The Scottish Parliament
Pàrlamaid na h-Alba

# EDUCATION AND SKILLS COMMITTEE

## AGENDA

## 24th Meeting, 2020 (Session 5)

## Wednesday 28 October 2020

The Committee will meet at 11.00 am in a virtual meeting and will be broadcast on www.scottishparliament.tv..

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.

2. **Declaration of interests:** George Adam will be invited to declare any relevant interests.

3. **Subordinate legislation:** The Committee will take evidence on the Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 [draft] from—

   Maree Todd MSP, Minister for Children and Young People, and Tom McNamara, Head of Youth Justice and Children's Hearings, Scottish Government.

4. **Subordinate legislation:** Maree Todd, Minister for Children and Young People to move—S5M-22706—That the Education and Skills Committee recommends that the Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 [draft] be approved.

5. **Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   David Whelan, and Harry Aitken, Former Boys and Girls Abused in Quarriers Homes;

   Flora Henderson, Future Pathways;

   Helen Holland, and Simon Collins, In Care Survivors Service Scotland (INCAS).

6. **Review of evidence:** The Committee will consider the evidence it heard under agenda item 5.

Gary Cocker
Clerk to the Education and Skills Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5204
Email: Gary.Cocker@parliament.scot

The papers for this meeting are as follows—

**Agenda item 3**

| | |
|---|---|
| Subordinate Legislation paper | ES/S5/20/24/1 |

**Agenda item 5**

| | |
|---|---|
| SPICe briefing paper | ES/S5/20/24/2 |
| SPICe Summary of evidence | ES/S5/20/24/3 |
| Submissions pack | ES/S5/20/24/4 |
| Advisor briefing paper- Boarding out | ES/S5/20/24/5 |

**Education and Skills Committee**

**24th Meeting, 2020 (Session 5), 28 October 2020**

**Subordinate Legislation: draft affirmative instrument**

## Introduction

1. This paper seeks to inform the Committee's consideration of the Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 draft which are subject to the affirmative procedure.

2. If approved by the Parliament, the Order will come into force on 21 November 2020. The policy note is attached to this paper in **Annexe A.**

## Timetable

3. The SSI was laid on 14 September 2020 and the lead committee (Education and Skills) must report by 5th November 2020.

## Purpose

4. According to the Policy Note, the purpose of the instrument is:

*'Section 122 makes provision in relation to children's advocacy services, which are defined under section 122(7) as "services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing".*

*These regulations are made under section 122(4), which allows the Scottish Ministers to make provision for or in connection with children's advocacy services. The regulations set out, amongst other things, the qualifications to be held by persons providing children's advocacy services and the training they require to undertake. It also makes provision regarding the payment of expenses, fees and allowances by the Scottish Ministers to persons providing children's advocacy services.'*

## Consultation

5. The Scottish Government stated that there was no formal consultation but it has engaged with the Children's Hearings Advocacy Expert Reference Group.

## Committee Procedure

6. This is an affirmative instrument.

7. The affirmative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the affirmative procedure cannot come into force unless they are approved by the Parliament.

8. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument.

9. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee then has up to 90 minutes to debate the motion. The lead committee must report its recommendation to the Parliament; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed.

10. At its meeting today, the Committee will take evidence from the Minister for Children and Young People and her officials. The Minister will then move motion S5M-22706:

*That the Education and Skills Committee recommends that the* Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 (Draft), b*e approved.*

**Delegated Powers and Law Reform Committee**

11. The Delegated Powers and Law Reform Committee considered the instrument on 22 September 2020 and had no comment to make on the draft regulations.

**Action**

12. Members are invited to—

- take evidence from the Cabinet Secretary and Scottish Government officials on the instrument;
- ask the Cabinet Secretary to move (the Committee will then debate and vote on) the motion on the instrument; and
- delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.

**Clerks**
**Education & Skills Committee**

## Annexe A

# POLICY NOTE

### THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (CHILDREN'S ADVOCACY SERVICES) REGULATIONS 2020

# SSI 2020/XXX

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 122(4) and section 195(2)(a) and (b) of the Children's Hearings (Scotland) Act 2011 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

**Purpose of the instrument**

Section 122 makes provision in relation to children's advocacy services, which are defined under section 122(7) as "services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing".

These regulations are made under section 122(4), which allows the Scottish Ministers to make provision for or in connection with children's advocacy services. The regulations set out, amongst other things, the qualifications to be held by persons providing children's advocacy services and the training they require to undertake. It also makes provision regarding the payment of expenses, fees and allowances by the Scottish Ministers to persons providing children's advocacy services.

## Policy Objectives

The purpose of section 122 of the Act is to make provision for children's advocacy services at children's hearings. Section 122(2) introduces a requirement on the chairing member of a children's hearing to inform the child of the availability of children's advocacy services. Section 122(7) defines this as "services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing".

In addition, section 122(4) contains a regulation-making power that allows Scottish Ministers to make regulations for, or in connection with, the provision of children's advocacy services. The objectives are to ensure that the right support is available for children and the arrangements for providing it are effective.

The primary role of children's advocacy is to support children and young people to express their own needs and views and therefore to support decision-makers to make informed decisions on issues which influence children's lives where those issues are considered within children's hearings. The role of children's advocacy services is therefore to make sure children's rights are respected and their views and wishes are fully considered within the decision making within their children's hearing.

Section 122(4) of the Act provides that Scottish Ministers may make regulations which cover a number of areas in relation to persons providing children's advocacy services. This includes

the qualifications to be held, training to be completed and payment of expenses, fees and allowances.

The regulations apply where Scottish Ministers have entered into arrangements with a service provider under section 122(5) of the Act for the provision of children's advocacy services.

Child advocacy workers must act in accordance with the children's advocacy service standards. Detailed in the National Practice Model and Service Delivery Model for the provision of advocacy services for children's hearings. The National Practice Model Guidance, published in March 2020 can be accessed here: https://www.gov.scot/publications/advocacy-childrens-hearings-system-national-practice- model-guidance/

Persons are only qualified to act as child advocacy workers under this provision when they have completed training and qualifications in accordance with the Regulations. Under Regulation 4(2), the Scottish Ministers must provide, or make arrangement for, this training and qualification to both child advocacy workers and potential child advocacy workers and this training must be successfully completed. Pre-appointment and in-service training and future qualifications for those child advocacy workers will be provided to ensure they have the knowledge and competence to understand the critical parts of the children's hearings system and to support children effectively in the children's hearings context. Regulation 5 specifies the particular matters on which training must be provided. This includes the legislation relevant to children's hearings, possible outcomes of hearings, rights of children and young people at children's hearings and the roles and functions of the child advocacy worker and other key persons involved in children's hearings.

The service providers are entitled to the payment of fees, expenses and allowances in accordance with the arrangements they have entered into with Scottish Ministers under section 122(5) of the Act. Section 122(5) enables Scottish Ministers to enter into agreements (contractual or otherwise) with any person other than a local authority, Children's Hearings Scotland (CHS) or Scottish Children's Reporter Administration (SCRA) for the provision of children's advocacy services. The oversight and funding for this provision will be carried out by the Scottish Government's Children's Hearings Advocacy Team, and managed through grant funding agreements with third sector organisations providing advocacy services across each local authority area in Scotland. This ensures independence of the services from these named public bodies. This also allows grant funding to be provided to commissioned providers and one-off payments for expenses, fees, and allowances to child advocacy workers considered to be appropriate for the purposes of these Regulations to deliver these children's advocacy services.

Provisions under regulation 7 will mean that Scottish Ministers may consent to the continuation of existing advocacy relationships for children and young people who are referred to children's hearings prior to the commencement of these regulations. Supporting continuity of pre-existing advocacy relationships where possible and offering an element of choice for children and young people as to who may provide advocacy for their children's hearings. This only applies to those who are acting in a way akin to a child advocacy worker as defined for the purposes of children's advocacy in children's hearings.

## Consultation

No formal consultation was carried out in relation to these regulations. However, engagement with relevant stakeholders took place in the development of them.

Informal consultation with stakeholders took place during the Bill's parliamentary passage, and this has continued as the pre-implementation phase of the 2011 Act was developed. Detailed engagement also took place when the Scottish Government issued a discussion paper on 22 January 2019, to the children's care and justice sectors. An indicative response date of 1 March was set and 7 responses received, the last being submitted on 21 March 2019.

The development of the National Practice Model included wide engagement with stakeholders, including advocacy providers and children and young people who have experienced the children's hearings system. This work has invloved the setting up of an Expert Reference Group, Workshops and Consultations.

Three research reports were published in 12 July 2017. The reports relate to Advocacy Pilots undertaken by Who Cares? Scotland for the Scottish Government over 2016-17. The research looked at advocacy service for children and young people involved in the children's hearings system.

The reports are:
Advocacy matters: an analysis of young people's views
Advocacy matters: an analysis of stakeholder views
Advocacy Action Research: final evaluation report

The Children's Hearings Advocacy Expert Reference Group at the end of 2019 discussed the matters for inclusion in the Regulations and the position paper resulting from this discussion and engement in available on the Scottish Government website here:
https://www.gov.scot/publications/childrens-hearings-advocacy-expert-reference-group-policy-position-paper/

We will continue to work with the Expert Reference Group in a strategic role, directed at ensuring timely delivery of a high quality service and at further quality improvement development work which will be required after implementation. The Expert Reference Group terms of reference and membership are available here:
https://www.gov.scot/groups/childrens-hearings-advocacy-expert-reference-group/

## Impact Assessments

The following impact assessments have been completed:

- Equalities Impact Assessment
- Data Protection Impact Assessment
- Children's Rights and Wellbeing Impact Assessment

No equality, rights or privacy issues have been identified in these assessments.

Screening has been carried out for other impact assessments (Environmental, Islands and Communities and Fairer Scotland Duty) and it has determined they are not required.

## Financial Effects

The Minister for Children and Young People confirmed a Business and Regulator Impact Assessment (BRIA) is not necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

The expected costs associated with the new provision were detailed at the time of inclusion in the Bill introduced to the Scottish Parliament, in the Suplementary Financial Memorandum as Amended at Stage 2, published in November 2010 see here: https://www.parliament.scot/S3_Bills/Childrens%20Hearings%20(Scotland)%20Bill/b41as3- stage2-fm.pdf

We have further considered the financial effects. The costs are under £5 million, and the impact is solely on the public sector. The Scottish Government is assured that no new policy or resourcing challenges have arisen.

Stated in the 2019-20 Programme for Government there will be an initial budget of £1.5 million for 2020-21. Based on the grant monitoring returns from providers and feedback from other sources, there will be periodic reviews of the levels of demand for, and provision of, advocacy for children's hearings. As a matter of course, these Government interventions will remain under review with regards to the extent and distribution of unmet demand with our analytical colleagues and the Expert Reference Group who will help inform any necessary revisions for future grant awards.

The Scottish Ministers will ensure children and young people are provided an element of choice of service provider, with the aim of securing one primary and at least one alternate provider in each local authority area. These provisions must provide additionality to any existing services commissioned by the local authorities.

It is not envisaged that every child and young person attending a children's hearing will want to make use of the service. Children and young people will have the freedom of choice to accept or reject advice, information, support and help offered by children's advocacy services. Many will be content to provide their views themselves or will have other people they choose to support them.

Scottish Government
Children and Families

Directorate September 2020

Agenda item 5 ES/S5/20/24/2

# Education and Skills Committee
# Redress for Survivors (Historical Child Abuse in Care) (Scotland Bill)
# 28 October 2020

The paper below outlines issues which could be explored with witnesses during the evidence sessions on 28 October 2020. For more details on issues raised see the summary of the evidence provided in response to the Committee's call for views.

## REDRESS AND THE WRONGS OF THE PAST

The Policy Memorandum (para. 5) summarises the Bill's aims as follows:

> "For too long, survivors of abuse were not acknowledged and the truth of their abuse neither accepted nor acted upon, for some compounding the effects of their childhood. The wrongs of the past must be addressed, financial redress is an important part of doing that."

**Members could explore with the witnesses whether they think the Bill will succeed in addressing the wrongs of the past.**

## NON-FINANCIAL REDRESS AND APOLOGIES

The scope of non-financial redress isn't defined in detail in the Bill. Instead, the Bill gives the Scottish Ministers a general power to fund:

1. emotional, psychological or practical support to those applying or considering applying to the redress scheme (section 85); and
2. emotional or psychological support to:
    1. those receiving a redress payment under the scheme;
    2. survivors who have previously received an advance payment; and
    3. survivors who meet the eligibility criteria for a financial payment but who will not receive one due to deductions of previous payments or previous criminal conduct.

The Policy Memorandum emphasises that a priority area for support will be for therapeutic support and counselling (paragraphs 316-318).

In addition, there will also be a public apology process. The details of this are yet to be determined. However, the Policy Memorandum states at para 326 that:

> "Apology, like other forms of acknowledgement, needs to be meaningful at an individual level for survivors. Close working will continue with survivors to develop good practice guidance on the principles and provision of apology. The redress scheme will be able to build on the experience of the advance payment scheme where applicants have, in large numbers, commented on how much it has meant to them to receive a letter from a senior Scottish Government official reiterating the apology delivered by the Deputy First Minister in the Parliament in October 2018.

Consideration will continue to be given as to how other redress schemes deal with the issue of apology"

**Members could explore in more detail with the witnesses what their views are on the importance of non-financial redress for survivors.**

**Members could also explore with the witnesses what non-financial redress survivors are likely to need and whether the proposals in the Policy Memorandum are likely to be sufficient.**

**Members could also explore what the value of a public apology would be for survivors and whether witnesses have any views on the form which such an apology should take.**

## SUPPORT FOR APPLICANTS

Applicants will be provided with support by means of:

- the use of Scottish Government case-workers (para 308 of the Policy Memorandum) for example to assist in obtaining evidence and medical or psychological reports (para. 147 of the Policy Memorandum)

- regulations which will provide for the reimbursement of costs and expenses reasonably incurred in the making of an application (section 87)

- the payment of capped legal fees which applicants reasonably incur (section 88)

Legal advice isn't formally required to apply to the scheme. However, the Policy Memorandum recognises that people may benefit from it and states that independent legal advice is to be "strongly encouraged" before applicants sign the waiver required for payment under the scheme.

**Members may wish to explore with the witnesses the types of support which survivors will need to be able to apply to the scheme.**

**Members could also explore with witnesses whether there is there anything missing from the support envisaged by the scheme.**

## WAIVERS AND FAIR AND FAIR AND MEANINGFUL CONTRIBUTIONS

Care settings which provide "fair and meaningful" financial contributions will be put on a "contributor list" and protected from future civil actions by applicants who sign a waiver.

Organisations can be removed from the contributor list (for example because they default on paying – although this could be pursued as a debt by the Scottish Government). Organisations which are removed from the contributor list would, however, still benefit from the waiver (section 12(7) of the Bill).

Applicants will have to choose between redress and civil actions at the point of signing the waiver. Funded legal advice does, however, not cover whether to pursue civil litigation as an alternative to redress (section 89(3))

Submissions from survivors and survivor groups take a negative view of the waiver process. They see it as an attempt to silence survivors and to limit organisations'

responsibility for abuse. Many argue that it would be fairer if double compensation was dealt with by allowing future civil damages to be offset against redress payments.

In contrast, charities are in favour of waiver on the basis that protection against future liabilities will be necessary for the continuing operation of bodies that are still providing care.

**Members could explore with the witnesses what their general views are on the waiver procedure and making survivors choose between redress and civil actions.**

**Members could ask witnesses what their views are on arguments made by charities that the waiver is necessary for the continuing operation of bodies that are still providing care.**

**Members could also explore with witnesses what their views are on potential alternatives – for example, requiring the redress payments to be repaid from any damages paid out in future court cases.**

**Members could also explore with the witnesses whether they think survivors are likely to have all the information needed to make an informed decision on whether to sign the waiver or to choose civil litigation. What is their view on the need for funded legal advice on pursuing litigation as an alternative to accepting the waiver?**

**Members could also explore witnesses' views on the fact that organisations which are removed from the contributor list would still benefit from the waiver.**

## LEVEL OF REDRESS OFFERED

The Bill allows applicants to choose whether to apply for:

1. a fixed rate redress payment of £10,000; or
2. an individually assessed redress payment of either £20,000, £40,000 or £80,000.

Any individually assessed payment includes the fixed rate redress payment. Consequently, maximum total payments cannot be higher than £20,000, £40,000 or £80,000.

A number of survivors, survivor groups and their representatives view the level of redress proposed as too low. They also argue that that it is not clear how the Scottish Government arrived at the amounts proposed and that there needs to be more transparency.

Note that information on the level of payments in other countries' schemes in can be found in the CELCIS/SHRC report "Consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care Report 3: International perspectives – a descriptive summary" (see table 6.1)

**Members could explore arguments around the level of payments with the witnesses.**

## EVIDENCE NEEDED FOR REDRESS APPLICATIONS

The approach taken by the Bill is to have a simplified application process for fixed rated payments and to provide further guidance on the type of evidence needed to apply for an individually assessed payment. The aim is to create robust evidentiary rules, but ones which do not create a burden on survivors. Documentary evidence will be the norm

Para 146 of the Policy Memorandum states that evidence for individually assessed payments could include information such as.

- Previous statements or evidence given in other proceedings
- Medical and social care records
- Evidence of physical injury or psychological or psychiatric harm
- Previous reports or disclosures to the police or to others
- Statements from third parties
- Criminal convictions of perpetrators.

**Members could explore with witnesses:**

- **What difficulties survivors are likely to face in sourcing the evidence need to apply to the scheme**
- **Whether they think the Bill's approach will provide the right balance between rules which do not provide a burden on survivors, but which are robust enough to prove the need for an individually assessed redress payment.**
- **What their views are on the use of documentary evidence over oral evidence.**

## PERIOD FOR WHICH OFFER OF REDRESS IS VALID

Under section 47(3) of the Bill an offer of a redress payment is, in principle, only open for a period of 12 weeks (panels can, however, extend this if they are satisfied that there is a "good reason" why an applicant needs a longer period).

A number of survivor representatives consider this period to be too short for survivors to decide whether to accept the offer of redress or pursue a separate claim in the courts.

**Witnesses could be asked for their views on this issue.**

## NEXT OF KIN PROCEDURE

The Bill allows next of kin of a deceased person who was abused (spouse, civil partner, cohabitant or surviving children) to apply for a fixed rate payment of £10,000 on their behalf.

The survivor of abuse must have died on or after 17 November 2016 and must also meet the general eligibility criteria for the scheme.

17 November 2016 has been chosen as on the basis that it was the date when the Deputy First Minister made a statement to the Scottish Parliament committing to consult on a redress scheme. The Policy Memorandum argues that the date is appropriate as

> "From this date, the Scottish Government considers that survivors and their families may have formed reasonable expectations that a financial redress scheme would be established by the Scottish Government for such abuse survivors." (para 258)

A number of survivors, survivor groups and their representatives have argued that this cut-off date is not fair to the next of kin of survivors who passed away before 17 November 2016.

**Members could explore with the witnesses what their views are on the next of kin procedure and the cut-off date of 17 November 2016.**

## REVIEWS

The scheme allows applicants to request a new panel to review a panel's decisions on applications for financial redress. Review panels are not permitted to determine that an applicant is ineligible for redress and cannot reduce the amount of a payment. They may otherwise uphold, reverse or vary any part of a panel's decision.

The review panel's decision is final. There is no further appeal, other than the possibility of bringing an action for judicial review in the courts.

**Witnesses could be asked what their general views are on the review process and the lack of an appeal to the courts (other than judicial review).**

## CARE SETTINGS COVERED BY THE SCHEME

Applications for redress payments can be made in relation to, "one or more relevant care settings in which the abuse took place" (section 27(2) of the Bill).

"Relevant care setting", which must be in Scotland, is defined broadly in section 18 of the Bill to cover both:

- children who were in an institutional or public care setting because their families were unable to look after them (e.g. a children's home or in foster care); and also
- children who were in care due to some sort of intervention by a body exercising public functions (e.g. a court order placing a child in an approved school).

This includes situations where voluntary organisations (e.g. a charity/religious body) had what we would now think of as a public function in caring for children.

However, it is important to note that the following would not be covered:

- Kinship care or care due to private fostering or healthcare arrangements.
- Private or grant-aided schools (e.g. boarding schools) unless the child's attendance at the school was arranged and paid for by or on behalf of a local or education authority, or a relevant voluntary organisation.
- **"**Residential care facilities" (including hospitals and mental health institutions) where residential accommodation was not provided on a "long term" basis (see section 19(1) of the Bill).
- Placements made to institutions in England and Wales (applicants must have been resident in a relevant care setting in Scotland (section 16(1)(b)).

**Members may wish to explore with the witnesses what their views are on the definition of "relevant care settings". In particular:**

- **What their views are on the fact that boarding schools will normally not be covered**

- **What their views are on the fact that the Bill only covers "residential care facilities" which provided "long term" residential accommodation**

- **Whether they think that "long-term" needs to be defined somewhere in the Bill**

- **Whether they have any experience of Scottish survivors who were placed in institutions in England and Wales.**

- **Whether they can give any examples of other care settings which in their view are not covered by the definition in the Bill but should be.**

## ABUSE COVERED BY THE BILL

The Bill defines "abuse" as meaning sexual, physical and emotional abuse and abuse which takes the form of neglect (Section 17(1)).

**Members may wish to explore with the witnesses what their views are on this definition. In particular, witnesses could be asked for views on:**

- **The exclusion of corporal punishment where it was, "permitted by or under any enactment or rule of law at the time it was administered".**

- **The need for the Bill to cover "abuse by peers."**

## FIVE YEAR DURATION OF THE SCHEME

The scheme will be open to accept applications for five years, although the Scottish Ministers will have the power to extend it (subject to the Parliament's approval).

**Members could explore with witnesses whether they think there is a risk of applicants being excluded by making the scheme time-limited (e.g. those no longer living in Scotland or people who were boarded out to crofts for agricultural work who may not realise that they fall under the scheme)?**

## HISTORICAL CUT-OFF POINT

The scheme only covers abuse which occurred before 1 December 2004. The rationale is that this was the date when the then First Minister Jack McConnell made a public apology in Parliament and also on the basis that current standards are radically different to those in the past (see para 72 of the Policy Memorandum).

In contrast, the Scottish Child Abuse Inquiry can examine abuse up to 17 December 2014. The Policy Memorandum states that this date would not be appropriate as, "redress has a different context and purpose, and requires eligibility criteria which take account of that."

**Members could discuss with the witnesses what their views are on the cut-off point for the scheme and the difference with the cut-off point for the Scottish Child Abuse Inquiry. Is it justified in their view?**

## DEDUCTIONS FOR PRIOR PAYMENTS

The following prior payments for abuse will be deducted from any redress payments made by Redress Scotland:

- court awarded damages
- out of court settlements

- payments from the Criminal Injuries Compensation Authority (CICA)
- payments from the advance payment scheme
- payments from other ex-gratia payments.

The aim is to prevent "double compensation" (Policy Memorandum para 189).

**Witnesses could be asked for their views are on this rule.**

## APPLICANTS WITH CONVICTIONS FOR SERIOUS CRIMINAL OFFENCES

The Bill gives Redress Scotland a discretionary power not to offer a redress payment where a payment would be contrary to the public interest due to the applicant having been convicted of a serious criminal offence (murder, rape or other defined violent or sexual offences where someone is sentenced to imprisonment for a term of 5 years or more).

**Members could explore with the witnesses what their views are on whether redress payments should be paid to abused children who were later convicted of serious criminal offences.**

**Members could also explore with witnesses whether they think it is appropriate that the decision on this matter should be left to the discretion of the Redress Scotland panels.**

**Angus Evans**
**SPICe Research**
**22 October 2020**

Agenda item 5 ES/S5/20/24/3

# Education and Skills Committee
# Redress for Survivors (Historical Child Abuse in Care) (Scotland Bill) – summary of the evidence
# 28 October 2020

The paper below provides a brief overview of the evidence provided in response to the Committee's call for views. It is not an exhaustive summary and is only intended to highlight some of the main issues raised.

## WAIVER

### General principle behind the waiver

Survivors, survivor groups and their representatives have fundamental disagreements with the proposed waiver procedure.

For example, Wellbeing Scotland states that:

> "The Waiver appears to many as the silencing of survivors by compelling them to remove their right to pursue any civil actions resulting in them being ineligible to participate in the scheme. We view this as a retrograde step in light of all that has been achieved for survivors by the government."

Similarly, Anne Macdonald states that:

> "I believe this is a removal of fundamental rights of survivors to have choice and agency. Survivors have fought for their right to be heard and believed for decades and this effectively removes their rights as citizens of Scotland to access justice and silences them once again."

The law firm Thompsons also argues that the redress scheme is a way for the state to admit its ultimate responsibility for children who suffered abuse in care, but that

> " … there is absolutely no reason why the Scottish government should seek to introduce measures to limit the financial liability for other organisations who were equally, if not far more, responsible for the abuse."

Various submissions also argue that it would be fairer for survivors if double compensation was dealt with by allowing future civil damages to be offset against redress payments (e.g. the law firms, Digby Brown and Thompsons; the Scottish Human Rights Commission; the Faculty of Advocates; The Association of Personal Injury Lawyers (APIL)).

Thompsons and Wellbeing Scotland also argue that the Scottish Government's conclusion that there was majority support in the consultation for the waiver is incorrect. Their view is that the consultation questions were misleading and overly favoured bodies with a vested financial interest in the waiver procedure.

In contrast, potential contributors to the scheme support the waiver procedure on the basis that it, for example:

- Prevents double compensation
- Provides the incentives necessary for bodies to make a fair contribution and for insurers to contribute
- Provides legal certainty.

A number of bodies (e.g. the Church of Scotland, Quarriers) do, however, acknowledge that they are open to discussions on alternatives which are closer to survivors' wishes whilst achieving the same ends as the waiver.

**Other issues with the workings of the waiver procedure**

The submissions also raise a range of other issues about the workings of the waiver procedure, including arguments that:

- not providing funded legal advice to applicants on whether to pursue civil litigation as an alternative to redress (section 89(3) of the Bill) is unfair and doesn't allow applicants to make an informed choice (Faculty of Advocates, SOLAR, Aberlour)

- it is unfair that section 12(7) of the Bill would allow contributors who are removed from the contributor list to still benefit from the waiver (SHRC)

- the waiver should not apply to the Scottish Ministers (section 45(5)) (SHRC)

- it should not be possible to sign the waiver at a point before the application for a fixed rate payment has been finally determined (section 36(4)(b)) (SHRC).

**LEVEL OF REDRESS OFFERED**

A number of survivors, survivor groups and their representatives view the level of redress proposed as too low. For example, Thompsons states that:

> "the levels of payment are low compared to civil damages and certainly when compared to the abuse survivors have suffered. The basic award of £10,000 is derisory. The scales in our submission require to be revised."

Similarly, Anne Macdonald argues that:

> "The scale of redress payments should be higher. Compensation of ten thousand pounds in today's economy and for having endured horrific abuse and life chances is an extremely low sum."

The SHRC also states that, "possibility of raising the highest payment level … should be fully explored with survivors" as well as arguing for more transparency about the reasoning on how the payment levels were arrived at. This point is also made by, for example. Nicky McKinstrey and Former Boys and Girls Abused in Quarriers Homes (FBGA) who argue that it is not clear from the Policy Memorandum why these levels were set.

Former Boys and Girls Abused in Quarriers Homes also indicates that it is not clear how the Scottish Government arrived at the amounts proposed. It also recommends increasing the maximum amount payable in exceptional cases or where child migrants are involved.

In contrast, certain contributors to the scheme make the point that increasing the level of redress could impact on the ability of these bodies to pay in. For example, Quarriers states:

> "We note too that survivor groups are requesting that the proposed limits be increased. We support their right to maximise rightful compensation, however we are worried this could impact on charities' ability to contribute to and participate in the scheme. We anticipate that higher levels of compensation would be paid directly by participating charities, given that the Scottish Government has indicated that it will only underwrite the first £10k of an award. This will make participation more challenging for organisations like Quarriers, particularly if the insurance companies are not part of the process."

**PAYMENT SCALES**

A number of submissions argue that redress payment scales should not be applied rigidly.

For example, WhoCaresScotland states that,

> "The decision-making process to determine financial redress payments must consider experiences of abuse on a case by case basis and without inflexible categories being applied to survivors' experiences…Communication about payment decisions by Redress Scotland must be done sensitively and framed in the right way, with the input of survivors being central to getting that right."

The Faculty of Advocates goes slightly further and argues that, "it would be fairer to have a range within each level".

In contrast, Wellbeing Scotland highlights survivors who are of the view that having different payment scales based on "the nature, severity, frequency and duration of the abuse" is not trauma-informed and that it will create tensions in the survivor community.

**ABUSE - CORPORAL PUNISHMENT**

A number of responses question the exception for lawful corporal punishment (section 17(2)).

Wellbeing Scotland's view is that it should be removed from the Bill on the basis that such punishment was a result of failure in legislation at the time, "in the same way that failings in the care system enabled abuse of children."

Similarly, Dr. Susannah Lewis argues that in the past "the belt" was often used in an emotionally abusive way. She states that:

> "The Scottish Child Abuse enquiry has reported that victims have disclosed practices where the entire dormitory or cottage of children was routinely "lined up for a belting" (e.g. Quarriers, Renfrewshire). This was not "discipline" in keeping with childcare practises of the time, but a form of emotional/ritualistic abuse. The adult

used “the belt” to incite fear and public humiliation for his/her gratification. The context around “beltings” must be considered. A practice that was “legal” was misused to conduct abuse.”

Others also stress that more clarity is needed on how this exception will work in practice. SOLAR notes for example that:

> “Corporal punishment is rightly no longer legal, however at the time it was legal the administration of that could still amount to abuse of a child. A complete exemption could therefore rule out a possible claim by a survivor where they were abused by corporal punishment. This would appear to be the case even if the punishment was extreme. Consideration should be given to whether some form of clarification or guidance needs to be issued with this.”[1]

## ABUSE BY PEERS

Certain submissions question how the redress scheme will deal with abuse by peers. For example, COSLA states that:

> “Local Government has raised potential issues around inclusion of peer abuse within this definition, as this was not previously consulted on and there is question as to whether any civil case has considered this within the context of the Limitation Act. COSLA urges that full and robust consideration is given to the implications of widening the definition to include peer abuse.”

## DEFINITION OF RELEVANT CARE SETTINGS

Various submissions argue that the current definition of “relevant care setting” in sections 18 to 20 of the Bill is too narrow.

For example, South Lanarkshire Council states that it is concerned that the definition, “does not consider those abused historically in school setting and hospital settings if they were placed there by their parents.”

Social Work Scotland also makes a similar point, referring to its submission to the Scottish Government’s consultation where it stated that this risks:

> “ … denying many individuals the right to redress for abuse suffered while in the care and protection of the NHS. It also insulates the NHS from appropriate accountability around how it fulfilled its responsibilities to the children in its care. […] The primary consideration in determining eligibility should be whether the state had a significant role or power in determining the placement of the child, and when the child was in that placement, had responsibilities for their care and protection.”

The SHRC also takes the view that there needs to be an assessment of whether the definition has the effect of ruling out specific groups of survivors. It states that:

> “There were situations where there was no clear process of transferring legal responsibility for parenting, nevertheless the institution effectively had complete control over the liberty, and the moral, physical, social and spiritual well-being of a

[1] The Policy Memorandum (para. 76) states that guidance will be issued under section 97 of the Bill. The content of this guidance is not yet clear, however.

> child. This may be particularly relevant for disabled people, including people with learning disabilities, institutionalised as children where parents were often advised that an institutional setting would be the most appropriate place for the care and support of the child, but where parents may not have formally ceded parental rights to the institution."

**Placement in England and Wales**

Applicantions are only eligible in relation to relevant care settings in Scotland (section 16(1)(b)). East Lothian Council states that this,

> "would not cover placements in England which were made by Scottish local authorities. While this was not a frequent occurrence, it is nevertheless something which happened on occasion."

**Long-term residential accommodation**

Residential care facility is defined in section 19 as, "an establishment, including a hospital which provided long-term residential accommodation for children." "Long-term" is not defined in the Bill. The Congregation of the Sisters of Nazareth questions the term's use and meaning noting that:

> "an applicant may have been with the organisation from a few days through to several years, and suffered abuse during this time, and therefore entitled to redress. However, not all situations can be described as having long term responsibility or be in place of the parent."

Digby Brown LLP also argues that "long-term" should be defined.

**Section 18(4) of the Bill**

Section 18(4) of the Bill gives the Scottish Ministers the power to modify the definition of "residential institution" by regulations subject to the affirmative procedure. The SHRC argues that an additional obligation to review this definition at regular intervals could be a way of dealing with some of the issues mentioned above.

Aberdeen City Council accepts that section 18(4) could be useful for this purpose, but also argues that the Bill needs to include details on what consultation the Scottish Government would carry out before changing the definition of "residential institution".

In contract, SOLAR's view is that it would not be desirable to change the definition by regulations. It states that:

> "Further changes risk uncertainty in terms of retrospective applications or contributing organisations being asked for further payments/contributions to the scheme because of a widening of the definition. If the experience [the] Scottish Government has of the advance payment scheme tells them it may need modified then it is unclear why they are unable to commit to a full definition for the purpose of this scheme at the outset. We consider clarity at this stage to be very important."

**APPLICANTS WITH CONVICTIONS FOR SERIOUS CRIMINAL OFFENCES**

A number of submissions question the Bill's approach to applicants with convictions for serious criminal offences.

For example, bodies such as East Lothian Council and the Faculty of Advocates take the view that there should be no exception for applicants with criminal convictions. According to the Faculty of Advocates:

> "Given the scheme's focus on the recognition of the harm caused by child abuse and treating survivors with dignity, respect and compassion, a person's character or conduct after the abuse should have no bearing on any redress payment."

Thompsons argues that any exception should only be withheld in exceptional circumstances, noting that the Bill,

> "fails to understand that survivors may have committed a serious crime that would on the face of it exclude them from receiving a payment under the scheme because of the abuse they themselves suffered."

In contrast, other submissions agree with the approach taken. For example, Former Boys and Girls Abused in Quarriers Homes states that it agrees in principle with the provision in the Bill but that it awaits further guidance to be published by the Scottish Ministers.

**HISTORICAL CUT OFF DATE**

To be eligible for redress the abuse must have occurred before 1 December 2004 (section 16(2) of the Bill).

A number of submissions are of the view that this is acceptable. For example, Aberdeen City Council states that:

> "The date of historical abuse, which took place before 1 December 2004, is appropriate. The redress scheme is also open to those where the abuse took place before 26 September 1964. This is significant in terms of equality given that the operation of the law means that those survivors are unable to raise a civil action to pursue damages in respect of that abuse. For those survivors, the redress scheme is demonstrably more inclusive than existing remedies. This distinction reflects that the purpose of the redress scheme is to account for historical abuse. "

In contrast, many survivors, survivor groups and their representatives do not agree with using 1 December 2004 as the cut of date.

For example, Digby Brown LLP states that,

> "There can be no logical basis for the use of any date other than the date of the inception of the scheme. Section 16 (2) ought to be revised to that extent….The only intelligible explanation for this provision is as a cost-limiting measure."

It also argues that the wording of section 16(2) should be changed from, "the abuse must have occurred before 1 December 2004" to, "the abuse must have commenced before 1 December 2004" so as to cover situations where the abuse started before 1 December 2004 but continued beyond that date.

## FIVE YEAR PERIOD

A number of submissions argue that the scheme should be open to applications for longer than the current five years (section 29). For example, APIL's view is that five years is "too restrictive" and could lead to people being too late to make an application. It argues that the scheme should remain open for an unrestricted period similar to the Criminal Injuries Compensation Scheme.

Applications which are "paused" under section 30 of the Bill (for example pending the outcome of a civil damages claim) will be treated as having being withdrawn at the end of the five year period. Digby Brown LLP argues that this is unfair as,

> "an applicant whose civil damages claim has not concluded within that period is faced with difficult and stressful decision of opting to wait the outcome of their civil claim or accept a (probably) more modest redress payment."

## APPLICATION PROCESS

### Removing burdens on individual applicants

Broadly speaking, survivors and their representatives stress that the burdens on individuals applying should be as low as possible and that the application process should reflect this.

For example, Wellbeing Scotland states that, in its experience, in many cases documentary evidence does not exist and that therefore testimony from counsellors who have worked with survivors should be permitted.

Similarly, WhoCaresScotland argues for flexibility in the types of evidence which Redress Scotland will accept as well as arguing for an explicit link to be made between evidence held by the Scottish Child Abuse Inquiry and the process for applicants seeking redress.

### Support for applicants

Survivors and representative bodies also stress the need for substantial support for applicants during and after the application process. For example, Dr Susie Lewis notes that:

> "A number of applicants will be elderly, many will have mental health difficulties. Some will not have access to technology. Making an application is likely to be very anxiety provoking. I request that independent support staff are available to guide applicants through the process (with each applicant having a named support person), and give telephone or face to face support at agreed intervals."

Similarly, Thompsons Solicitors argues that:

> "It is therefore essential in our submission that the Bill provides for survivors to have access to survivor support services of their choosing, without the need to go through Future Pathways and that trusted support is paid for by the Redress Fund."

WhoCaresScotland stresses that it will be important to take into account the impact of abuse in individual cases when assessing the support needed. It states that:

> "This process of understanding impact must go beyond identifying diagnosable mental health conditions. Survivors living with the lifelong impact of experiences of abuse may never have received a mental health diagnosis which neatly labels the impact of their experiences. As such, an inclusive, sensitive and case-by-case approach must be used to explore this in a trauma-informed way with individual survivors seeking redress."

The SHRC indicates that the views of individual applicants will be of paramount important in shaping the application process. It recommends that consideration should be given:

> "as to whether Scottish Ministers should be obliged to consult with particular groups or individuals in determining the support that should be made available."

**Evidential standards**

A number of bodies take the view that there needs to be more clarity on evidential standards in the Bill. For example:

- The Faculty of Advocates argues that there is a risk of inconsistency if the Bill remains silent on the standard of proof needed (it suggests that the test should be "the balance of probabilities"). SOLAR also makes a similar point

- COSLA argues that the discretion given to Redress Scotland on evidential matters raises a question around the accountability of local authority funds. It states that:

  > "Local Authorities must have a role in ensuring that Council funds are spent in a way that meets criteria of audit, scrutiny, and accountability. This means that Local Government should be jointly involved in the scrutiny of the decisions and administration of Redress Scotland as it is anticipated that a substantial proportion of scheme payments will arise from the Local Government contribution"

- The Faculty of Advocates argues that section 34(6) of the Bill should be removed. Under section 34(6) the offer, or otherwise, of a redress payment is not to be taken as a finding that someone acted in a certain way. The Faculty states that, "this seems to preclude the panel from determining whether abuse actually took place."

- The Church of Scotland argues that failing to give contributors the opportunity to comment on evidence provided by applicants, and to submit their own evidence in response, would be inappropriate and not in line with the Human Rights Framework for Historical Child Abuse adopted by the SHRC.

**Period for which offer is valid**

Under section 47(3) of the Bill an offer of a redress payment is, in principle, only open for a period of 12 weeks (panels can, however, extend this if they are satisfied that there is a "good reason" why an applicant needs a longer period).

Certain submissions (for example APIL and SHRC) are of the view that this period is too short. APIL states that:

> "This period is designed to provide an opportunity for a survivor to speak to a solicitor and decide if they want to accept the payment, and sign the waiver. During this period survivors might want to investigate the possibility of a legal claim if this has not already been considered. Each case will have its own unique circumstances, so it is not possible to say how long survivors and their solicitors would need before knowing if a redress payment should or should not be accepted. A period of 12 weeks is too short if survivors did want to pursue a separate civil claim."

**Review procedure and appeals**

The Bill does not provide a further right of appeal once Redress Scotland has reviewed a decision.

The SHRC argues that, although this is not strictly required under Article 6 of the European Convention on Human Rights (right to a fair hearing), consideration should be given to establishing a further right of appeal as this would:

> "strengthen confidence in the process and would allow Redress Scotland to learn from and address any errors in decision making."

**NEXT OF KIN PROCEDURE**

Under section 22 of the Bill a survivor of abuse must have died on or after 17 November 2016 for next of kin to be eligible for a next of kin payment.

A number of parties, including Former Boys and Girls Abused in Quarriers Homes, express concerns that this date is too inappropriate.

For example, the SHRC states that:

> "The Commission is concerned that the cut-off date of November 2016 provides an extremely limited and restrictive window of eligibility for next of kin payments. The rationale for enabling next of kin payments it that the family of the deceased person should receive some acknowledgement and remedy on behalf of the person who experienced the abuse. By setting the cut-off date as late as is proposed, opportunities for redress for the families of survivors are much more limited. "

Similarly, Dr Susannah Lewis argues that is discriminatory:

> "I do not agree with the cut-off date for next of kin payment. Life expectancy is known to be shortened by childhood abuse, some victims will have died before old age. I feel it is therefore discriminatory that only the next of kin of victims who died on or after 17th November 2016 may seek a payment. This also dishonours the deceased victims (who died before this date) who had reported their abuse to the police/authorities."

**FAIR AND MEANINGFUL CONTRIBUTIONS**

Section 12 of the Bill puts the Scottish Ministers under a duty to draw up a list of responsible bodies who "are making or have agreed to make a fair and meaningful financial contribution towards the funding of redress payments". Section 13 requires the

Scottish Ministers to publish a statement of principles on determining whether bodies have made a “fair and meaningful” contribution. Organisations which offer a “fair and meaningful contribution” will benefit from the waiver procedure.

Submissions by charities raise a wide range of critical points about the operation of the “fair and meaningful“ contribution test. These include arguments that:

- There is a lack of transparency as to how the “fair and meaningful“ contribution test will operate in practice (Church of Scotland, Quarriers, Aberlour) and whether contributors would be consulted prior to publication (Aberlour). This makes it difficult for contributors to assess whether or not to participate

- The principles on “fair and meaningful“ contributions which the Scottish Ministers have to publish (section 13) should be included in the Bill itself (or in a statutory instrument) so that they can be subject to Parliamentary scrutiny and debate and so that Ministers will be subject to statutory obligations when taking decisions (Church of Scotland, Aberlour)

- The test appears to be aimed at securing the maximum contribution from each participating organisation rather than trying to maximise the number of organisations contributing. The result is that organisations will be forced to make a binary choice with the result that total contribution may be less than desired (Congregation of the Sisters of Nazareth)

- The level of payments required and the fact that significant sums will have to be paid up-front will threaten charities’ future operations. For example, Quarriers states that:

  > “Realistically, if charities are to protect the services they deliver, contributions will need to be paid from free reserves. Following ten years of austerity, the impact of COVID-19 and legacy issues such as pension deficits (not commonly recognised as a challenge outside of the sector), many charities do not operate significant reserves or hold wider assets.”

- Not participating due to financial constraints will lead to reputational damage in the future (Quarriers)

- There needs to be a process for reviewing and reassessing on a regular basis whether organisations can afford to contribute (Quarriers)

- There is a need for a mechanism to apportion responsibility to a number of different organisations and also to distinguish between children who were in long term care and those who were temporarily in care (Church of Scotland)

COSLA and local authorities also raise similar issues. For example, COSLA states:

> “A key area of concern to Local Government is the unknown quantum of the contribution. While it is assumed it will be a significant proportion of the costs of redress payments as set out in the Financial Memorandum (£350m), there are various unknowns which will determine the total payments which will be made and, in turn, the extent of the financial contribution from Local Government.”

COSLA also argues that it will be important for payments to be spread across an extended period rather than being "front-loaded" so that the impact on council services is minimised. It states

> "Whilst the details of the contribution are further assessed over the coming weeks and months, consideration must be given for an extended period of payment in order to spread the financial impact for Councils. Payment over ten years would be a reasonable suggestion as it profiles the contribution over a longer period, lessening the in-year financial impact, and the consequent impact on funding available for core services delivery."

COSLA also argues that payments by local authorities into the scheme should take into account the needs of individual local authorities in line with the approach taken when councils receive funding from the Scottish Government. It also argues that thought will have to be given to how to fairly assess councils' contributions given the reorganisations of local authorities which took place in 1975 and 1996.

Similar points are made by, for example, East Ayrshire Council, South Lanarkshire Council and Social Work Scotland.

**CHARITY LAW**

Charities and voluntary sector representatives have negative views on the proposed changes to general charity law in section 14 of the Bill and to restricted funds in section 15 of the Bill.

For example, SCVO and the Chartered Institute of Fundraising Scotland indicate that they do not believe that the Scottish Ministers should be able to make changes to the charitable aims of charities or how charitable funds are spent. They indicate that they,

> "are concerned that this legislation sets a precedent for other situations in which Ministers may seek to do so."

Quarriers states that:

> "Charity law will be profoundly affected by this legislation. In particular, it could erode the confidence of donors to charities since the financial support they provide might be used for purposes other than that which they intend."

The Scottish Charity Regulator, OSCR, indicates in its submissions that it has some concerns with section 14 of the Bill and that it has offered to assist the Scottish Government in producing guidance for charities. It states:

> "We have some concerns that the effect of the provisions at section 14 might undermine charity trustee's duties as set out in the 2005 Act. For example charity trustees, following detailed consideration of the impact on their charitable activities, might reach the view that, on balance, a significant contribution to the Redress Scheme is not in the interests of the charity due to the adverse impact it might have on current and future services and beneficiaries. However, given the nature of these provisions charity trustees may feel compelled to do so. Should this be the result this could undermine the voluntary nature of the scheme."

OSCR also notes in relation to section 15 that:

> "In our view, the proposed use of restricted funds to contribute to the Redress Scheme raises some fundamental issues. Restricted funds are given to a charity for a specific purpose – sometimes to deliver a special project or a distinct piece of work or to be used only for one charitable purpose where the charity has more than one. The person or organisation giving those funds has done so on the understanding that the charity will use the funds for that reason and no other.
>
> There is a major possible unintended consequence. Legislating to remove donor conditions on restricted funds and enabling them to be used in a manner which does not further the charity's purposes may affect donor, funder and public confidence in charities. Legislating in this way may undermine the fundamental principle of trust that underpins charitable giving and could impact on future donations …"

**INSURANCE COVER**

In its submission, the Association for British Insurers (ABI) explains that public liability insurance policies are the most likely to be relevant. These indemnify an organisation,

> "where there is vicarious liability for the direct acts of an organisation's employees, liability as a result of institutional failures, or liability as a result of negligence of the organisation's employees (not necessarily systemic negligence)"

The response notes, however, that public liability insurance is not mandatory and that there will be many cases where there is no cover or where cover is only provided with a large excess of with a low limit of indemnity cover.

The response also states that insurance policies covering personal injury will only be triggered where legal liability is established. On this point, ABI indicates that the lack of detail in the Bill on evidentiary standards means that it is not clear whether the level of evidence "meets the standard required under civil law to trigger an insurance policy."

ABI also explains that there may be difficulties where an insurer for the period where the abuse took place is no longer in business or has been taken over by another business or business in the meantime. ABI therefore concludes that:

> "The lack of clarity in the Bill as introduced means it is not possible for an insurer to confirm its position on the Bill at this point in time as there are too many unknown factors involved."

COSLA's view (shared by for example by SOLAR ) is that historic insurance cover is unlikely to help fund contributions. COSLA states that:

> "The design of the redress scheme means that it is unlikely that Councils can draw on historic insurance cover to help fund the Local Government contribution. Less stringent evidentiary requirements and the lack of determination of liability means that Councils would likely fail to access historic cover for this specific purpose, despite having purchased cover in good faith, to provide a level of protection from these and other related risks."

## NON-FINANCIAL REDRESS

Submissions stress the need for non-financial redress. Points made include:

- The fact that non-financial redress should be seen as a form of reparative justice (WhoCaresScotland)
- The importance of more work being done together with survivors on the scope of the public apology (SWS, Aberdeen City Council, WhoCaresScotland)
- The need for non-financial redress (e.g. memorials) to be aimed at people have have died but who may not be able to use the next of kin procedure (WhoCaresScotland)
- The need for scrutiny of the practical working of the emotional and psychological support envisaged in sections 85 and 86 of the Bill (WhoCaresScotland)
- The lack of detail in the Bill on non-financial and the obligations of organisations. On this point the Church of Scotland states that:

> "We believe that the Scheme, as presented, fails to make sufficient provision for any form of reparation other than financial compensation."

## PAYMENTS TO VULNERABLE APPLICANTS

S 49 of the Bill gives Redress Scotland the power to make directions in relation to payments where the recipient is under 16, an adult with incapacity or, "a person whose ability to manage the redress payment is otherwise impaired due to mental or physical illness, disability, age or any other reason".

The SHRC's view is that this section gives Redress Scotland too much leeway in making these directions. Its submission states that:

> "While the Commission understands the policy intention, we are concerned that the Bill as currently drafted places too much discretion with Redress Scotland in assessing the capabilities of a person to manage a redress payment. In particular, references to illness and disability are very concerning. There is a formal legal safeguarding framework in place through the Adults with Incapacity (Scotland) Act 2000 and any restrictions or directions on payments should be made in accordance with a recognised legal procedure, such as through powers of attorney or financial guardianship"

**Angus Evans**
**SPICe Research**
**22 October 2020**

**Education and Skills Committee**

**24th Meeting, 2020 (Session 5), Wednesday 28th October 2020**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Submissions pack**

## Submissions

The following submissions have been received in response to the call for views

### Individuals Submissions

- Bruno Bernacchi
- Shirley Caffell
- William Connelly
- Fred Crainer
- Josephine Duthie
- Iahan Ivory
- Dr Susannah Lewis
- Anne MacDonald
- Lynne Marshall
- John McCall
- George McClung
- Nicky McKinstrey
- William Murphy
- Pauline Omond
- Jacqui O'Prey
- Peter Paton
- Joanne Peacher
- Janine Rennie
- Andy Tait
- Arthur Thornton
- Sandra Toyer
- Richard Tracey
- Mark Wodrow

### Anonymous Submissions

- Anonymous Individual 1
- Anonymous Individual 2
- Anonymous Organisation 1

### Organisation Submissions

- Aberdeen City Council

- Aberlour
- Association of British Insurers (ABI)
- Association of Child Abuse Lawyers (ACAL)
- Church of Scotland Social Care Council ("CrossReach")
- The Congregation of the Sisters of Nazareth
- COSLA
- Digby Brown LLP
- East Ayrshire Council
- East Lothian Council
- Former Boys and Girls Abused in Quarriers Homes
- Glasgow City Council Glasgow City Health & Social Care Partnership
- In Care Abuse Survivors (INCAS)
- North Ayrshire Health and Social Care Partnership
- OSCR
- Police Scotland
- Quarriers
- Scottish Council of Independent Schools (SCIS)
- SCVO and Chartered Institute of Fundraising Scotland
- South Lanarkshire Council
- Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)
- Stirling Council
- Survivors First
- Thompsons Solicitors
- Who Cares? Scotland

The following links are to the submissions from the previous witness panels.

- Association of Personal Injury Lawyers (APIL)
- Faculty of Advocates
- Scottish Human Rights Commission (SHRC)
- Social Work Scotland
- Wellbeing Scotland

# Individual Submissions

**Bruno Bernacchi**

Noted below are my views on the proposed Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill and what I think are important improvements that should be considered to amend the Bill.

The reason I feel qualified to submit my views on the amendments that should be made in the bill is that I am a victim and survivor of historical child abuse which I was subjected to while in the care of a religious establishment.

1) The people who are eligible to apply to the scheme.

Currently this seems to only to apply to those who have been sent or put into a care or educational setting by the state. I personally feel that this is a type of discrimination as under the current guidelines I do not qualify for any redress as it was my parents that sent me to a boarding school. The fact that they paid for me to be educated, cared and looked after by the order that ran the boarding school is indeed no different, as the abuse I was subjected to was every bit as horrendous as those suffered due to the States decision to send children to these establishments. In fact, I was not happy with the decision which my parents made to send me to the establishment, taking me out of the family life away from my siblings and other friends that I had, despite my pleas to them to change their mind. How does this differ from a child that was sent to an establishment by the state? As my parents, like the state thought they were acting in the best interests of the child by sending them to an establishment that would educate and care for a child in a proper and fit manner. The Duty of Care to any child in their care should apply whether it was the state or trusting parents that committed the child into their care. Thus, I think that this is a situation that should be considered by the Bill. As both my parents have now passed away, I have been left with the need for closure for some time and it is I that has been subjected to the physical and sexual abuse as a result of their decision.

2) The Bill's definition of abuse.

No Comment

3) The dates used in the Bill to define 'historical abuse'.

I realise that trying to decide when the dates for qualifying for any type of redress is quite difficult and where the line should be decided to be drawn. However, as this is classed as 'historical abuse' should it not apply to any survivors that are still alive and that are still living with the trauma of being abused.

4) The Bill's definition of 'in care' and the places in which that care took place.

No Comment

5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.

No comment

6) The level of payments offered to survivors.

No comment

7) What you believe to be a ‘fair and meaningful’ contribution to the scheme from organisations responsible for abuse.

Any organisation that was responsible for any type of abuse should be wholly accountable for this and held to contribute to the scheme, especially as they would be making a profit from the payments that would have been made to them to look after their wards.

8) The process for dealing with applications to the scheme from people who have serious convictions.

No Comment

9) The process for family members to make an application on behalf of a survivor who has since died.

No Comment

10)How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors

This would be in some ways difficult as many of the perpetrators may no longer be alive and thereby in no position to offer an apology to the survivors. I also believe that it is easy to say that you are sorry without the conviction required to really mean it.

Kind Regards,

Bruno P Bernacchi

**Shirley Caffell**

I am a survivor member of INCAS and wish to express my personal opinions in relation to Redress.

As the abuse I suffered was in the years I was in the care of local authority, foster care and a putative father's sexual abuse having been given access to myself and sister whilst under the LA's care.

As one of the foster family still lives, who did mete out severe punishments, including a threat to abuse me in a sexual way with a broom handle, why would I be expected to sign the waiver to protect this person? Surely, as well as social works responsibility, I should be allowed the choice of making a totally separate claim for reparation without consequence, in fact accepting The State's Redress offer for their failing in their duty of care is not justice for the trauma the foster carers caused me. Or, will the Scottish government include foster carers in the invitation to contribute? If so, will I be shown proof or advised of their contribution agreement?

It is important that calling us Survivors is just a descriptor, we are and always have been... PEOPLE.... we may have missed opportunities, but most have tried to live as part of our communities and managed to hold down jobs of all kinds, being traumatised as children wasn't the only obstacles we faced, our self-worth was impeded, yet it has taken a group of survivors 20 years to get recognition and laws amended..... No Government parties made the decision to take up this, so called, apology without survivor input.

The Redress waiver should be reconsidered and amended to show a real connection with survivors.

**William Connelly**

Dear Sir/Madam

I attended Smyllum from 1958-1962

You have asked for views on any aspect of the Bill but are particularly interested to know my views on the ten issues you mention in your guidance notes. I would find it difficult to answer most of these questions and so would many other survivors I have spoken to.

It is actually putting some people off making a submission as they feel it is like taking a test. The language of the Bill is very daunting, as are the guidance notes. I understand that the Bill by its very nature needs to be comprehensive to cover a very complex issue but many survivors find it difficult to respond to. My opinion on the Bill is in many ways it does what it needs to do but I do take issue with some aspects.

The Waiver, it is not made clear that it does apply to those who where in care pre 1964 and this leaves some people worrying unnecessarily. But to those that the waiver does apply are being asked to sign away their rights because the Government says it will encourage organisations to make a larger financial contribution to the Redress Scheme.

Does the Government think this is a charitable fund? I have never known a guilty party choose their own level of punishment, in 2014 the then Education Minister made a statement to the Scottish Parliament saying these people should be prosecuted and I agree.

In the Bill, the Government states that Corporal Punishment was acceptable at the time. Corporal Punishment is a measured amount of punishment for something you have done wrong, I do not remember receiving CP in Smyllum for doing something wrong but I was brutally assaulted regularly for, wetting my bed, taking too long to get dressed, not eating all my food, looking round in chapel to see my sister and regularly for just being there.

Many survivors I have spoken to are confused by the Government statement on Corporal Punishment because of their lack of understanding of what CP is. Some who feel they are entitled to a higher sum of compensation will be reluctant to apply as they feel the Government have sanctioned assault, the Government should have made the distinction clear in their statement. Survivors who feel they are entitled to a higher amount of compensation will need to produce documentary evidence of proof they were in care and evidence they were abused, this will be difficult for many.

No account has been made for those who have given evidence to the Child Abuse Inquiry and the National Confidential Forum. When Lady Smith gave her decision on Smyllum and the reasons for her decision she said abuse did take place and stated the type and extent of the abuse and in doing so she referred to my evidence several times. If a High Court judge believes what we have said why do we need to go through it all again and provide proof to a panel.

I do not think the amount of compensation goes anywhere near repairing the harm done.

William Connelly

**Fred Crainer**

RE: MY VIEWS
24-08-2020

Dear Sir/Madam,

I'm not at all happy with this Abuse Inquiry or Redress.

I would like to inquire if any of these abusers, if still alive and medically fit, are any of them ever going to face justice? because it looks to me "for my complaints" they are getting away Scot-Free.

I complained to the Child Abuse inquiry in December 2015 and my main reason for complaining was the expectation that these abusers would finally face justice. In August 2019, after waiting patiently for 3.5 years I contacted the police and asked if anything was being done about my complaint and if the abusers are being arrested. I was informed by the police because I went anonymous; the abuse inquiry hadn't contacted them. When I went back to the police and told them I was no longer anonymous. They refused to listen to my complaints and told me, people higher up are dealing with it.

I then contacted my solicitors to sue the institutions and asked my lawyer if they could get these people arrested. I've been reading all the transcripts and I've read that another abuse victim, who also went anonymous, the police was inform in his case immediately but for some reason, not in my case.

I would also like to mention, I complained about serious child abuse when I was in Calder House Remand Home in 1970.

Why is Calder House Remand Home not on the official abuse inquiry list? Calder House Remand home was built in 1968 and demolished in 2004. Why can't I find anything on the internet about this place and why is there not one photograph anywhere on the internet. Why is this place being whitewashed?

As far as the Redress scheme. Offering £10k and expecting me to sign a waiver forfeiting my human right to justice is not on. I want these people arrested. I have complained about serious child abuse and the way I have treated so far is inexcusable. I will not be applying for your redress. I want justice and closure

Fred Crainer

**Josephine Duthie**

Boarded-out by Glasgow Cooperation to a croft in Morayshire with three siblings, of which two remain, for over 10 years. Used as slave labour, physical and mental abuse, and no further contact with family for the rest of our childhood.

4) Definition of 'in care'. Would like to see 'Boarded out to Private Dwellings' included.

10) Non-financial redress would like to see 'next of kin' families of relatives abused while in care of the state and now passed away, included in the apology section. Many tried in vain to draw attention to their abuse and were never listened to. An apology for this abuse would give some meaning to their quiet and unheard cry for justice and give some comfort to the family they have left behind with that memory.

**Iahan Ivory**

Hi, my name is Iahan Ivory and I'm a survivor of abuse in the care system. As children, many of us were forgotten, and growing up with the Post traumatic stress of the abuse has been and continues to be incredibly difficult in terms of living a normal life. Forming relationships, low self-esteem, feelings of worthlessness, suicidal thoughts, just some of the issues many adults including myself now carry with them. I don't live in Scotland anymore. I ran away from there in my early 20's and have been back to Irvine several times. Even at 44, I'm terrified of going back home to visit as it brings up a lot of issues. Having gone through the care system, (children's homes and foster parents) the worst abuse took place in Kerelaw School.

I now live-in North-East China and teach English to children. It gives me hope to see them smile and lifts my heart to know they don't have the kind of childhood I did. It was truly horrendous. I can't bring myself to think about it, but I need to face the past. The reason for this email is that I would like to know if online therapy will be available, given my location.

It's truly felt like I slipped through the cracks after being abused in those places and then just forgotten about, no use to anyone, just left to pick up the pieces by myself. It's been incredibly difficult trying to live.

I will be applying for financial redress and I'm extremely grateful to the Scottish Government for presenting the opportunity to have the financial redress and emotional support.

Thanks for reading

**Dr Susannah Lewis**

**Response to Introduction of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Background**

I write as a close relative of a victim of historical abuse whilst in care in Scotland, who is now elderly and frail, and as the relative of another victim who sadly has died. I have witnessed the lifelong impact and terrible suffering caused by in care abuse, I am committed to doing everything I can to support redress for all victims.

The opinions expressed are my own and are derived from my understanding of the suffering my relatives have experienced, and also from my work with survivors of childhood abuse (in my role as a clinical psychologist).

**My views**

**1)Eligibility**

I am in agreement with the rules around who may seek redress. I do not agree with the cut-off date for next of kin payment. Life expectancy is known to be shortened by childhood abuse, some victims will have died before old age. I feel it is therefore discriminatory that only the next of kin of victims who died on or after 17th November 2016 may seek a payment. This also dishonours the deceased victims (who died before this date) who had reported their abuse to the police/authorities.

**2)Definition of abuse**

Use of the belt- I am strongly opposed to the use of "the belt" being excluded from the bill as a form of abuse. I ask the committee to consider that where "the belt" was used in an emotionally abusive manner then this is considered abuse, under the category of emotional abuse.

The Scottish Child Abuse enquiry has reported that victims have disclosed practices where the entire dormitory or cottage of children was routinely "lined up for a belting" (e.g. Quarriers, Renfrewshire). This was not "discipline" in keeping with childcare practises of the time, but a form of emotional/ritualistic abuse. The adult used "the belt" to incite fear and public humiliation for his/her gratification. The context around "beltings" must be considered. A practice that was "legal" was misused to conduct abuse.

Even allowing for the law and disciplining practises of the time it was abuse where: beltings were public, were inflicted on the whole group of children, were excessively frequent / lengthy, were used when the child had not misbehaved, or the adult "belted" before/after other abuse (e.g. before sexually assaulting the child).

Emotional abuse- under emotional abuse I request the bill includes abuses of the child's right to family life e.g. separation from siblings or being moved to a different house or dormitory as a form of punishment. In addition, that the blocking of contact with relatives, or the blocking attempts from relatives to remove the child from the establishment is also included.

Spiritual abuse- I would also ask that “spiritual abuse” is included as a subsection of emotional abuse. Many of the settings were run by religious organizations, with adults using their power as “religious leaders” to groom, coerce, and control the children e.g. bible verses being used out of context and distorted by the adults to belittle, frighten, and shame.

**3) Definition of “in care”**

I am in agreement with the bills definition of “in care” and the places in which that care took place.

**4) The process of applying**

The assessment process needs to be completely transparent, with survivors being closely involved in recruiting those who assess, and also being involved in the assessments themselves.

A number of applicants will be elderly, many will have mental health difficulties. Some will not have access to technology. Making an application is likely to be very anxiety provoking. I request that independent support staff are available to guide applicants through the process (with each applicant having a named support person), and give telephone or face to face support at agreed intervals.

When applicants are asked to give evidence, I propose that this could be done by pre-recorded video or audio, by video link, or in a signed statement. Consideration needs to be given to how applicants with learning disabilities may give evidence without compromising their welfare. No survivor should be left “re-traumatised” by the process of giving evidence.

Evidence-The bill has proposed that impact will not be considered in terms of the level of redress payment, with the rationale this would disadvantage victims whose psychological or physical injury may outwardly seem less “severe”. However, I would ask that impact is considered within the context that it is evidence that the survivor was abused e.g. where there is evidence of Post-Traumatic Stress Disorder, behaviour consistent with “neurodevelopmental trauma” (due to neglect), or where a survivor has mental health difficulties consistent with “attachment disorder”.

**5) Payment levels**

The maximum payment award proposed is **too low.** I propose this is raised to at least £100,000, with the panel having the ability to award higher payments in the severest of cases.

**6)Contributions from organizations responsible**

I believe that the organizations responsible should contribute a significant proportion of the redress payment for each individual who was abused whilst in their care.

**Dr Susannah Lewis**

**Anne MacDonald**

I would like to make the following submission for the above Bill which I welcome for survivors who have waited for years for Redress but not in its present form.

The principal issue I have is the Waiver clause. This removes the right of survivors to pursue civil actions in the future if they decide to access the Redress Scheme. I know some survivors may wish to access the Redress Scheme and accept this clause. However as many are in financial positions that are uncertain, some may understandably concede that this is a means to hopefully, if accepted, provide some financial help more so at a time when COVID 19 is having a financial impact like no other.

I believe this is a removal of fundamental rights of survivors to have choice and agency. Survivors have fought for their right to be heard and believed for decades and this effectively removes their rights as citizens of Scotland to access justice and silences them once again.

The Limitation (Childhood Abuse) (Scotland) Act was passed into law in 2017 removing a barrier preventing child abuse survivors accessing civil justice. The Waiver contradicts the intention of this Act and as survivors campaigned for years for this opportunity it is difficult to reconcile one Act potentially cancelling out the other.

Survivors know that this route to justice is one that does not always result in success; however it is their fundamental right to be free to do so if they wish. When they have been successful the sums awarded are much higher than the scales in the Redress Scheme. Two Court Actions by survivors from St Margaret's Children's Homes were awarded £75,000 and £150,000 respectively in 2005/6. Many survivors have intimated to me that they feel as if this Waiver is a 'gagging order' and the government have put it in place to protect the institutions who failed them as children.

Therefore, on all of these points the Waiver should be removed. On a professional level and as someone who has worked in the field of child abuse and child sexual abuse for over thirty years I find this inclusion exploits the right of self-determination for survivors whose lives have been controlled by their abusers, the institutions that denied the abuse had happened, various governments failures to address historical abuse and a society who looked the other way.

My other issue is the lack of trauma awareness in the composition and content of the Bill document. Considering how much government have funded in trauma awareness training across Scotland and how hard we have endeavoured through the years to reach a shared understanding of language, tone and communication to a wide and varied audience of survivors, many who had poor educational opportunities. This document has a varied tone of adversarial, condescension and density.

I realise that such documents have to adhere to certain legal terminology language and composition but in comparison to the Irish Redress and Recovery of 2002 it does not bear comparison.

Other:

The scale of redress payments should be higher. Compensation of ten thousand pounds in today's economy and for having endured horrific abuse and life chances is an extremely low sum. Fife Council paid out £370,000 in 2005 to survivors of abuse in St Margaret's Children's Home in Elie.

In providing evidence of abuse it should be understood that one abusive act can be as traumatising as several incidences. If the Redress Scheme insists otherwise there is a hierarchy of abuse which further diminishes survivors abuse experiences and stigmatises them.

Many survivors will find it impossible to provide intimate details of their abuse as they have never spoken about certain aspects and events with anyone.

Recognition that some survivors have gone on to commit criminal offences as a result of their childhood experiences. There is no mention of Adverse Childhood Experiences research and findings.

Psychological counselling, support and advocacy have to underpin this Scheme. Future Pathways is not the appropriate agency to provide this.

I am happy to provide further detail and add to the submission if required.

Anne Macdonald

**Background relevant to Historic Abuse**

Director Kingdom Abuse Survivors Project, Fife Investigation into Historic Abuse and Inquiry
Scottish Government Professional Adviser, SurvivorScotland Strategy
Scottish Government Professional Adviser, Care & Justice developing the In Care Survivor Service Scotland Project
Member of the Advisory Panel, Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit
Scottish Government Professional Adviser, Time to be Heard
Scottish Government Professional Adviser, The National Confidential Forum
Member of the Advisory Panel National Records of Scotland, leading to the Public Records (Scotland) Act
Co Convener, Scottish Parliament Cross Party Group on Adult Survivors of Childhood Sexual Abuse

**Lynne Marshall**

I’m Lynne Marshall and I’m a survivor of abuse in care

I will not be taking the governments redress as I know I will get more from taking a private case £80k max for mental sexual and beating that I took, I’m using a lawyer as I want 500k to set me up for the hell of a life I have been given They said we would get an education we never got.

**John McCall**

On 23 October 2018 the Deputy First Minister for Scotland Mr John Swinney made a statement to Parliament setting out the Government's commitment to establishing a redress scheme for survivors of historical child abuse in care.

https://www.gov.scot/publications/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care/

On 2 September 2019 The Scottish Government set out its Financial Redress consultation document for Historical Childhood Abuse.

https://www.gov.scot/publications/pre-legislative-public-consultation-financial-redress-historical-child-abuse-care/pages/2/

On 4 December 2019 the Scottish Government set out its proposals for an Advanced Payment Scheme for Survivors fo Historical Child abuse in care.

https://www.gov.scot/publications/financial-redress-survivors-historical-child-abuse-care-review-advance-payment-scheme/

In all of these documents and subsequent papers from the Scottish Government the definition of 'Children in care' has been :

'children in institutional residential care such as children's homes (including residential care provided by faith based groups); secure care units including List D schools; borstals; Young Offenders' Institutions; places provided for Boarded Out children in the Highlands and Islands; state, private and independent boarding schools, including state funded school hostels; healthcare establishments providing long term care; and any similar establishments intended to provide children with long term residential care. The term also includes children in foster care.'

One would therefor conclude that any Child abuse Survivor who was abused at any of the establishments as listed above would be eligible for Redress as defined by the Government of Scotland. At last anyone abused in residential care would receive an apology from any of the bodies or organisations running any of the above establishements as well as financial redress.

It is proposed by the Government that they would seek, perhaps by means of legislation, contributions and payments from the relevant bodies and organisations responsible for the care of the children.

The Scottish Governments position changed only when the Advanced payment scheme came into operation when they stated that those survivors who were sent to boarding schools by their parents were ineligible. Only those who were sent there by the State would receive Redress.

This meant that any other child who was abused in the care of the defined establishments who were sent there by any other agency, parent or Guardian will not be eligible for Redress.

The State will apologise and financially compensate to those children they sent to the identified establishments leaving all others without any redress whatsoever. Equally by reference only the State will apologise and not the organisations and egencies responsible and only to the children they were directly responsible for.

There are a number of points that I would wish the Committee to consider:

- Why was it not made clear at the outset that only those children sent to these establishments by the State would be eligible for Redress.

- If the Government's position was as above why did they include the question of boarding school eligibility and specifically those not sent by the State in their public consultation.

- Why would the Government propose legislation to enforce agencies and religious orders to contribute to the scheme if the State were assuming full responsibility?

- By reference only the State would offer an apology to those abused and not the the perpetrators of the establishments which is against the whole principle of Redress

Given much of the above there is a scenario whereby a boarding school may have say ten children abused of which say three were State sponsored. Three would receive Redress and seven would not, yet all abused within the same establishment and probably by the same abusers.

All boarding school survivors in Scotland were encouraged by the proposed Redress scheme when included within its terms of reference and now feel as if they have been abused once more. If the Government's intention was, as it appears to be now, it should have been made clear at the outset. It should not have further fudged the issue during the consultation process whereby giving hope to all survivors of boarding school abuse.

In relation to the consultation itself less than 50% of respondants did not believe boarding school children not sent by the State should be included in the scheme.

In conclusion it is my contention that all children abused at boarding schools in Scotland irrespective of who sent them there should be eligible for Redress.

If they are not included an apology from the Scottish Government for giving survivors false hope through their negligence must be forthcoming.

**George McClung**

**VIEWS ON THE BILL**

Who proposed the committee?
Who is on the committee?
Are there any child survivors on the committee?
On the 123 grades who judges its decisions? Why is there not a judge making these decisions?
I think that Lady Smith should be making the judgements.
I propose myself to be available in Edinburgh as part of the Scottish child survivors in London, Surrey and Kent as their advocate.

**Nicky McKinstrey**

**Feedback on the redress for survivors Bill.**

I thought I would provide information on myself that will allow the committee to have an understanding why I support this Bill. I was sexual abused in care when I was ten years old and staying in care in the late 70s. I was awarded in care of the estate from the age of ten to eighteen years old. During the eight years into care, I stayed in three homes and two foster care placements. During that time there was a lot of issues that impacted on me, which I feel would take to long to explain because we are here to discuss the bill.

I served my county in the first Gulf war and Northern Ireland. I left the army after six year (Royal Scots). I then started to work in schools in Edinburgh and I did night classes to complete my H.N.C, H.N.D, Degree (distinction) and post grade, which took me eight years.

My last job was a manager in NHS Fife, part of my role was to work with Scottish Government to design PINN Guidelines for all the Health Boards in Scotland, which are guidelines for all the Health Boards in Scotland for writing policies.

I became ill about 10 years ago, I found out I had Primary Progressive M.S. this lead me to get involved with disabled groups to help people that needed support in the work place. One of my roles was chair of Unison disabled group for Scotland. I retired about 5 years ago because of ill health. I have tried for five to get more involved with groups that wrote the Bill with no luck.

I am dyslexic so I apologise about any part of feedback that does not make sense. This information is to give the committee a feel of the person writing the about the bill.

**Key points about bill.**

Consultation questionnaire

1) Consultation questionnaire, only 280 people applied and 18% sent by organisation, which meant there was only 229 victims responded to the consultation questionnaire because:

    a) There was no Equality Impact Assessment carried out of the consultation questionnaire. Example; there a of lot people that are at an age, where they may not have the skills to complete the online questionnaire or cannot afford a devise to complete the questionnaire?
    b) Some of the victim I know found the wording of the questions too difficult to read, which was stated on Page 35 bolt point 2, Public consultation on financial redress for child abuse in care report.
    c) Future Pathways has 1400 victims getting support in a lot different way, which I feel should have been asked to be involved in taking forward any consultation with victims. Future Pathways is an organisation funded by Scottish government, which is a god send to victims is Scotland. Future Pathways should have a lead rule in taking forward all aspects that need

setup once the Bill is passed because they know more about Scottish victim than any other group. Future Pathways is the best thing that the Scottish Government did for victims.

I hope that I have given my thoughts on way there was a poor response to completing the consultation questionnaire. There was no understanding of the victims in Scotland only national groups.

2) Financial memorandum, Page 7, part 20, raises the point about the peak that will happen in the first year. The means more staff should be appointed in the first. The first couple of months will be important for setting the way forward for the scheme.

   I have concerns that the financial paper are talking about the saving that will be made because some victims having criminal convictions. I will cover this under the Bill. Page 12, part 33

   Page 22, Part, 56 staffing levels for the project are different from other documents and Bill.

   Page 26, part 70, Finding victims records will be major area to be able to complete cases, Future Pathways should be give this resource ASAP, 1400 victims are at different stages of getting this information , it took me over 1 year half get my files from the Council, which could have a massive impact cases moving forward.

   Page 25 point 67 Psychological assessment, this will slow the cases being resolved. There should be a spread sheet (Gantt chart) to look at areas that could impact the completion of the scheme in five years.

   Page 26, Part 72 Communication and engagement should be set up as soon as possible the webpage could be used to give updates on the Bill, which would start engagement with victims. If Scottish Government organised for Future Pathways to update their webpage on the Bill and gave Future Pathways funding to have more interactive webpage (funding could come from the Bill?). I got a newsletter by e mail on 2/9/20 on the Bill, is Future Pathways involvement in it/ victims? I do feel the newsletter is a start.

   Page 11,table 2,3 and 4 believe there will between 7,700 and 14,300 claims under Bil. If we take 10,000 as average amount of claimants for the scheme over five years, which gives us 2000 per year, 166 case per month and 41 a week. There will be delays because of some of the points I covered in the financial document information I have provided. For example when my case gets heard with all the evidence I have, it will take four days. The main reason for this I want to be given the opportunity to discuss what happened over the 8 years I was in care.

If we are not careful we will end up with another child abuse enquiry that has run for five years and it still is not half way yet and it was only meant to last 5 years. There is a lot of work needed to ensure the finances and time scale for the project is met. There will have to be detailed monitoring by Scottish Government and the victims group. The victim's group should have a clear line of contact/relationship with Scottish Government to ensure that victims aren't neglected again.

3) Policy Memorandum, Page 6, Survivors Voice Part23/ Part24. This really upset me because it takes about how import it is for victims to have a voice but Scottish victims have no voice apart from Scottish Government. There is a lot of mention National abuse groups throughout all documents attached to the Bill. The key work that was carried out was the consultation, which I have already given feedback on how it let done Scottish victims.

   Page 5 point 17, I feel this point should be removed it's a very broad statement says there nothing wrong in care system in Scotland. I was a child panel member for over a year and I read a lot of children's files, which showed me there are different types of problems for children in care.

   Page 18 part 52, staffing information should compare to staffing levels on the finance sheet.
   Page 18 part 52 I have concerns if lawyers will be part of the panels because the victim should be able to have their own lawyer to ensure their being treated fairly. Also the Bill at the moment is designed to penalise victims with criminal conviction. This could mean there would be a panel of five if each side had a lawyer. Also victims may feel the lawyer is there to find fault in the case. Some cases could end up in court/ European court, which just adds financial costs to the Scottish government and bad press for Scottish people.

   Page 21, part 67,68 and 69 Alternative approaches, I don't know what NDPD is.

4) Bill
   Page 17, part 38. Payment level throughout reading all the information provided on the bill. I could not find out where the payment figures came from and what evidence was used to decide the different level and what groups agreed with the figures. If this process is to be transparent why is this information missing. Hopefully the consultation questionnaire will not be the method used that a token of victims completed. If this redress scheme takes longer to complete the claims should contain a yearly rise(index linked) in the amount because ten thousand pounds today will be valued 8 thousand in 6 years' time.

   Page 58, charter 3
   On the consultation questionnaire it was mentioned that a couple of people said" if the person had child abuse offence that they should not be able to get compensation". This changed too convicted of: 1) murder 2) rape 3)

imprisonment for more than 5 years. This means, however, wrote this never used information provided in the consultation questionnaire. I feel this is national part that was pasted into the Bill. I have shown this to couple of people who have convictions and they feel that they will be penalised and made to feel that they are in the wrong because of their behaviour after being abused in care. I think this whole part needs looked at or pulled out the bill and looked at. I know they say people that were abused can be more likely to abuse others and some are more likely to commit crimes and go to jail. Once people are in the jail system they get institutionalized and their crimes get worse. So I feel that the committee needs to carry out a lot more research and involve professional people who can give more information on this area.

My feeling in this matter is the five year imprisonment should be removed and once the victims group is set up all cases that the person has been charged with child abuse, murder, rape the cases should be taken forward by victims group, which makes the whole process government free.

**Inclusion**

Key point to remember, the longer it takes to the Bill up and running the more victims that will die without getting closure on all the horrible things that they went through in care of the state and I did feel that the Scottish Government will try their hardest to get the Bill through as quick as possible.

From the information provided I feel the scheme will take a lot more than five years to complete, if the scheme is not funded properly it will just cause more unset for all involved in the scheme (staffing levels to process cases are key area to scheme).

There could be a lot victims penalised because of their convictions. There has not been enough work carried out to have a clear understanding the impact on victims being highlighted for their past behaviours. Also, there is no understanding of the amount of victims this will affect.

The people going through this Bill are all adults, so I think that is part of the problem, adults want to speak for themselves and be involved in the process. I read some wear in the paperwork that two members of a group that works with children and young people have been appointed to group to take forward the redress scheme. I would say whatever the group is called, Scottish victims should be on it and the manager (Chair) of the group should made to explain why the victims are not on the group to the committee.

I know a lot of professional involved will not be happy with what I had to say but this is the first time I have been able to raise my concerns.

I noticed on the government paperwork, that there is a group being set up called Redress Scotland. I hope at least half the group is victims because they have the voice of the victims, which victims should be at the forefront of any group that impacts of them? Also I hope Future Pathways has a seat/ chair of the group with Future Pathways having 1400 victims using their services.

I do realise a lot of excellent work has been carried out to get the Bill to this stage. The financial document is very comprehensive with a lot good detail. On behalf of myself, I would like to THANKYOU all involved in getting there Bill here. I also feel that the committee will do their best to make the Bill re bust enough to be passed.

Questions asked by committee:

1) Any child that the estate was responsible for.

2) Covered well in supporting paper for the Bill.

3) Happy with dates that is being used.

4) There has been a lot of work done on this already in the Bill and supporting paper work that covered this?

5) This is really good question, which I feel a walking group of victims could answer while the Bill is going through Scottish Government. There has been no working groups to my knowledge for the abuse of victims. A lot of victims would like to give verbal feedback for different reasons. I think Future Pathways should be asked this question as well.

6) I do not know what would be a fair payment. I think a group of survivors and a group of government staff should look at other schemes that are going through the process and have completed the process and gather the information then speak to Scottish victims and get feel on what is a fair payment and discuss the finding with the government finance department and try to find way forward.

7) I think an independent financial body should look at their financial books and come to agreement on the amount the charity should pays. If they refuse to pay the charity should loss the tax breaks.

8) I covered this in the information provided on the Bill. I do feel you will get a poor response from the victims because alot victims don't have or use a computer. However the organisation that are being penalised will be happy answer this question.

9) This could be covered by the working group.

10) Organise a venue at Scottish parliament to carry out the apology and then a letter for all victims after the public apology meeting.

**William Murphy**

I agree on many aspects of the Bill, however I have taken the opportunity to submit my views to the Committee below.

SUBMISSION

- **The Bill's definition of abuse:**
- **The level of payments offered to survivors:**

These two aspects of the Bill are intrinsically linked in so far as each one will determine the final outcome. This will be considered when the development of an assessment framework becomes available.

**Question 1 - It is suggested that survivors will have sight of this before applying for redress. if so, when will it be published?**

Abuse can take many forms: sexual, physical, emotional, neglect etc however the impact as a result of one or all of these can be severely damaging throughout one's life

My worry and concern is that the panel members will have had no experience of this and may lack sufficient empathy.

What about applicants who have not sought help from outside agencies, medical or otherwise because they were either too embarrassed or could not deal with it emotionally. There is now increased awareness of mental health issues in young adults with more focus on male adults.

Sadly 20 to 30 years ago young men did not have the support network that is available now. I remember being told to man up and made to feel inferior especially in the workplace setting. As a result some survivors will not be in a position to provide documentary evidence.

**Question 2 - Will applicants be penalised as a result of this?**

I have grave reservations regarding this as it gives the redress panel the easy option to dismiss a claim or reduce the level of award. Applicants should have the option of speaking to the panel face to face. At the very least it will give the panel members a clearer picture of how the abuse impacted the survivor and provide a level playing field for all.

**Question 3**

Can the Individually assessed redress payment levels be made clearer? For example,

**Question 3(b) Level 1 up to 20,000 pounds.**

Can an award be made anywhere between 10,000 pounds and 20,000 pounds or will the award be restricted to three limits:

0 pounds

10,000 pounds

20,000 pounds

**William Murphy**

**Pauline Omond**

I am writing to add my views to be considered. I am a 50 + year old woman who lives a solitary Life in Rutherglen, Glasgow. I was in care age 5/6 until I left care age 16/17 years old.

I fled my Local Authority which was a felt necessity because the house I was given on leaving care was straight over the road from the ex 'officer in Charge' and His Wife. I was very scared about this and I have given evidence to the Child Abuse Enquiry about some of the behaviours of this woman towards Me. This was a horrific thing to happen in my mind's eye and I was often tormented by the knowledge that She lived so close. That stopped me interacting with neighbours or spending time in the garden.

I find myself in a very difficult position in terms of proving eligibility because The Local Authority have told me that they have lost my Case Notes. I have written conformation about a Lawyer advising the Local Authority not to give me a hard copy of my files. Then a letter from the social work director at that time "reassuring me that the files would be kept secure for a further 25 years to ensure I got access". I got access twice, once in Glasgow at my psychiatrist's office. The contents, and thoughts that they had written were shocking to me. I got the impression that the system was against me and social work responsible people thought I'd die by my own hand soon after I left care. Perhaps that is why there was no investment in my wellbeing after leaving care.

I was given a cooker with two broken rings on it, no washing machine or fridge, no T.V. or radio, no warm friendly household appliances, like lamps, cushions covers or kitchenware. The carpets didn't fit properly as they had been cut and laid in another house before. Everything was second hand and grotty and the house I was placed in only had a coal fire for heat and hot water; Which I also knew nothing about. On the third evening there I accidently set my arm alight because I thought you had to hold the fire lighter to light the fire kindling - I had a plastic glove on which caught fire and melted onto my winter jacket. All the time living at the Children's Home and all my other placements there was central heating and a cook and young people were never allowed in the kitchen.

As a result of being in care I had/have no cooking skills. The pressure I felt about feeling So Alone was intensified when I went from living in a group setting to suddenly living alone. I felt abandoned and very scared especially at night because I felt vulnerable, but I had no-one to talk to. This was 1981/2 and I survived on very little money whilst working on a Government Y.T.S. I was scared to let anyone know that I lived alone in-case the house was used like a youth club.

The sheer feeling of despair and anguish became overwhelming at times. I knew I'd feel jealous every Monday morning when I returned to the Y.T.S. Workmates were talking about what they had bought and done over the weekend with friends and family.

They were the same age as me, but the situations were so different. It was another factor which made me feel different and more disadvantaged from my peers because I had had lived in Local Authority Care as a child. For me it would be an important factor that the eligibility takes note of the possibility that care notes have been lost.

I think it was a deliberate act because of the contents that the Local Authority wanted to keep quiet because my care experiences as well as the Leaving Care Experience was a shortfall on their behalf. I didn't die; I survived despite their opinions and acts. It would be good if all care leavers could be recognised and given the appropriate help.

Similar to a parent of a child leaving home for the first time. I would like to see a Scotland Local Authority database for all care leavers to access support whatever area they find themselves in. Many young people like me will choose to move house for work, emotional self and general wellbeing, family issue's or educational needs. I know of someone who's recently left care and aged 18 and found they needed help. This person had to go back to their Children's Home's Local Authority, because the local Social Work department told them that "were not on their books". Many young people want to move for a variety of reasons so shouldn't be financially or support wise stuck in the Local Authority Area where they left care from.

There is also the acceptance that the care provision changes depending on the age and/or placement. I started in the Matron Days where it was referred to as 'a large family' and people were welcomed and encouraged to join in with the wider community. Good manners, regulated routines, smart church attendance and strict discipline were utmost importance for every child with 'jobs' designated dependent on age and/or behaviour, again there were a mixture of known 'good' staff and the 'bad' ones who were often too strict for my liking.

Then there was the Auntie and Uncle Years - I hated calling these sometimes-nasty staff as if they were related. Some staff were often particularly nasty on an individual basis, privacy became an issue and the food got worse; food was often used and became what felt like a punishment because it was so disgusting. Again, there were lots of rules and regulations, which could change depending on who was working and how the staff mood was. The threat was regular for everyone by the 'officer in charge' who even named the punishment Belt as Charlie. It was rumoured that He soaked these Taughs in vinegar to make it tougher.

This was late/mid 70's with some of the young people I'd grown up with now as older teenagers; Referred to after the age of 15. Eventually after many complaints from the older teenagers about the cramped conditions and various problems associated with the way the young people felt. Asking about their prospects for the future and facing down the staff into a stand-off position thing at the staff at the children's Home 'lost control'; An emergency meeting was held with senior social workers arriving at the children's home relatively shortly during the second stand-off. It was decided that the officer in charge and his wife would leave immediately with new staff to be sought throughout.

Things were quite muddled for a while and it seemed that the older teenagers were going to get some independent living skills and many got a placed at a hostel which was also ran by the Local Authority for young people preparing to leave care and seemed the desired objective for the Home.

There was a drive on foster care and I remember meeting a family once then going to stay with them full time a short while later. I had said that I did not want to get fostered out, because if me own family couldn't love me then another one wouldn't either. My foster family definitely treated me different from their biological child who was about two years younger than I when I went to live there, I was 12 yrs. old. My

foster placement broke down and thankfully they dropped me off at the Children's Home again when I was 13/14 during the School Summer Holidays so I was going to have to re-start High school for the third time.

All the staff as well as the rules had changed once again; This time staff were called by the first name and asked to live outside from the home so that meant the children and young people could get more space. The food improved but I didn't know anyone anymore also the kind of difficulties and issues that the young people were contending with had seemed to change too.

I felt a bit in shock because there was no one (except one lad) that I knew. Things were definitely different with very few actual rules or chores; Staff working at the Home were much more laid back as to before. I also got a new social worker, but no-one ever mentioned my failed foster placements or any of the issues I felt anxious or confused about.

I acknowledge, and hope it continues, that improvements to child care provision for children and young people has changed so much over the years of Learning. It's very brave, kind and considerate, even forward thinking about not only Addressing Historical Child Care Abuse whilst living in the Scottish Care Environments – But also Redressing the experiences.

The whole progression to this point has been an amazing undertaking; The Child Care Review; The Promise; The Child Abuse Investigation and the Redress system. These have become massive opportunities for many vulnerable people to be recognised, actually really believed and eventually have their experiences recognised and acted upon. I just feel so proud to have been involved. It would be good if other places in the World took lessons from Scotland's willingness to ensure mistakes are learnt from and perhaps rectified in some way later on in Life as reparation and acknowledgements that there were severe failures at some points for some people.

I think for me the most sad and damaging issue is that I don't have any family to speak of people with names, but I don't know them, so I encourage sibling support; As well as not having my own children. Life changing circumstances later in Life as a medical diagnosis of Multiple Sclerosis was a big shock as I had previously been treated for 'Freudian Hysteria' by various workers in The Local Authority Region where the Home was. My lack of mobility was blamed on my leaving care experience. I lost a good job because of this and thus I decided to move to Glasgow, far away from the people who continued to hurt and harm me. I have no children which is heart-breaking for me and my biggest regret in the world, I think I'd be a good Mum.

However, when I was younger, I was so scared that I'd be like my Mum. I also had problems making and maintaining relationships with individuals and couldn't/wouldn't have sexual relationships because of the past encounters I'd had under abusive and controlled conditions.

I never received any acknowledgement about any trauma as a child. I saw my first psychologist when I was about 7 or 8 then I had my 1st regular psychologist when I was 14/15.

My emotional and social wellbeing was further curtailed after the Local Authority social work department sent me to The Young People's Unit in Morningside Edinburgh Mon-Fri; I had to get the bus back to the home on a Friday evening for the three-hour trip back to the Home to stay the weekends. This was a very confusing time for me and it was made even harder with the living conditions I was put under in this family themed psychiatric Hospital Unit.

There is so much to say that this section on how I was treated whilst getting ready to leave Local Authority Care, but it would overtake the fact that I believe that Now the Scottish Government are being brave and accountable, even though this abusive time of care is Historic.'

I would like the recognition of Life Changing Events to be considered; It's an on-going issue. No-one forgets their past or how they were shaped by events – some of which still haunt me to this day. I have night terrors which are a direct and crippling springboard back to the past; It's not always at night these flashbacks happen. I've also managed to educate myself and since have had great jobs - I worked very differently with young people who are 'troubled' by talking, laughing, eating and generally building the foundations for trust.

I believe that many of my own personal issues should have been noted, picked up upon and dealt with appropriately. I think talking to young people is very important and one to one discussion's should be encouraged. Getting to know someone is difficult and the staff should take the onus upon themselves to enhance and develop social skills and coping skills which should last a lifetime.

It's not easy to discuss difficult issues; Often hidden deep inside the self because they hurt too much to acknowledge; Feelings of abandonment and Hopelessness are private, but they are also long-term damaging problems which need to be addressed. Long Term Needs = Needs to be Addressed. The loneliness can be overcome with time and eventual trust; I still feel Alone and Even now the focus is always another reminder about families – not being able to see someone you love in order to protect them causes so much grief it's on the news every-night at the moment. I stand in Isolation all the time since being a very young child. I would love a family to miss me so much it hurts…

Finally, if required I would be willing to provide any further evidence. I apologise about the rush of this document as I only found out about its possibility on Monday 28th Sept.

Thank You,
Yours Sincerely,
Pauline Omond.

**Jacqui O'Prey**

As a Survivor I have attended many meetings over the years. I have been helped by Future Pathways but not everyone appreciates how Survivors feel. Some Groups or individuals have an agenda that is not beneficial to everyone. The redress Bill covering historical child abuse in care affects thousands of Survivors. After consultation Scottish Government has passed to parliament a bill that strips us of our right to sue.

Waiver

Why is the Scottish government asking survivors of child abuse to sign a waiver to give up their rights to raise civil action against the government or the organisations that committed the abuse in the recently published redress scheme. The Scottish child abuse inquiry was set up so that those who abused the children of Scotland could be held accountable, but how can you have accountability without justice. The Scottish child abuse inquiry was set up so that those who abused the children of Scotland could be held accountable, but how can you have accountability without justice.

Evidence

The bill states that applicants will have to provide documentary information to satisfy the decision-making panel who may not be unbiased. What this means is that survivors will have to produce their records. How many survivors do we know who can access their records? This alone is a dangerous position to put survivors in. This section also states that survivors will be asked to provide a more detailed account of the abuse they suffered and will be required to provide supplementary information. During the Assessment period survivors are going to have go back over the severity, frequency and duration of abuse along with other relevant matters. Where on earth is someone who was abused forty or fifty years ago going to find such information? In my estimation, roughly 90% of survivors who come forward are going to fall at this hurdle and what is so disturbing is that as is normal in Scotland there is no details of any organisations that people can turn to for support. Where is the compassion here from the Scottish government in offering support to survivors to find their records. This really is quite disturbing.

Deceased

Deceased Survivors relatives can be awarded up to 10k this is an insult to everyone who has died especially during the current process.
This bill will cripple survivors of historical child abuse and once again the Scottish government is going to cause major distress to the most vulnerable people who were let down as children.

Jacqui O'Prey

**Peter Paton**

I wish to lodge submissions with the Education and Skills Committee please on the Redress Bill.

I do believe overall under close inspection and scrutiny that the Redress Bill is Fit For Purpose for the Historic Victims of Abuse in Scotland.

In concise summary, I do believe the proposed conditions of who is eligible for the Statutory Payment Scheme, the definition and concept of abuse, the proposed dates of historical abuse, the incare definitions, the application process, the amount and levels of payments, the contributions expected from related organisations, next of kin applications, those who have serious convictions applications, and non financial redress terms, are all tangible, credible, praiseworthy and legitimate proposals to my mind.

**But there is one glaring statutory and administrative deficiency and weakness in my considered opinion, the existing eligibility criteria of the current and ongoing Advance Payment Scheme of the Redress Bill.**

And that is the artificially high age limit of 68 and the terminal illness benchmark. I therefore lodge a request please with the Education and Skills Committee to consider introducing an amendment to the Scottish Government's Advance Payment Scheme for Historic Abuse Survivors in Scotland in the Redress Bill.

I have already lodged similar submissions with my own local MSP and Scottish Ministers on this important matter. I am requesting please that the Scottish Ministers consider relaxing the qualifying age limit of 68 to the Pension Age of 65 for the Advance Payment Scheme because of the Covid 19 Virus Pandemic and Lockdown Crisis, and it’s devastating impact on the Historic Victims of Abuse in Scotland and their dependents.

I do believe it would be an extraordinary humanitarian gesture and the right thing to do by the Scottish Parliament at this critical time in Scotland’s history and facing the biggest health challenge in our lifetime, to relax the age limit further to the Pension Age of 65 for many of those abuse survivors are in the advanced age and vulnerable group with dependents, and are at the greatest risk of fatality and suffering financial grief and distress at the lowest ebb of poverty because of the Corona Virus Pandemic and Lockdown.

**The fact the Advance Payment Scheme also does not have any route of appeal for exceptional and compassionate cases outwith the current eligibility criteria is to my mind, unethical, undemocratic, insensitive and open to legal challenge. I cannot think of any other modern statutory system or scheme that does not have an appeal system in such humanitarian and human right cases. This administrative aberration is further compounded by the inexplicable decision, and without consultation to the parties, by the Scottish Ministers to axe the regular three-month reviews of the Advance Payment Scheme, which were recommended by the Inter Action Review Group (Scottish Human Rights Commission, Celsis, Social Work Scotland etc.)**

**A further fundamental flaw exists in that Members of the Review Group were also excluded from the Redress Bill process, and had not been informed of the Government's proposals for scheme design or payment levels before the Redress Bill was introduced to Parliament. These two highlighted factors suggest to me a significant lack of oversight of the proposed Redress Bill which is very worrying and troubling for the Historic Survivors of Abuse in Scotland, and their dependents and supporting organisations.**

In the light of all these circumstances, I would be most obliged to the Education and Skills Committee for serious consideration please of introducing a corrective amendment to the Advance Payment Scheme to this immediate effect, on behalf of the Historic Victims of Abuse in Scotland.

**"Human rights law requires that the scheme should be adaptable, in order that it can be tailored to the needs and circumstances of survivors, and this is equally relevant in the case of the Advance Payments Scheme.", Scottish Human Rights Commission.**

Kind Regards

Peter Paton

**Joanne Peacher**

I want to add from my personal view some issues and things that are being discussed in the survivor community.

1) The people who are eligible to apply to the scheme.

This in general is ok but child abuse is abuse there's thousands of children now adults that have been abused in other settings.

2) The Bill's definition of abuse.

Again the definition is ok

3) The dates used in the Bill to define 'historical abuse'.

This is ok but abuse has also happened after these dates and needs addressing.

4) The Bill's definition of 'in care' and the places in which that care took place.

Please add boarding schools hospitals even young offenders institutions. Foster carers adopted parents this is huge for child abuse. Mental health institutions.

5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.

I hope the process for applying wont harm the person claiming as they are still living with the trauma without needing to prove they lived in a certain establishment as in church settings the priests and nuns often changed their names Nazareth houses are a good example of this. I was sent documents then I sent them to my solicitor and the inquiry now they have disappeared. We need a easier less court room style to the claims. I think any legal help or support by a worker could be paid for out of the scheme and not the victims compensation.

Example a victim gets £20000 less solicitors fees of 20 percent they actually only get £16000 less the exchange rate if they live overseas and bank charges leaves them with approx. £14500 the exchange rate also and bank charges need to be paid by the scheme.

A victim should be able to also sue for damages as well in the courts less what the scheme gives them.

The advanced payment scheme should of been available to all or at least the most vulnerable for eg those who have never worked in their lifes those who have had life time social workers and psychiatrists. The wait adds to the pain and the closure of the abuse.

6) The level of payments offered to survivors.

This is very fair but its worried that the smaller payment will only be offered to all. Some people like me have suffered mentally since the 1970s

7) What you believe to be a ‘fair and meaningful’ contribution to the scheme from organisations responsible for abuse.

As in any court and any one guilty 100 percent contribution of damages and costs to solicitors helping clients then may be survivors will agree the idea that they cant sue. The institutions need to show really, they are sorry.

8) The process for dealing with applications to the scheme from people who have serious convictions.

The convictions if caused due to mental health issues and a good criminal history otherwise should be let off in full.
If a repeat offender, then they need some type of warning or contribution say community work to help survivors victims really should not have to pay any price any penny if there health was the reason for the criminal activity This is my story and I had a clean record the fact mental health was ignoring me then and now made me worse. The cica scheme has stopped many survivors getting a payment blamed on criminal activity.

9) The process for family members to make an application on behalf of a survivor who has since died.

This is ok and should remain easy also adults with a mental illness learning issues there carers family should also be able to apply.

10) A institution should apologize to each victim who has come forward individually by placing a advert in the newspapers by sending them a personal letter as well.

Survivors really hate the name the redress scheme after being raped and undressed the government will redress them after years of being naked and alone the name needs changing surely.

Let Scotland get in their first and show they support survivors.

**Janine Rennie**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

I am writing this submission with the background of being Chief Executive of Wellbeing Scotland and the In-Care Survivor Service Scotland (ICSSS) for the past 14 years. I was responsible for the design of the ICSSS service ultimately winning the tender to deliver it based on feedback from survivors about what service model would meet their needs. As well as being in a management role I have delivered therapeutic support to survivors and I have had a significant level of contact with those accessing the service due to Wellbeing Scotland's high level of consultation. I am Co-Convenor of the Cross-Party Group for Survivors of Childhood Sexual Abuse and I was the Secretary for many years. The ICSSS service model was described as one that was a model of good practice for working with survivors of abuse in care in a 2011 external evaluation by Napier University.

I have strong concerns about the Redress Bill as it currently stands. I have been aware how many years survivors have campaigned for the Inquiry, repeal of the Time Bar law (to enable Civil justice) and ultimately Redress. While no amount of money will ever be able to change the suffering faced by survivors, it can give them hope for a future with possibilities that were lost as children.

I find it impossible to contemplate how it must have to have left what was often a difficult home situation to be placed in a care setting that became daily torture in many cases. The testimonies I have heard over the years have left me with deep shock and distress and the desire to campaign for survivor rights.

When the Bill was sent to me, I was shocked and concerned, realising the impact it would have on survivors, making them feel let down and betrayed again.

The aspect of the Bill giving most concern is the waiver. In my view organisations should be required by law to pay into the Redress scheme with no ability to then limit their liability. The organisations investigated by the Inquiry were responsible for appalling abuse of children. The subsequent fight for justice led to re-traumatisation due to combative and disturbing attempts by the homes to limit liability. There has been an ongoing concern that records have been destroyed and lost. In many of these establishments abuse was still ongoing in recent years. Survivors have told me they do not want revenge they want justice. The waiver removes the right to choose what that justice will be.

The removal of Time Bar meant that at last survivors felt they could access civil justice. Many started to come forward to raise civil actions. However, due to records lost and the long time since the abuse took place cases have taken some time. However, if the cases are successful it is possible that damages will be at a level that can reflect the level of damage affecting lives of survivors. The Redress scale is not reflective of the level of damages in any personal injury case. The £80,000 level is around three years of an average salary where survivors have lost employment for decades due to Complex Trauma. For many survivors they live with such poverty and debt that they will feel compelled to accept the £10,000 payment and forego their right to pursuing a civil action because of the fear they experience of how they will survive. COVID-19 has made this fear even more tangible. I am very concerned

about what the acceptance of the Redress payment will do to survivors through time when they realise what they could have had.

For survivors pre 1964 the Redress Bill is a lifeline and therefore I really welcome that the Bill has been brought forward. However, it is a missed opportunity.

The scale of payments gives me great concerns. Having worked with many survivors over the years the impact of the abuse is not dependent on how many times the abuse happened or how severe it was. There are a number of factors that come into how severe the impact will be. Research on Complex Trauma evidences that some people thrive with post traumatic growth while some have lifelong experiences of dissociation and severe distress. The scale is not trauma informed. Survivors have told me they will never tell a panel about the sexual abuse they experienced. Survivors have told me this feels like a PIP assessment, something that recently made one of my clients suicidal due to the humiliation. Having a scale and a panel fails to understand how long it takes for a survivor to tell even their therapist what happened to them. Building trust often takes months or years. If this aspect goes ahead it will be vital for survivors to have their trusted therapists with them throughout the process. It is vital that physical abuse is not described as corporal punishment. Any legislation that allowed children to be battered should be seen as much of a failing as the care system was.

Regarding criminal convictions as we know without condoning the violence, for survivors abused in care, life choices and chances were negligible. Many ended up on the streets to steal for food and fend for themselves. Within our prison services a large cohort were brought up in a care setting. We must never forget they were children when the abuse took place. They have served a sentence in the eyes of the law and justice was served. They should not be further punished or excluded from justice for the abuse perpetrated on them as children.

Survivors must be given the ability to pursue civil action and Redress to discover which way would give them the best outcome. They could then repay the lower amount. By having the Redress payment, they would then have security to pursue civil cases. I feel there should not be a scale but instead a payment at the same level to all survivors. A hierarchy of abuse will cause conflict between the survivor community.

It will be vital that survivors have support throughout the process from a trusted worker. Survivors are already showing signs of significant re-traumatisation and distress which I am sure was not the intention of bringing forward this Bill.

Janine Rennie
Chief Executive
Wellbeing Scotland

**Andy Tait**

Having looked through the bill concerning financial redress i have to say it’s a much-welcomed approach that may help survivors as myself some kind of closure although i feel it has to be as easy and as unobtrusive to the survivors as it possibly can be. It’s hard to talk about the abuse which has happened and all so very raw to talk about this again. I suggest to get the bill through parliament quickly so as to ease the hurt and anger survivors feel.

**Arthur Thornton**

Monday 24th August I went to bed but could not sleep because I had just read in the latest Future Pathways news report that Corporal Punishment was not to be included in the new redress scheme which was being forwarded to Parliament as it was not illegal for Corporal Punishment to be administered, well I would like to put forward to the SCAI that whoever drew this clause up was probably not aware of the law that came into force in 1959 to protect children of indeed abusive Corporal Punishment that I in fact suffered as being borne out in my witness statement to the SCAI.

The law courts sought to stop what they considered, Abusive and sexual Corporal Punishments being carried out under the GUISE of Corporal Punishments by abusers in power, in fact, it is telling the abusers that this ABUSE has got to stop. It was classed as ABUSE and therefore every case of Corporal Punishment coming before the Inquiry should be dealt with on its merits, ie., was the Corporal Punishment administered normal, or was the Corporal Punishment carried out on the child Abusive or Sexual in nature.

I would respectfully ask the SCAI to make a distinction between Normal and Abusive, that it should not accept the fact that the Law Courts were slow in providing an act of Law in 1959 banning children having to remove their clothing and being publicly humiliated and suffering excess use of the cane, the actual fact of bringing this law into force is actually an admittance that this WAS ABUSE and it had to stop,

Law or no Law, I emphasize that in my case prior to 1959 that this was ABUSE and should not be discarded or approved as legal, it was disgusting, excessive and sexually humiliating to say the least all over a one brown penny sample scent bottle left on a counter in Woolworths for the public to test the aroma, which I had stolen.

My Gym teacher was not amused when I turned up for gym a couple of days later when one of my classmates turned round to him and said “Sir, look at Thornton's legs" whereupon he asked me to drop my gym shorts, ( We not allowed to wear underpants in those days for the gym ), in fact, he was angry that the Matron of Barnardo's homes where I lived had administered 18 strokes of the cane to my naked backside and legs publicly after he/the school had dealt with this incident by giving us 18 of the belt each ( 5 of us ).

I ponder to think that the gym teacher, after him witnessing this ABUSE perhaps he reported it to the Education Authorities at that time in 1958 and in so doing was amongst many others instrumental in a small way in bringing about this new Law in 1959 banning more than 6 strokes of the cane which should only be administered in exceptional circumstances should a child be beyond a scolding as a first resort, and the banning of children's clothing being removed prior to punishment, and that it should not be carried out in public view. This insight I got from my gym teacher was in fact the first that Society did care, please when making your redress to Parliament.

Yours Sincerely
Arthur Thornton.

**Sandra Toyer**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

I have been asked to submit the following comments into the general principles within the proposed legislative Bill on Redress by the survivors I support. Therefore, everything written is with their consent and approval and is not written on behalf of any organisation

I have over 30 years' experience of supporting survivors of abuse within Women's Aid and Wellbeing Scotland. My primary remit is within the Incare Team where I have been for over 12 years and have supported hundreds of survivors of in care abuse through their healing and recovery.

Over the years the Government have taken on many of the recommendations from the Tom Shaw Report, Celcis and the Interaction Review Group and they were all welcomed by survivors.

Many survivors view, the redress scheme, or as one survivor puts it, the final hurdle in receiving the 3 A's-Apology, Acknowledgement and Accountability". However, the principles for consideration by the committee is being viewed as "a kick in the teeth" the final betrayal that their "voices once again haven't been heard". Their final hurdle has come with a feeling of disbelief, anger and ultimately betrayal which serves to retraumatise survivors of incare/historical abuse.

They have asked me to address the following.

**The Waiver** (S45-46)

They believe this waiver is designed to serve and protect those who were responsible. They want their justice from the people, organisations and institutions that failed in their duty of care. They want to be able to say they finally challenged those who were responsible through civil court or other means. To be able to say they are no longer the children who were silenced into submission through fear, intimidation and repercussions.

This waiver serves as a reminder that they are signing away and relinquishing their rights. It reminds them of when they had no rights as children and were put into a flawed system where money was made from the suffering of children, a very lucrative commodity over the centuries.

Survivors do not want what constitutes to , behind the flowery language, "a gagging order"

**Corporal Punishment**

"The rule of law, …or a right derived from having charge or **care** of the child is justifiable and is therefore not an assault……"

Corporal punishment has been used in various forms for centuries to inflict pain on a wrongdoer Survivors are asking who will determine what is meant by "corporal punishment , what model or era they will referencing -1930, 1940, 1950, 1960 and so on. Whilst there were commonalities of method there were also differences. Who

will determine what was legal at the time they were in care and when does it crossover to abuse?

If 6 strikes of the cane is classed as corporal punishment, is the 7th strike coming from a teacher or carer while frothing at the mouth assault and abuse??

**Levels of payment**

Already millions of pounds have been spent from the public purse, setting up and putting into action the National Confidential Forum, The Public Inquiry and Future Pathways. The total cost is still ongoing and mounting each day. These initiatives will almost certainly come to an end.

However, the legacy of child abuse is life lasting and life changing.

Therefore, survivors feel that the money spent on the above should have been considered when determining the proposed levels. It should be comparative and just. Everyone I have spoken to believe the proposed lower level of £10,000 is an insult to their human worth and suffering. If we had privy to the financial records of the Religious orders, local authorities and the Governments who sent or acquired "good white British stock" to replenish their workforce and fill their coffers, then perhaps a truer and more moral and realistic value could be put on the survivors suffering and loss.

Higher levels are awarded to victims of petty crime and injury.

Survivors DO NOT wish to have to jump through the hoops to get a bigger payment, to have to justify to a panel why they deserve more, why their suffering was more than someone else's. It is retraumatising and will set a precedence for survivors to turn against each other and conflict within families.

Many will be unable to prove their suffering. Abuse, especially sexual abuse is carried out in secret. It will not be found in any records or documentation. The systems that allowed abuse of children are very clever. Those who seek to undermine the recounts of testimonies will ensure that no records will be found.

**Applicants with convictions for serious offences** s45-46

It is well documented that people who have suffered adverse childhood experiences and also been through the care system have limited life choices and life chances.

For many, their lives will have started on the street at an early age, stealing to survive or to support their parents. Through resilience some will prosper. For others, however, addictions and a life of crime become their options. Whilst never condoning any act of violence or serious crime , the committee is asked to consider this principle in a trauma informed way and to remember that they have already served and paid their duties to society and justice was deemed to be served. Crimes were committed against them as children and therefore they should not be further punished or exempt from their justice.

Whilst there were other areas of the Bill for concern, these are the main points I was asked to comment on by some of the survivors I work with and support. I believe others have already commented vis their MSP's

I trust members of the committee will consider.

Sandra Toyer

**Richard Tracey**

I have just finished reading the above proposed Bill and I appreciate that this is only stage one of the process. It is quite clear that a lot of time and work has gone into these proposals. Survivors and support services have, to my knowledge, fully participated which is an essential part in getting the full picture and I remain grateful that Scotland has taken such an approach.

I am also thankful for the acknowledgment from the very start, of the valuable contribution that myself and so many other survivors have made, in doing what we can by sharing our personal experiences. This has never been an easy journey for any survivor and the redress scheme will hopefully for some, bring matters to a close as much as they can.

In the overview of the Policy Objectives is stated that Scotland fully and compassionately supports us and that our right to justice is fully respected. I believe this to be true until it comes to the issue of the Waiver. I have little doubt that many survivors including myself, will have a major issue with this suggestion and the implications in respect of us seeking justice.

I will explain more by discussing my case and I appreciate that you cannot become involved in any way, which I fully respect. However, I hope this will help to get my point across a bit more clearly. I have been seeking justice since 1993 for the many years of sexual, physical and mental abuse and neglect, some of which happened in local authority care.

Only last week I sent a letter to PIRC, finally closing off six years of complaints against Police Scotland, which clearly shows the awful way I have been dealt with including the many complaints upheld, as well as the thirty-three apologies. It is clear that because of some of the failures on the part of Police Scotland, I have been denied justice. However, at least now, I am able to close that particular door in respect of my case and move on.

When it comes to the abuse itself which happened over a number of years and many times, that is a completely different matter. The only time I will be able to close that particular door and at last get on with what's left of my life is when I see justice. That is only going to happen through the legal process in respect of a civil action when I am able to hear why the social worker I had, thought it was fine for me to be beaten and abused both at home and in local authority care and why my allegations in respect of being sexually abused were ignored.

I may get answers to why I was continually let down, what the failings were and why. I may not get any answers, but I am still entitled to try as hard as I can because I need to, in order to get closure or at least some part of it. I have made clear before that I am as are many survivors, serving a life sentence for what happened in the periods that should have been the happiest of our lives. So far, certainly in my case, the only person to have paid for what happened to me, is me.

As discussed before, I am fortunate if that's an adequate description, in having my full, unaltered, original social work file with nothing redacted. This file contains shocking evidence of some of the horrific abuse I suffered. The signing of the waiver, relinquishing my right to continue or raise civil actions in respect of the abuse will

merely continue the familiar pattern of them and us. The only people who in effect will truly benefit from this will be the insurers for the many local authorities.

I fully agree that it is not just and fair for people to be compensated twice and I as with most survivors, am very uncomfortable with that thought. However, what I would have no problem with would be a system similar to the CICA where any payments received, must be paid back. That therefore doesn't punish us again by removing the right to seek justice.

In this proposed bill it is suggested that the purpose of the waiver is not to allow parties to reduce or escape liability. I see that somewhat differently and believe that is exactly what it is going to do. Again, our right to answers and explanations which are a massive part of closure, will be denied.

I accept that the waiver scheme may be suitable for some survivors, but I know it isn't for me or many others. By approving the waiver in the suggested way is again denying us the right to full justice. It also means we will continue serving the life sentence. That isn't fair.

**Mark Wodrow**

I write on behalf of my dad and wish to make it clear the harm that's had been done by the care my father received from age 5 and a half to age 18 in Quarriers (1944 onwards) My dad was in a Quarriers home with his younger brother and suffered horrific abuse from those caring for them including regular beatings, being hit with implements including straps, being given cold baths, locked in cupboards, denied food and drink, and emotionally abused, told his mother or family did not want him which was a lie.

This experience as a child including his many moves (16) resulted in my dad having mental health issues from young adulthood to adulthood, affecting his life to a huge degree and resulting in him being unable to work and losing his family, marriage and what would have been a good quality of life for him and us as a family. This should be reflected in the redress since as I am sure you can appreciate no amount of money will compensate for this loss. My dad thankfully is now in a care home after many years of ill mental health and sleeping rough as a consequence of his poor mental health affected by his childhood.

# Anonymous Submissions

## Anonymous Individual 1

During the 1970s I attended St Joseph's College, Dumfries, along with two other pupils from my primary school who passed the 11+ and were subsequently enrolled at St Joseph's College Dumfries as 'boarding pupils' and the costs were met by the local authority.

To date, the current local authority, Dumfries and Galloway Regional Council and the Marist Order who operated St Joseph's College have failed to provide documentary evidence that the costs for my attendance at the College were met by the then local authority. Both organisations have been served with 'freedom of information' requests for this information and both have stated such documentation no longer exists – they having destroyed it/or lost it, as it was no longer required for accountancy purposes.

I have documentary evidence I was enrolled at St Joseph's College as a 'boarder' and medical records and other documentation to prove my attendance. In addition, I have a copy of Dumfries County Council accounts 1970 (Abstract of Accounts) detailing fees, bursaries and allowances and confirmation there were twenty applications for High School Bursaries. Eighteen out of twenty applications were approved.

This proves I attended a boarding school and Higher School Bursaries were being paid by the local authority at that time.

However, the accounts do not name pupils or the college and even though no one disputed the fact I attended this institution or that my fees were met by the local authority when I gave evidence to the Child Abuse Inquiry. Both organisations had representatives engaging with the inquiry.

A recent update from the Scottish Government Re: Redress for survivors of historical child abuse in care, note 6, dated August 2020, page 3, Who will be eligible, second category, which I should fall into:

'or where arrangements were made by a local authority to send children to board in schools not managed by that authority and the authority met the costs.

If I and my fellow survivors cannot provide documentary evidence, through no fault of our own, that the local authority met our costs, we will be ineligible for financial redress, the way the Bill is currently presented.

I do not believe discriminating against survivors because organisations chose to lose or destroy evidence is the aim of the government and I believe it would be unjust if it was allowed to happen. It would turn into a postcode lottery and survivors would feel cheated and deprived of justice.

Surely a signed declaration, or some other legal declaration could suffice. As the investigator who looked at my case stated I can prove in all probability that I attended the College and that fees were paid by the local authority, surely this

should be enough, after all no-one questioned my account of my time at this educational establishment when I gave evidence so why I should now be denied redress.

**Anonymous Individual 2**

I am care experienced myself which accumulated adds to between 7 and 11 placements including residential care and foster care on my Journey from reception into the care of the Greenock Corporation aged approximately 3 years to eventually being taken to the Highlands.

**The Bills definition of abuse** –

I think that there will be many children in Scotland who like the children moved to Australia who were also deceived into travelling significant distances both emotionally and physically from their families, cultures and communities. I believe that this can be equally damaging for those of us who were moved around the UK with no knowledge of why, grasping at the tissues of lies given if someone even bothered to tell us.

It is easy to underestimate the enormity of this and the serious impact this would have on the children who were exposed to this terror where a child is removed for the first time since being taken into care from tentative feeble roots and familiarities. In response it is likely they would regress or arrest, withdrawing from this new world as an interloper destined to disappoint, failure to emotionally thrive ignored by corporate parents, giving up they become numb, act out (cry out) fight or flee.

The labelling, stigma and criticism that one internalises from new carers and new communities is crushing as is the likely breakdown and failure of these placements, notwithstanding the abuse within the placements that compounds the abuse of neglect in corporate planning and parenting. It was a destructive damaging vicious cycle for many children.

Apply any social work theory and practice to this, any phycology theories, any health and medical theories and the likelihood of the level of damage done to him or her is catastrophic. Think of the experiments carried out on young children in America where nurture was withheld, and only physiological needs were meet. A large number of children just gave up and died others were damaged for life.

This was often social work practice in Scotland in action. Multiple placements, multiple failures, unplanned moves to the other ends of the country which seemed like the other end of the world to most children decades ago. Vulnerable, isolated and dependent on the often dysfunctional and abusive carers with their families and friends also reinforcing that this was normal and that we were abnormal.

For example apply Erickson’s stages of psychosocial development and the crisis outcomes are likely to be ones of basic mistrust, shame and doubt, guilt, inferiority, role confusion, isolation, stagnation and lastly in your life’s journey despair.

As adults the damage is often invisible, sometimes it manifests and implodes inward in self- destructive self-loathing behaviours or explodes outward at others and sometimes the toxic stress effect of childhood is cruelly delayed and only presents later in chronic ill health.

So yes, think of a child trying to survive without a core of self nor resilient carers who will claim them and never shame them who is miles from anywhere, adrift with no

roots and if they make it to their teens, their realisation that they are truly alone. Think for a moment that it happened in Scotland as well as Australia.

Corporate neglect and emotional abuse should be a distinct standalone financial redress like that given to the devastated children  who were taken to Australia and should be viewed as an additional payment to other forms of abuse by perpetrators while in care settings and other consequential financial redress.

**Anonymous Organisation 1**

We write in response to the Call for Views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, which we understand was published on 24 August 2020.

We became aware of the Call for Views the day before the original deadline date of 2 October 2020. While we appreciate the grant of an extension to submit our views by midday on 9 October 2020, it would have been helpful (as an organisation having previous engagement with the Scottish Government on this subject) to have received notice of the Call for Views when it was first published.

We have identified the following specific issues; however, it is possible we might have been able to identify and raise additional issues if we had been alerted to the Call for Views in August, or if more time had been made available to us. In any case we hope our limited comments at this stage are of some assistance to the Committee.

*Fair and meaningful contributions*

We anticipate there would be a number of charities and other organisations interested in participating in a scheme of financial redress and support in respect of survivors of historical child abuse in relevant care settings in Scotland.

However, we are concerned that a charity interested in participating may not be able to afford to do so if the fair and meaningful contribution they are requested to pay would (a) very significantly hamper the delivery of their usual activities for the public benefit, or (b) result in breach of a declared reserves policy. We would therefore strongly encourage the Committee to consider and include affordability as a key factor in the method of calculation of a fair and meaningful contribution.

We also think it is important to be clear that a shortfall in contributions required to make redress payments may arise in circumstances where there are a number of charities and other organisations willing (but unable, on grounds of affordability) to participate in the scheme.

In summary we think it is important to ensure the fair and meaningful contribution is calculated in such a way to facilitate, and not exclude, participation by those charities and other organisations who are interested in participating.

*Restricted funds*

We note the possibility of restricted funds being ‘unlocked’ and used for the purposes of making contributions to the redress scheme. We would encourage the Committee to consider (a) the wishes of the donors of those restricted funds, (b) the importance of seeking the consent of any donors who are alive and contactable, (c) the potential difficulty in contacting donors, and (d) the potential effects on the ability of charities to raise funds in support of their activities in future if donors do not have confidence those funds will be used for the purposes given. We consider it important that the Scottish Ministers should at least be required to have regard to these factors before making subsequent regulations under the primary legislation, if it is passed.

*Waiver*

We note the proposal that an applicant who accepts an offer of a redress payment should be required to sign and return a waiver abandoning any relevant civil proceedings and waiving any right to bring relevant civil proceedings.

This raises a practical question: How will an organisation know if a person raising civil proceedings against the organisation has signed a waiver and is, in fact, barred from raising those proceedings?

We also raise a question of what assurance organisations would have that a waiver would stand indefinitely and not be overturned in any change of law or approach that could take place in the future.

# Organisation Submissions

## Aberdeen City Council

Call for views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

Aberdeen City Council (ACC) participated in the Financial Redress for Historical Child Abuse in Care - Pre-Legislative Consultation in November 2019. ACC welcomes the opportunity to respond to the Committee's call for views as part of its Stage 1 scrutiny of the Redress for Survivors (Historical Child Abuse in Care) Bill. In terms of the specific questions posed:

**1. The people who are eligible to apply to the scheme.**

ACC agrees in principle with the criteria for those eligible to apply to the scheme but notes that the Scottish Ministers will have the power by way of regulations (subject to the Scottish Parliament's approval by affirmative procedure) to adjust the definition of "relevant care setting" by adding to or varying the descriptions of types of residential institution listed in section 18(3), or by modifying the detailed descriptions of each type of residential institution provided for in section 19.

The power to modify the definition of "relevant care setting" is said to be based on experience gained through the advance payment scheme that has shown that additional types of care setting may come to light once the scheme is operational, and that it is possible that adjustments may be required in the future (paragraph 85 of the Policy Memorandum).

In principle there is no objection. However, it is not clear what level of scrutiny will be applied to adjustment of the definition of "relevant care setting" in particular, if this may include further consultation, due to the process being by way of affirmative procedure.

Examples or case studies where additional types of care setting have been discovered, would be helpful to provide context for the necessity of the power to adjust "relevant care setting."

**2.** The Bill's definition of abuse.

In its response to the Pre-Legislative Consultation, ACC agreed with the Scottish Government's intent to base the definition of "abuse" on that as set out in the Limitation (Childhood Abuse) (Scotland) Act 2017 ("the 2017 Act"). The broad definition provides a flexible and a proportionate approach, focussing on the experience of the survivor, rather than making a judgement that any form of abuse is, in and of itself, more severe than another. Recognition that abuse takes a variety of forms, and that all have damaging, long-term impacts must be respected.

However, further consultation and consideration should be given to the extension of "abuse" to include "peer to peer abuse," with reference to the Explanatory Notes. May this include, as an example, "a one-off fight between peers"?

Notwithstanding, there are examples and experience where peer to peer abuse should be within the eligibility criteria of the redress scheme. To withhold eligibility for those who have this lived experience, may be considered a disservice. The criticality of this scheme is to ensure that each case is assessed on its own merits.

**3. The dates used in the Bill to define 'historical abuse'.**

The date of historical abuse, which took place before 1 December 2004, is appropriate. The redress scheme is also open to those where the abuse took place before 26 September 1964. This is significant in terms of equality given that the operation of the law means that those survivors are unable to raise a civil action to pursue damages in respect of that abuse. For those survivors, the redress scheme is demonstrably more inclusive than existing remedies. This distinction reflects that the purpose of the redress scheme is to account for historical abuse.

**4.** The Bill's definition of 'in care' and the places in which that care took place.

There is no definition of "in care" within bill. Therefore, ACC understand this question relates to the definition of "relevant care setting" as defined in sections 18 to 20.

In principle there are no issues with the two categories of care setting in Scotland; nor "relevant care setting" meaning, firstly, a residential institution in which the day to day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there, and secondly a place, other than a residential institution, in which a child resided while being boarded-out or fostered. Nor with the definition of "Residential institution" to mean a children's home, a penal institution, a residential care facility, school-related accommodation, and secure accommodation.

Reference is made to ACC's views on the power to modify the definition of "relevant care setting" as per question 1.

**5.** The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.

The scheme's intention is to give survivors more, not less, choice as to how to pursue financial reparation. Independent legal advice is critical as redress does not replace existing avenues of financial reparation. An identified risk for survivors is where, perhaps the legal fees are not fully understood and civil litigation is pursued; the expectations is to receive higher settlement. An unknown is whether there will be a substantial increase in legal fees once the scheme is live.

For the waiver to operate effectively, it must clearly and specifically outline the period, people and organisations, and instances of abuse for which the survivor is accepting the redress payment. It is crucial that survivors have independent legal advice at this stage in order to make a fully informed decision.

Inclusive to the process, at point of entry, survivors must be offered counselling and support services. The impact of the redress process including accessing records, living the redress process and re-living life experiences cannot be

understated. A significant risk to survivors is being re-traumatised through this journey.

**6.** The level of payments offered to survivors.

ACC have no observations to make on the level of payment offered to survivors.

**7.** What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.

A response in relation to the financial aspects and implications of the bill will be provided in the call to views by the Finance and Constitution Committee, due on 9 October.

**8.** The process for dealing with applications to the scheme from people who have serious convictions.

ACC agrees with the process for dealing with application to the scheme from people who have serious convictions, on the basis that a public interest / human rights based approach will be adopted.

9) The process for family members to make an application on behalf of a survivor who has since died.

ACC are supportive of the process for family members to make an application on behalf of a survivor.

10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.

It is noted that the bill says very little about apology. Apology is referred to once in section 91 regarding reporting requirements. Public apology is without doubt a key aspect of non – financial redress and Scottish Ministers should continue to publicly acknowledge survivors experiences. Survivors should be consulted on how non-financial redress looks and feels for them.

**Aberlour**

**October 2020**

**Prepared by SallyAnn Kelly, Aberlour Chief Executive**

## Overview

Aberlour works with vulnerable children, young people and families throughout Scotland, providing services and support in communities around the country across a range of settings. We help to overcome significant challenges, like growing up in and leaving care, poor mental health, the impact of drugs and alcohol on family life, living with a disability, or the impact of poverty and financial hardship. We aim to provide help and support at the earliest opportunity to prevent problems becoming intractable or spiralling out of control.

We would like to reiterate our unconditional apology to anyone who suffered abuse while in our care.

We would be happy to give evidence orally at Stage 1 of the Bill.

## Introduction

Aberlour understands the intention of this Bill and recognises that redress is an important element of justice. We support the principle of financial redress as part of acknowledging and repairing the impact of child abuse. We are committed to working together with all stakeholders in whatever way we can to realise a redress scheme that meets the expectations of survivors and which will allow for our participation.

However, it is our responsibility to ensure that we do not compromise our ability to meet our financial obligations to any potential claimants and to the organisation as a whole, including the children, young people and families who currently rely in our services. Therefore, we feel it is necessary to highlight our concern regarding the impact the Scheme could have on the viability of the charitable sector in Scotland, if it proceeds, as proposed within the Bill, on the basis of being funded in part by a number of charities.

We note that it is the intention of the Bill that those organisations bearing responsibility for the abuse will be expected to provide financial contributions to the costs of redress. We note that, at this time, there is limited information on who will assess the level of financial contribution, or how. We also note that the Bill leaves open the possibility of changes to charities law, with potential for impact on the charitable funds from which such a contribution may be drawn. We are concerned that this may result in organisations, including ourselves, being precluded from participating voluntarily in the Scheme if the costs prevent us from meeting our financial obligations, either by virtue of the impact of meeting the contribution

assessed for us on our ability to continue to provide services, or by virtue of the effect on securing future income.

We have further outlined our concerns regarding the proposed scheme below.

**Financial Issues**

***General***

We note that requirement for contributions to the scheme is a process of agreement between the Ministers and the particular organisation and is not subject to any question of legal liability.

With reference to section 15(1) of the Bill, we have a number of concerns. We are concerned about the impact of the scheme on future funding. Many charitable donors provide funds on the basis that they will be used for a specific or “restricted” purpose. Where this occurs, funds are accounted for as “restricted” and cannot be used for any other purpose. This is a charity law fundamental which provides a protection to the donor and requires to be observed by charity trustees, such that a breach of this principle would constitute a breach of their charity law trustee duties.

There are statutory provisions in the Charities and Trustee Investment (Scotland) Act 2005 (**the 2005 Act**) (sections 39-43) confirming OSCR’s role relevant to permitting changes to restricted funds.

Scottish Ministers’ ability to make regulations in this area is limited in terms of the focus set out in those sections (and operation of s103 of the 2005 Act concerning the making of regulations).

We do not see within the 2005 Act any basis upon which Scottish Ministers, by way of regulation, could change the clear charity law principle noted above that funds given for a specific purpose require to be treated as “restricted funds” and cannot be used for any other purpose.

Furthermore, we do not see how any intervention by Scottish Ministers purporting to change, in law, the status of restricted funds, could be done without need for consultation and then change to the UK Statement Of Recommended Practice (**SORP**) for preparation of charity accounts.

Finally, we consider any change would have significant negative impacts on charity donations as donors wishing to support a specific purpose would have no guarantee that their donation would be restricted to that purpose only.

Additionally, we also note the anticipated and estimated distribution of statutory claims via the Scheme outlined within the Financial Memorandum. However, some organisations that could be liable to claims through the scheme remain uncertain about the potential number of claims they may be exposed to. Therefore, we would require clarity regarding the overall level of contribution and what is seen as meaningful before committing to the scheme. We require to continue to meet existing financial obligations as a whole, including to funders and to the children, young people and families who currently rely on services. It will be crucial to balance our support for the principle of financial redress as part of acknowledging and repairing the impact of child abuse with our commitment to serving those vulnerable children, young people and families throughout Scotland who are currently reliant on our services. Trustees require in law to ensure that any actions they oversee are in the best interests of the Charity.

***Fair and Meaningful Contribution***

We also note the provisions of Sections 12 and 13 of the Bill. We welcome the opportunity to engage with the contribution process in recognition of our duties to the survivors of abuse who were in our care. We consider that the terms of this engagement and any subsequent contribution to be made should have a clear basis in both principle and law and should not be subject to arbitrary decision-making.

In terms of Section 12, the Ministers are obliged to produce and maintain a "contributor list" of "scheme contributors". Being placed on this list will be of material importance to organisations and institutions which the Ministers invite to make contributions to the Scheme due to i) the public recognition that the organisation is contributing to the redress process; and ii) the protection from civil litigation the waiver provisions confer (discussed below). In order for an organisation to be placed on the contributor list, the same would have to make a fair and meaningful financial contribution to the Scheme. The current drafting of Section 13(1) (read in conjunction with Section 12(1)(b)) suggests that the decision-making on whether an organisation had made such a contribution would be decided by the Ministers. This decision would be made in accordance with a statement of principles which are to be prepared and issued by the Ministers. The statement does not require to be made prior to this provision coming into legal force (Section 13(2)).

We consider that these provisions have the potential to produce arbitrary and inconsistent decision-making on the side of the Ministers which could have negative implications for both the scheme contributors and the public purse due to the following:

1. A statement of principles is not legally binding on the Ministers' decision-making. Accordingly, it is likely that there will be departure from particular principles resulting in inconsistency and leading to uncertainty.

2. It is unclear whether potential scheme contributors would be consulted prior to the preparation of these principles. More importantly, it is unclear if principles would be ready prior to the operational start of the Scheme which could see potential scheme contributors being unable to make a contribution on time.

3. It is unclear what department within the Scottish Government would be making the decisions on the contributor list. The Policy Memorandum is clear that the Scheme would be administratively run by the existing structures of the Scottish Government. But neither the Memorandum nor the Bill provide any indication on who specifically would be making the decisions on the contributor list.

4. The statement of principles would be prepared by the Ministers and it would be the Ministers who would be interpreting the statement's provisions. This allows for ministerial decision-making with significant ramifications which would not be scrutinised either by Parliament or by an independent non-departmental body. This could be remedied by providing Redress Scotland with the final say on the composition of the contribution list after recommendation from the Ministers.

5. The Ministers are not placed under a specific statutory obligation to produce reasons for any decisions taken in respect of the contributor list. Although Ministers are under such a duty at common law (see *Scottish Ministers v Scottish Information Commissioner* [2007] CSIH 8), a specific obligation in the Bill (or any statutory instrument to be issued in light thereof) would increase the level of accountability. In the absence of such a provision, the possibility for ambiguous, unclear and arbitrary decisions is increased.

6. If organisation are unclear about the Ministers' decision-making on this matter, they may decide that is not possible for them to participate in the contribution process. This will increase the burden on the public purse in respect of the amount of the redress payments which would have to be funded by the taxpayer.

It should be clear that we do not wish to hinder the present legislative effort which is providing comprehensive redress to survivors of child abuse. The Bill should be enacted without delay in order to provide a meaningful avenue which might lead to closure for many survivors. The way to address our concerns above is by simply amending Section 13 and placing an obligation on the Ministers to produce a statutory instrument, as opposed to a statement of principles, governing the decision-making around the contributor list. This will allow for all of the above matters to be ironed out in a separate piece of legislation after proper consultation with all parties (including the organisations listed in para 2.3 of the Bill's Business and

Regulatory Impact Assessment). It is also likely to give organisations the necessary clarity which would enable them to fully participate in the Scheme. Further, in the event that there is the potential for the assessment of what constitutes a "fair and meaningful" contribution to be re-evaluated as the Scheme progresses, it will be important for organisations to be clear on what might be required of them in that process, and what the impact on funds of that might be, at the earliest opportunity.

**Waiver**

We believe that any scheme which aims to meet the expectations of survivors must be established with human rights at its centre. The Scheme must promote dignity and respect for survivors and should not impose barriers to them fulfilling their rights to appropriate levels of redress. We recognise the Scheme's intention of providing an alternative to civil litigation, and of avoiding the possibility for some survivors of having to go through the potentially retraumatising experience of civil proceedings and court actions to seek redress.

We welcome the inclusion of waiver provisions within the Bill which would achieve fairness between the survivors of child abuse and care providers. The requirement for the signing of a waiver would not only create legal certainty but would be a significant step towards bringing a form of closure to survivors.

In the interests of making the provisions as a fair as possible, we would suggest that the regulations under Section 46 should not be a matter of ministerial discretion. Rather, the Ministers should be placed under an express obligations to make such regulations so that both survivors and organisations understand the proposed waiver mechanism better. This should be done mainly for the benefit of survivors who will without doubt seek to obtain legal advice on the ramifications of signing such a waiver to their legal rights.

Further to the above, survivors should be given unfettered access to legal advice on whether or not to accept an award by Redress Scotland which would include the signing of a waiver. We therefore welcome the generous provisions in Part 5 of the Bill on the Ministers meeting such legal costs. Nevertheless, it appears to us that the provisions of Section 89(2)(d) and Section 89(3) are in contradiction to one another. Comprehensive legal advice on whether an offer of redress payment should be accepted (including the signing of a waiver) cannot be provided without legal advice being given to the survivor on their prospects of success in raising a civil claim. It is our view that Section 89(3) should be removed to allow for the provision of holistic legal advice which would enable and empower survivors to make an informed decision on the mode of redress they wish to obtain.

Making sure that survivors are fully advised on their legal rights prior to signing the waiver will also remove any question of the legal validity of the waiver which might

be otherwise arise. A waiver has the effect of abandoning a legal right. In order for the waiver to be effective, the party providing it must have knowledge of the right that is being waived (see *Porteous's Trustees v Porteous* 1991 S.L.T. 129). In the event that a survivor is not fully advised on all its rights, remedies and pleas in law in respect of the abuse perpetuated on them, the Court might find the waiver ineffective in whole or in part. Removing Section 89(3) would resolve this issue and allow for survivors to receive the proper and comprehensive legal support to which they are morally entitled.

**Competency of the Scheme**

We understand that work is being undertaken by the legal profession in relation to the overall competency of the scheme and Aberlour, beyond the points noted above relevant to restricted funds and the Charity and Trustees Investment (Scotland) Act 2005, is not qualified to comment on this matter.

## Association of British Insurers (ABI)

*ABI response to Scottish Parliament Education and Skills Committee call for evidence on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill*

### About the ABI

The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive, inclusive and thriving sector, our industry is helping Britain thrive with a balanced and innovative economy, employing over 300,000 individuals in high-skilled lifelong careers, two-thirds of which are outside of London. In Scotland the industry supports more than 22,000 jobs generating more than £3bn to the Scottish economy.

The UK insurance industry manages investments of over £1.7 trillion, pays nearly £12bn in taxes to the Government and powers growth across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world.

Founded in 1985, the ABI represents over 200 member companies providing peace of mind to households and businesses across the UK, including most household names and specialist providers.

The ABI's role is to:

- Get the right people together to help inform public policy debates, engaging with politicians, policymakers and regulators at home and abroad;
- Be the public voice of the sector, promoting the value of its products and highlighting its importance to the wider economy and society;
- Help encourage consumer understanding of the sector's products and practices; and
- Support a competitive insurance industry, in the UK and overseas.

The ABI appreciates the opportunity to comment on the above Bill and to help inform MSPs on the position of liability insurance in relation to redress schemes such as the one proposed in the Bill.

The role of the insurer in historical abuse claims is not to defend abuse. Insurers usually become involved in these claims once they have been notified by a policyholder, most often under public liability insurance policies. The nature of liability insurance is to indemnify an organisation – which can include businesses, charities, religious orders and local authorities – for certain legal liabilities under the terms of their policy or policies. In the context of abuse claims it is important to note that insurers do not indemnify the abuser, who will always retain primary and personal responsibility. Insurers indemnify their policyholders in circumstances where there is vicarious liability for the direct acts of an organisation's employees, liability as a result of institutional failures, or liability as a result of negligence of the organisation's employees (not necessarily systemic negligence).

Historical child abuse is the most sensitive type of claim insurers will deal with and so they handle it differently to any other kind of personal injury. They have designed practices and protocols specifically for abuse claims.

Historically, liability policies were not written in contemplation that they would cover potential liabilities from alleged abuse. The law has changed, and through these changes liability has arisen for employers or organisations who then seek an indemnity through their insurers. In the majority of such cases where insurers have become liable this has been through policies which were written decades previously. These policies were not written with liabilities for child abuse in mind, but it is part of the function of insurance to absorb unforeseen risks and so the policies will often respond.

A significant proportion of claims for compensation for historical abuse is not covered by insurance. Employers' liability insurance is mandatory and must be purchased by employers. Public liability insurance is not mandatory and many organisations will have not purchased it in the past. Those organisations that did purchase public liability insurance cover may have bought it with a large uninsured excess in the event of any claims, or purchased a low limit of indemnity cover up to a fixed sum of money. Only a small percentage of the ABI's membership has a risk in this area. A number of abuse claims against care providers and local authorities for instance are therefore managed and paid with no insurance involvement.

Where there is a valid policy and a legal liability then an insurer would indemnify the insured organisation including the payment of any compensation settlement and legal fees.

It is important to recognise that redress, including the redress proposed under the scheme in the Bill, is not compensation. Paragraph 235 of the policy memorandum supporting the Bill states: *"the redress scheme does not establish legal liability, and it is not intended to work as a civil court would."* Paragraph 12 states: *"The scheme is not about establishing legal liability for the consequences of the abuse; redress serves a different purpose."* Paragraph 127 states: *"the scheme is not intended to replicate either the process or payment available through the civil courts and will not attempt to establish legal liability for the consequences of the abuse, nor determine any issue of fault or negligence arising from any matter to which an application for a payment under the scheme relates. It follows from this that the purpose of redress is not to provide compensation akin to an award of damages which would seek to calculate loss insofar as possible to put the survivor back in the position they would have been in had they not been abused. Redress serves a different purpose which will be reflected not necessarily in comparable awards but in a more accessible application and determination process with access to non-financial redress, such as support."*

Insurance policies covering personal injury including historical child abuse claims will be triggered only when a legal liability is established. There is a lack of detail in the Bill on the level of evidence proposed by the Scottish Government to meet the requirement for a redress payment and so it is not clear whether that level of evidence meets the standard required under civil law to trigger an insurance policy.

Where a legal liability is established, the level of cover under a liability insurance policy will depend on the wording used in the policy and whether it excludes any particular

operations or activities of an organisation. A policy may also set a deductible or excess sum payable by the insured organisation, meaning a claim below that value would not be covered by the insurer. Policies will also include a maximum limit on the financial value of the indemnity provided in the event of a claim. An indemnity limit may apply on an aggregate basis covering all claims made in the period covered, or an 'each and every claim' basis where each claim has an individual indemnity limit.

The Bill does not refer to insurance or insurers and the supporting documents only make limited reference to the role of insurers in the proposed redress scheme. Paragraph 232 of the policy memorandum states that: *"It is not appropriate for the Scottish Government to interfere in contractual relationships between insurers and those insured."* We agree with this. The financial memorandum at paragraph 114 notes that *"The Scottish Government has engaged with insurers on the subject of the redress scheme. Some insurance companies may determine that they will contribute to the scheme on behalf of those they insure with historical responsibility for the care of children."* It will be an individual commercial decision for an insurer whether or not they provide a contribution to an organisation they have insured if that organisation decides to make a financial contribution to the proposed redress scheme.

Paragraph 49 of the policy memorandum states: *"fair and meaningful financial contributions to the redress scheme are sought from those organisations who were responsible for the care of children at the time of the abuse, whether providing care directly or otherwise involved in the decision making processes and arrangements by which the child came to be in care."* Insurers would not have been involved in that decision-making process or responsible for the care of children at the time of the abuse they suffered.

Some care providers may find that their insurer for the period when the abuse took place is no longer in business or has been taken over by another insurer or insurers over time. This may present challenges in tracing policies and establishing the presence and levels of liability cover.

Over the past decade there has been a considerable amount of change in the liability insurance market. A number of insurers have sold their historic liability businesses to third parties which are now responsible for handling and meeting any claims against those policies. Some other insurers have entered into agreements with reinsurers who, depending on the wording of these agreements, may now ultimately be responsible for paying claims against these liability policies.

The lack of clarity in the Bill as introduced means it is not possible for an insurer to confirm its position on the Bill at this point in time as there are too many unknown factors involved. We note that in his statement to Parliament on August 19 the Deputy First Minister said: *"The terms of the Bill are there for amendment—every single word of them"*. Insurers recognise the potential for MSPs to amend the Bill during its passage, but this means insurers would not be able to take a definitive view on the legislation until it has been passed by the Scottish Parliament.

## Church of Scotland Social Care Council ("CrossReach")

### About us

1. This submission is made on behalf of the Church of Scotland Social Care Council ("CrossReach"), Scottish Charity No SC011353.
2. We are one of the largest voluntary sector care providers in Scotland, operating a broad range of services across the country both in residential and community settings. Since 1869 we have, through the predecessors of the present Council, provided specialist resources to further the caring work of the Church by getting alongside people facing significant challenges in their lives and making a positive difference. We offer this support through providing care homes and day care for older people, dementia services, children and family services, substance abuse services, generic and specialist counselling, homelessness services, and support to people with learning disabilities or who are caught up in the criminal justice system. Each year we provide care and support to approximately 11,000 people across the country.

### Support for principles behind the Bill

3. We wholeheartedly endorse the policy aim behind the Bill, in acknowledging and providing tangible recognition of harm caused by historical child abuse in various care settings in Scotland. We accept that we have at times failed to protect some of the children entrusted to our care and, having apologised to all those affected, are keen to see that the provision made through the Bill allows us, along with a wide range of civic and charitable organisations, "*to participate meaningfully in this national collective endeavour to recognise the harms of the past*".
4. We work to a set of values which include transparency, offering dignity, and valuing others for their individual worth. We have invested time and resources in working with survivors both through the National Confidential Forum and with individuals who have engaged directly with us so that we can know more about the impact of abuse on their lives and respond from a position of better understanding. We have already made financial reparation where that has been asked for but understand from our wider engagement that redress comes in a number of different forms including acknowledgement, apology and support. Our preferred option would always to be able to engage with those harmed in our care, wherever possible, so that opportunities to reconcile are maximised and that remedy can be made in the most appropriate way and in line with the needs and choices of the individual.
5. We have had positive engagements with the policy team behind the Bill and would support their position that contributions should be sought from all of those who have been involved in the care of children. We do, however, have a number of concerns about how the Scheme will apply in practice and believe that some of the proposals being put forward will work against organisations in the charitable sector. We are not sure that the right balance has been found to allow charities like CrossReach to commit to making large upfront contributions and to also be able to continue to deliver life changing support to individuals and to communities of the type which we offer today.

**Concerns relating to implementation**

How will "fair and meaningful" contributions be assessed?

6. Section 13 of the Bill requires the Scottish Ministers to prepare and publish a statement of the principles by which a fair and meaningful contribution will be assessed. The Policy Memorandum says that these principles will set out in detail the methods used to determine contribution amounts and the process used to assess contributions, and that the communication of the contribution amounts will play a critical role in providing the necessary transparency for survivors. We think that these principles are of such fundamental importance that they should be subject to Parliamentary scrutiny and debate, and set out in the Bill itself.

7. We are concerned that the current methodology being used to assess contributions will result in a lack of consensus which may threaten the achievement of some of the policy aims of the Bill. Our recent discussions with the policy team have resulted in a number of questions about the algorithm they are employing, the principles of which are outlined in the Financial Memorandum. We believe that some of the methodology being used is neither reliable nor appropriate and would want to engage on a more individual basis which takes a wide view of all of the known factors and use that as a foundation for assessing future contributions. We do however believe that transparency is important and that the basis for assessing contributions in this way should be available for public scrutiny.

8. One of the conclusions of the Human Rights Framework for Justice and Remedies for Historic Child Abuse published by the Scottish Human Rights Commission in 2010 was that "*institutions should contribute to reparations to the extent to which they are accountable*". We agree with this. It is therefore critically important that agreement in good faith is reached with potential contributors on proportionate financial parameters for their accountability.

9. There is no mechanism in the Bill for the apportionment of responsibility to a number of different organisations, where two or more are "named" within an application. An individual may have resided very briefly in one home but perhaps suffered abuse in more than one location and whilst under the care of several organisations. We think that the broad principles of how accountability is apportioned in such circumstances should be published and that this should not be left to be worked out on a case by case basis.

10. There is also no mechanism in the Bill to distinguish between children who were in care long term and those who were very temporarily in care. This is important where 'overall numbers' are being used to assess contributions and potentially skews the data when considering proportionality.

Supporting wide participation

11. Whilst the Scottish Government's determination to underwrite the full costs of the Redress Scheme is welcomed, initial approaches to charitable organisations such as CrossReach have flagged up that significant up-front payments towards these costs, based on an actuarial approach, will be sought to allow 'entry' to the Scheme.

12. The actuarial assumption takes no account of an organisation's ability to pay, or any costs already incurred as part of an organisation's own redress. In order to make the payments it is likely that we would have to fall back on reserves, already depleted through several years of austerity and by the Covid-19 pandemic, or call on insurance. With insurers still facing civil action, and no definite waiver in place, we understand that there is a high likelihood that they will not underwrite this Scheme. Large upfront contributions to the Scheme are therefore likely to entail cuts in support elsewhere
13. As we, along with many other charities, have made it clear that we would want to participate, we suggest that any barriers to participation are removed, and that the Scheme should enable individual charities to come forward with a meaningful and voluntary financial contribution, following full discussion of all known factors.
14. We also believe that all organisations accepted into the Scheme should work to some additional core principles including genuine apology and competent support to access records.

Non-financial redress

15. The Bill is concerned largely with financial redress and does not (other than the reference to provision of emotional or psychological support in section 86) address the many other ways in which social care agencies such as CrossReach can contribute to the Scheme and to the rehabilitation and support of survivors.
16. We endorse the intent of the Bill that the legislation is seen in a wider context of truth and reconciliation and believe that the primary focus on financial contribution in such circumstances is not productive. Whilst we fully support the principle of financial redress, knowing that it is of critical importance to many survivors in terms of remedy, there are other ways in which organisations can provide redress which include apology; supportive access to records; provision of work experience or volunteering opportunities to learn new skills; emotional or therapeutic support. Understanding redress in its wider context allows for a more individually tailored approach to be taken and is consistent with the overall notion of remedy.
17. In some other countries, care provider organisations have funded support services, separate from any contribution to financial redress. This reflects principle 7 of the Van Boven principles of international human rights law adopted by the UN, namely that: "*Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition*". We believe that the Scheme, as presented, fails to make sufficient provision for any form of reparation other than financial compensation.
18. The requirement in section 91 of the Bill for contributors to make an annual report on wider redress actions conflates the provision of financial and non-financial support. This in effect imposes a dual burden on contributors and presents additional challenges – regardless of the provisions of sections 13 and 14, to which we return below – for charities who wish to support the aims of the

Scheme in a tangible way but cannot, in doing so, prejudice their very existence.

19. As was noted in the SHRC submission on the pre-legislative consultation on the Bill, the purpose of a financial redress scheme is to compensate victims and survivors for the impact this abuse had on their material and non-material well-being, as part of a package of reparations, which taken together are able to provide an effective remedy to survivors of historic abuse.

Proposed changes to charity and trust law

20. Section 13 of the Bill purports to legislate so as to treat all financial contributions as being within a charity's charitable purposes and not contrary to its interests. Section 14 allows the Scottish Ministers, after consulting OSCR, to issue regulations regarding charities' use of restricted funds to make financial contributions to the Scheme. It anticipates that this will either be by making provision for the charity to apply to permit this or that it might just be permitted by automatic operation of law.

21. We have grave reservations about such sweeping changes to trust and charity law in Scotland. The overriding obligation of charity trustees is to act in the best interests of the charity, not simply in a way which is "*not contrary to its interests*". It is not reasonable for this duty to be legislated away so as to require a charity to make a payment which is likely to render it unable to fulfil its core purpose. The blanket imposition of the section 13 provision regardless of individual circumstances is at odds with the fundamental duty of trustees to exercise their discretion on a case by case basis.

22. There is already a procedure in place, in terms of Chapter 5A of the Charities and Trustee Investment (Scotland) Act 2005, for the reorganisation of restricted funds in appropriate circumstances. We do not accept that there is a good policy ground for creating a new procedure which will apply only for the specific purpose of allowing payment to the Scheme. Doing so is wholly unreasonable in itself, and fails to meet a basic test of proportionality. It also sets an unwelcome public policy precedent. If monies held in trust for one purpose can be applied to a totally different purpose in this case, why not in other cases also?

23. Were section 15 of the Bill to provide a less robust process to allow trustees to disregard the wishes of donors of restricted funds, there would be a devastating impact on public confidence in the charity sector. This would primarily, in the short term, affect social care charities who can ill afford to lose public donations. In the medium to longer term, it would impact the whole sector if potential donors fear that their expressed wish as to the application of a financial gift may be set aside by future legislation.

Waiver

24. We acknowledge that many survivors are unhappy with the requirement that they waive current and future claims against contributors as a condition of receiving payment under the Scheme. We recognise that there are concerns about this undermining their human rights and their recourse to justice. We do however believe that the concept of waiver is an essential element of the Scheme as currently drafted and support its inclusion on the ground that it will

further support organisations to make a genuinely fair contribution by allowing us to engage with insurers, on the basis that they would be protected from civil claims.

25. Since waiver only protects those organisations who pay the contribution required by the Scottish Government, this emphasises the critical importance of achieving consensus on this issue.

26. Recognising the difficulties with waiver, as proposed, we would be interested in exploring any alternative which better protects the rights of survivors but achieves the same end.

The process to be followed by Redress Scotland

27. Before contributions are agreed, it is important that contributors can be satisfied that the process to be followed by Redress Scotland will be robust and credible. We accept that it will be for Redress Scotland to put in place its own procedures and structures, but it is important that the Bill should as a minimum stipulate that information will be sought from named organisations, who will have a full opportunity to comment on the evidence produced by an applicant and submit their own evidence, before an application is determined. This we believe is reasonable for any case where the settlement figure is likely to be over £20,000, in which case the burden of payment will fall to the contributor as the Government's commitment is to the first £10,000 only.

28. We are concerned by the statement in para 228 of the Policy Memorandum that "*by agreeing to participate in the Scheme, contributing organisations will thereby be taken to have accepted the determination of applications by Redress Scotland*". The Human Rights Framework for Historical Child Abuse adopted by the SHRC says that: "*Care should be taken in designing the entire remedy framework of the need to uphold the rights of persons who may be accused. The right to a fair trial and a fair hearing is an absolute right, so cannot be limited. At least, everyone with an interest should have the opportunity to make representations and to have their side of events heard*". This is a fundamental issue of fairness.

Insurance

29. We urge the Scottish Government to engage in discussions with insurers to establish whether a framework might be agreed to establish satisfactory parameters around compensation payments in the absence of a finding of legal liability.

**Summary**

30. Our charitable purposes are about safeguarding people in vulnerable situations, now and for the future. This includes a commitment to survivor support through a variety of different services and an acknowledgement of harms done in the past, but our resources are limited and the scale of our financial contribution to the Scheme cannot be such that we are forced to withdraw support from those currently being cared for in our communities.

31. We remain fully supportive of the principle behind the Redress Bill and its aspiration to underpin the human rights of those who have been abused in care

to seek justice. However, we are concerned that the Bill as it stands may not in fact achieve its aims for the reasons which we have set out. We are keen to see these issues addressed so that we can participate in the Scheme in the spirit in which we entered discussions at the outset.

32. We would welcome the opportunity to provide oral evidence to the Committee to support this written submission.

**Viv Dickenson**
**Chief Executive Officer, CrossReach**
**1 October 2020**

**The Congregation of the Sisters of Nazareth**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: submission of views**

## Background

1 The Congregation of the Sisters of Nazareth operated four residential children's homes in Scotland from 1862 until the last one closed in 1985, as well as similar services in other parts of the world. Today we continue our long tradition as a Congregation to over 200 religious Sisters and caring for around 2,500 elderly people at any one time in 35 care homes globally, employing around 4,000 staff. Two of the care homes are in Scotland, in Glasgow and Bonnyrigg.

2 The Sisters of Nazareth have and continue to support the principles of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill and are keen to work with the Scottish Government and others to see its ambitions delivered. We want to find ways that will enable our participation in the scheme and this response is intended to help create the circumstances that will allow us to do so. We are also co-operating with and appearing before the Scottish Child Abuse Inquiry.

3 We restate our apology to all those who suffered abuse while in our care.

## Approach

4 We support the principle of providing remedies for abuse including justice, apology, and redress, either through the existing court process or through the new redress scheme. We believe that the legislation either needs to create or be positioned within a framework of truth and reconciliation. That will require a commitment from government and all providers including religious organisations and charities to accountability, transparency and ensuring the mistakes of the past cannot be repeated.

5 To achieve this, the legislation needs the support of and participation in the Redress Scheme from the broadest possible range of government and charitable organisations. However, we are concerned that this may be impeded by the assessment of how much represents a 'fair and meaningful' contribution from providers, potentially leading to willing organisations not being able to contribute. We are concerned that the Financial Memorandum and discussions with providers may result in an assessment that is opaque or inconsistent and too difficult for providers to satisfy, leading to lower participation and therefore fewer contributions. **[Response to consultation Item 7]**

6 The Sisters of Nazareth are committed to working with people who were abused as children while in our care. We believe that redress takes many forms, including listening and responding to survivors' testimonies; acknowledging the pain and impact caused by their abuse; and providing a meaningful and personal apology. We have and continue to restate our unreserved apology, meet with former child residents, provide access to records, respond to and pay claims through the civil court process, offer counselling, make ex-gratia financial contributions to assist with the expenditure of those formally in our care and are co-operating fully with the Scottish Child Abuse Inquiry. We are committed to continuing with all of these actions, as part of the Redress Scheme and the Scottish Child Abuse Inquiry.

7 We are an organisation built upon strong core values of Love, Justice, Patience, Respect, Compassion and Hospitality. Through these values we have and continue to engage with former child residents and the Scottish Child Abuse Inquiry. We have supported the Scottish Government as the Redress Scheme has developed, through to publishing of the draft Bill.

8 We also support making the process as supportive as possible for those giving evidence or submitting a claim to the Redress Scheme. **[Response to consultation Item 5]**

**The people who are eligible to apply to the scheme [Response to consultation Item 1]**

9 We support and welcome the principle that people excluded from civil claims due to the law of prescription will have access to the Redress Scheme.

10 We question the use of the phrase 'long-term responsibility for the applicant in place of the parent': an applicant may have been with the organisation from a few days through to several years, and suffered abuse during this time, and therefore entitled to redress. However, not all situations can be described as having long term responsibility or be in place of the parent.

**Supporting applicants participation [Response to consultation Items 5 and 10]**

11 Expectations regarding non-financial redress vary considerably and therefore an individual approach is preferred. Measures to consider may include:

- Access to relevant information concerning an individual's time in care
- Access to justice and clear signposting and support
- Adequate, effective and prompt reparations
- A meaningful and personal apology
- A range of practical and therapeutic support, including counselling

12 In our written submissions to the Scottish Child Abuse Inquiry and in our evidence given in June 2018, the Sisters of Nazareth unequivocally apologised to anyone who suffered abuse while in our care. This has been repeated at the Inquiry and wherever appropriate.

13 Further guidance is requested on how and when to provide meaningful, personal apologies. We note that Apology Law exists but restrictions can impede organisations wanting to apologise when their actions have implications for liability and insurance.

**The level of payments offered to survivors [Response to consultation Item 6]**

14 We note that the payment levels within the Redress Scheme are potentially less than paid through a successful civil claim. We equally recognise that the bar for demonstrating abuse may be lower and that claims will not be defended, hopefully making the process easier for the applicant and increasing the number of successful claims. We support a process that is clear and straightforward for the claimant.

15 We also note that payments via the Redress Scheme will be the only amounts available for those excluded by the law of prescription, and for those whose civil claim is not successful.

16 We support the right of survivor groups to maximise the level of redress that they are entitled to. We are of the view that this is best delivered by the use of appropriate and well considered definitions of abuse and the impact of abuse for each of the four proposed levels, and a process that is designed to be supportive of the claimant.

17 We are concerned that increasing the number of compensation levels or the amount for the four levels would impact on providers' ability to contribute to the scheme, particularly as any amounts over £10,000 are intended to be funded by the provider(s).

**Supporting charities' participation [Response to consultation Item 7]**

18 The Sisters of Nazareth today support a substantial number of vulnerable people in Scotland and elsewhere, as set out in paragraph 1. It is acknowledged by the Scottish Government and ourselves that participation in the scheme should not disadvantage those that we support now or in the future.

19 Participation in the Scottish Child Abuse Inquiry has cost us, either directly or though our insurance premiums, substantial sums in legal costs and payments made to survivors in Scotland for claims brought through the civil court process, many of which have been settled before reaching court. The draft legislation and the Financial Memorandum does not take these costs into account when considering the level of provider contributions.

20 Any contribution to the Redress Scheme is unlikely to be funded by our insurers, unlike the settlement of civil claims. Provider contributions are therefore likely to be an expense of the provider.

21 The period over which contributions to the Scheme are made will be a major consideration in determining an organisations participation. We note from the legislation that participating organisations are expected to front load their contributions and pay in full during the lifetime of the scheme. Allowing the largest possible proportion to be paid over the lifetime of the scheme would allow more organisations to manage their cashflows and to contribute. We consider that the risk of providers reneging on their commitment or no longer existing is very low and could be managed through legal agreements.

22 The fair and meaningful test appears to aim to secure the maximum contribution from each participating organisation. We consider that the contributions objective could be better achieved by instead focusing on maximising the number of organisations contributing. This would avoid forcing organisations to make a binary 'contribute / don't contribute' decision and instead encourage the maximum number and value of contributions, which is likely to lead to a higher level of total contributions received.

23 Figures provided to us show that the calculations leading to the proposed financial contributions from providers are weighted in favour of maximising the contribution. For example, the Government Actuary's Department estimate the number of claimants at 3,000 – 11,000 and the Financial Memorandum bases the calculations of the costs at the upper end of this estimate; and the average claim value has been applied to all providers without taking into account the circumstances of each provider or the degree of abuse suffered in each residential setting.

24 The average claim value of £28,000 used for the modelling requires a contribution by the providers of £18,000 and the Scottish Government of £10,000. When considered at the individual claimant level, this is at odds with the principle of the Scottish Government paying the largest share.

25 For charities to protect the services they currently deliver, contributions will need to be funded from insurance, where available, or reserves. Insurance seems increasingly unlikely. Coming after a decade of austerity, which has fallen hardest on local authorities who fund adult social care for many of our residents, exacerbated by the financial impact of Covid-19, reserves are already significantly depleted. There is also the need to consider redress schemes being established in other jurisdictions and ensuring that funds are available for these too.

26 We would therefore prefer to see the basis for participation to require organisations to:

- Issue a public apology to survivors of abuse.
- Demonstrate that they are committed to working with survivors as part of a process of reconciliation and non-financial redress.
- Commit to providing records and supporting survivors' request for information.
- Commit to and publish a voluntary level of funding to the Redress Scheme which is affordable, and which will not be to the detriment of people currently being supported.

**The waiver, insurance and alternatives**

27 The Sisters of Nazareth supports the principle of a waiver, which will largely prevent compensation being paid twice. The waiver may help to persuade insurers to support providers participation, although it is noted that this has not yet enabled them to do so. We are concerned that if the contribution level is prohibitively high, many willing providers will only be able to make a financial contribution if they are backed by their insurer. This has not yet been confirmed and indications at the moment are that insurers will not support, even where there is a good insurance history. Therefore, the full cost of contributions will fall on the providers, leading many providers to not being able to participate.

28 Insurers will be reluctant to commit to a voluntary scheme. If they do, it is likely to be based on comparing the cost of participation with the anticipated cost of civil claims and the cost of defending them. However well meaning, the risk is that the cost of participation is too high and therefore insurers do not contribute, making it harder for providers to.

29 A waiver can only exist on a case by case basis and cannot prevent a non-redress applicant continuing to bring a civil claim, thereby further increasing costs to the organisation or their insurer.

30 We note that survivors may argue against the waiver, and possibly in favour of an offset arrangement where any payment may be reduced by previous payments through the courts, or a court payment reduced by a redress payment. The risk of such an arrangement is that it adds a layer of complexity to a system that is intended to be simple and would further disincentivise the support of insurers if they thought the redress payment may not be the total claim. It is also noted that

the two schemes are different; a redress payment potentially has to meet a lower bar for demonstrating abuse and redress claims will not be defended, amongst other differences.

**Charity law**

31 Participation in the redress scheme risks damaging the support of charity donors as their donations will be used for purposes other than which they were intended and not for the furtherance of their mission, the primary reason for donations. The cost of Redress Scheme contributions is therefore unlikely to be the total cost to a charity.

32 Charity's trustees are required to act in the best interests of their charity. This may prevent them from participating in the Redress Scheme, even if they wanted to. For example, where trustees elect to make a payment that they are not obliged to, or by risking the 'going concern' principle of their continued trading.

**Conclusion**

33 The Sisters of Nazareth support the principles of the legislation, to provide remedies for survivors of abuse in care. We also support the principle that providers as well as local and national governments have a responsibility to contribute financially and non-financially. However, the financial test and contributions should not be set such that it prevents willing providers from participating, by pricing them out because the contributions are too great and not consistent with the other financial pressures they face. A voluntary and affordable contribution that is proposed by the provider would be preferred and may yield a greater level of contribution in total by not debarring any provider from participating.

**COSLA**

Response to the Education and Skill's Committee's Call for Views:
Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

*COSLA is the voice of Local Government in Scotland. We are a councillor-led, cross-party organisation who champions Councils' vital work to secure the resources and powers they need. We work on Councils' behalf to focus on the challenges and opportunities they face, and to engage positively with governments and others on policy, funding and legislation.*

Introduction

1. COSLA welcomes the opportunity to respond to the Committee's call for views as part of its Stage 1 scrutiny of the Redress for Survivors (Historical Child Abuse in Care) Bill. This response was informed through ongoing discussions with Local Government Professional Associations including SOLAR, Social Work Scotland, Directors of Finance, ALARM, and SOLACE.

2. COSLA previously responded to Scottish Government's pre-legislative consultation on financial redress for survivors of historical child abuse in care. Local Government agrees in principle with the redress scheme, acknowledging that financial redress should be made available to survivors of historical abuse in a way that is meaningful, inclusive, and accessible. COSLA's consultation response also highlighted the need to consider the significant financial (including insurance), legal, and practical challenges for Councils, to ensure that the needs of survivors are met through the scheme, and that existing Council services are not impacted.

3. There is no doubt however that this Bill as introduced by Scottish Government, and the national Redress scheme, will have significant implications for Local Authorities due to their unique roles, responsibilities and scope of their involvement across the entirety of the Scottish care system. This current submission will consider in greater detail the financial and resource implications that the scheme, as introduced by the Bill, will have for Local Government in Scotland, and the ways in which the Bill at Stage 1 could more robustly address these challenges.

4. The current financial context is severely challenging for Councils who are coping with significant financial pressures arising from COVID-19. Council finances had already been impacted by cuts to core budgets in previous Local Government Settlements. This scheme will present financial risks which Councils are already assessing and accounting for as a matter of high priority. This is being highlighted to the Committee to emphasise that, whilst Local Government fully supports the policy intention of the Bill, there must be careful consideration of the financial and resource impacts it will have. If Scotland is to provide meaningful and collective recognition of its historical wrongs, we must ensure that Local Authorities are fully prepared and resourced to support survivors of abuse throughout what will be a very challenging time.

5. Rather than responding directly to the Committee's suggested questions, this submission will highlight key areas for wider consideration, as informed by ongoing discussion with professional bodies across the Local Government family.

The Definition of Abuse

6. The Bill sets out that 'abuse' refers to sexual abuse, physical abuse, emotional abuse, and abuse which takes the form of neglect. The Explanatory Notes which accompany the Bill further expands on this definition, and states: *'As read with section 16, this would include abuse by peers within a relevant care setting. Corporal punishment that was lawful at the time it was administered does not constitute physical abuse for the purposes of the Bill*.' Local Government has raised potential issues around inclusion of peer abuse within this definition, as this was not previously consulted on and there is question as to whether any civil case has considered this within the context of the Limitation Act. COSLA urges that full and robust consideration is given to the implications of widening the definition to include peer abuse.

A Fair and Meaningful Contribution from Local Government

7. The Bill sets out that a fair and meaningful contribution will be sought from Local Government to reflect its 'legacy' of responsibility for abuse in care. Local Government has agreed in principle to participate in the scheme and has committed to making a financial contribution. The details of this contribution, including the amount, structure, and timeframe, are not specified in the Bill or its accompanying documents. Discussions are ongoing between Local and Scottish Government to examine and consider the scope and mechanism of the contribution.

8. A key area of concern to Local Government is the unknown quantum of the contribution. While it is assumed it will be a significant proportion of the costs of redress payments as set out in the Financial Memorandum (£350m), there are various unknowns which will determine the total payments which will be made and, in turn, the extent of the financial contribution from Local Government, including: number of applicants to the scheme, whether applicants choose a fixed rate payment or an individually assessed payment, as well as any other assessments that will be made to help determine a contribution amount. Importantly, scheme contributions in the round must recognise the *collective national* responsibility to survivors of historic abuse, which should be represented through contributions from providers and the spheres of Government.

9. Traditionally, when Local Authorities **receive** funding from Scottish Government, it is distributed through the Settlement and Distribution Group, which is chaired jointly by Local and Scottish Government officials. Recommendations are made by the group to distribute

funding based on relevant data and indicators, such as rurality, deprivation, pupils who receive Free School Meals, individuals in receipt of Universal Credit, etc. Taking a client-based approach, these indicators are based on need and should align with the policy intention of the funding.

10. As a matter of principle, it is likely that Local Government would favour an approach that aligns contributions to needs-based indicators, but in this instance, it is unclear how traditional 'distribution' i.e. taking a client-based approach, could account for Councils' contributions when there have been reorganisations of Local Authorities- in 1975 and then again in 1996. Determining who is now responsible to contribute towards redress, and to what extent, will be challenging. In addition to the reorganisation of Local Authorities, there is an added layer of complexity in that historically, a Local Authority may have placed a child in a neighbouring authority, so determining responsibility and fairness of contribution is challenging. Nevertheless, consultation to date with Local Government would suggest that options around 'indicator-based' contributions should be explored further to avoid a scenario where a few councils bear the financial brunt, when in reality, actual attribution would be difficult given the complexity of the Local Government landscape . An approach using needs-based indicators could also provide a level of certainty and stability for councils and assist with financial strategies to ensure the costs associated with this Bill can be met.

11. Whilst the details of the contribution are further assessed over the coming weeks and months, consideration must be given for an extended period of payment in order to spread the financial impact for Councils. Payment over ten years would be a reasonable suggestion as it profiles the contribution over a longer period, lessening the in-year financial impact, and the consequent impact on funding available for core services delivery. It would also allow time for the closure of the scheme (which is anticipated will run for 5 years) and a final reconciliation of redress payment costs. Local Authorities will require assurance for a greater level of certainty about the prospects of reconciliation and to what extent the contribution could change.

Insurance Cover

12. Councils have paid into insurance cover to protect themselves and reduce the financial risk arising from a variety of issues, including civil liability. Insurance cover is fundamental to minimising exposure and ensuring that Council finances and operations are protected to the maximum extent possible. Councils have a statutory duty of Best Value, which is about ensuring that there is good governance and effective management of resources, with a focus on improvement and ensuring the best outcomes possible for the public[1]. Effective management of resources in this context means ensuring that where possible, liabilities are covered and funded by existing and historic insurance policies.

[1] https://www.audit-scotland.gov.uk/uploads/docs/um/bv_audit_councils.pdf

13. The design of the redress scheme means that it is unlikely that Councils can draw on historic insurance cover to help fund the Local Government contribution. Less stringent evidentiary requirements and the lack of determination of liability means that Councils would likely fail to access historic cover for this specific purpose, despite having purchased cover in good faith, to provide a level of protection from these and other related risks.

Scheme Waiver and Civil Claims

14. The scheme will require that claimants who wish to accept a redress payment waive their right to continue or raise civil action in respect of the abuse against responsible providers who have made a fair and meaningful contribution to the scheme.

15. Whilst the intention of the waiver is to offer survivors an alternative to litigation (with support mechanisms put in place), and to minimise contributors' exposure to litigation, the reality for Local Authorities is that financial liabilities will now lie across both the collective Local Government contribution (which was discussed in greater detail at paragraphs 6 - 10) as well as civil litigation proceedings that are either ongoing or arising as a result of a decision by a survivor not to pursue or accept a redress payment. This results in Councils paying for historic wrongs via two separate and distinct mechanisms, adding to the already significant financial pressures faced by Local Government.

16. For the waiver to operate effectively, it must clearly and specifically outline the time period, people and organisations, and instances of abuse for which the survivor is accepting the redress payment. Crucially, Local Authorities must be actively involved and consulted in the development of the waiver as it will have significant implications for Local Authority insurers as well as future legal proceedings.

17. COSLA recommends that the scheme allows Local Authorities to seek cover from insurers for the Local Government contribution in order to mitigate the dual pressures which arise from both civil claims, and redress payments, the latter for which insurers are not likely to be responsible. Insurers could be asked to contribute on behalf of, or in addition to, the insured owing to the fact that the scheme, and its waiver, would provide protection to insurers as well as the insured.

Evidentiary Standards and Accountability of Redress Scotland

18. The redress scheme will provide an alternative to civil litigation for survivors of abuse and requires softer, more flexible documentary evidence to support claims than civil action would require. COSLA appreciates that this would enable survivors to have greater access to reparation and recognises the challenges involved in accessing historic documentation.

19. It should be noted that the provision of relevant information is not a cost-free exercise. As such detailed consideration will need to be given to how organisations covered by this duty are supported to undertake the work. Resourcing will be necessary, and it will be a key consideration that Local Authorities are properly resourced to respond to the increase in Subject Access Requests that will arise from the introduction of the redress scheme. COSLA welcomes the work undertaken to represent these costs within the Financial Memorandum and would urge the Scottish Government to fully fund this. Council services are stretched as it is and so any increase in service provision, in line with a new national policy commitment, must be fully funded.

20. The Bill also states that Redress Scotland should have the power to determine whether evidentiary standards are met or whether it is satisfied of this aspect of eligibility without the production of documentary evidence amongst claims. This raises an important question around accountability and responsibility for public funds, especially with regards to Council spend. As major contributors to the scheme, Local Authorities must have a role in ensuring that Council funds are spent in a way that meets criteria of audit, scrutiny, and accountability. This means that Local Government should be jointly involved in the scrutiny of the decisions and administration of Redress Scotland as it is anticipated that a substantial proportion of scheme payments will arise from the Local Government contribution.

Conclusion

21. It is important that, in summarising COSLA's response to the Bill, it is first emphasised that Local Government agrees without reservation that survivors of historical abuse must be recognised and compensated in a timely, fair, and appropriate manner. This is an important step in addressing the wrongs of our past.

22. Nevertheless, COSLA has highlighted important gaps within the Bill and its accompanying documents: the widened definition of abuse; the fair and meaningful contribution from Local Government; the operation of the scheme waiver; and the standards of evidence used by Redress Scotland must be carefully considered and challenged so that Councils can be resourced to not only contribute to the scheme and respond to increased service demand, but also so that Councils can continue their vital work educating, supporting, and delivering for their local communities. Accountability of Redress Scotland must also be considered at this stage.

October 2020

**Digby Brown LLP**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Overview:-**

The Scottish Parliament introduces this Bill as part of the package of measures to recognise and redress the impact of historical child abuse in care.

These measures have been heralded as a progressive step and a model that other legal systems may, in time, adopt.

scheme of tariff-based payments is broadly welcomed. There are, however, features of the proposed scheme which over-complicate the process and appear to operate against the over-arching principles of the Government's declared policy. In particular, forcing survivors to waive their civil rights in exchange for a redress payment is, in my view, a misguided and retrograde step.

It should be recognised that a scheme currently exists to compensate victims of crime of violence, namely the Criminal Injuries Compensation Scheme. That Scheme has successfully resolved the issue of avoiding double compensation and therefore the concept is not a new one. There is in my view no requirement to re-invent the wheel.

The requirement to sign a waiver on acceptance of a redress payment is predicated on the assumption that survivors will face a relatively straightforward choice. The number of cases where there will be a clear and obvious choice at the outset between a redress payment and civil damages is likely to be small. There will be cases where there are no prospects of success in a civil case (where for example the abuse occurred prior to 1964) and, at the other end of the spectrum, there will be cases where a conviction has been secured and there is an identified and solvent organisation to pursue.

However in all but these cases the choice will be far from clear. Significant investigation will be required to advise survivors not only on the prospects of winning a civil case, but also what their potential damages might amount to. The potential value of a claim is critical in allowing the survivor to weigh in the balance what they might potentially be giving up by accepting a redress payment. The assessment of quantum involves a number of crucial factors including the nature and extent of any psychiatric injury and its consequences on working capacity and ability to contribute to a pension scheme.

A fairer and more workable, approach would be to operate an offset in the event that civil damages have been or will be recovered. This mirrors the equivalent system under the CICA Scheme. No satisfactory explanation has been given as to why the redress scheme cannot operate in a similar way.

The insistence that a waiver has to be signed to recover a payment benefits only the scheme contributors. It would clearly be inequitable to have double compensation for the same injury but the principle of offset allows any payment recovered under the scheme to be repaid if the survivor is ultimately successful in a civil claim.

There is provision for an application to be paused. This **may** allow those who apply swiftly to the scheme to make their application and pause it pending the outcome of their civil damages claim. However, the scheme as currently proposed has a timeline of 5 years. (Section 29.)

Section 30 (5) has the effect that any paused application would be treated as being withdrawn as a result of the "sunset provision" of 5 years. The result is that an applicant whose civil damages claim has not concluded within that period is faced with difficult and stressful decision of opting to wait the outcome of their civil claim or accept a (probably) more modest redress payment. This Draconian and unnecessary provision is likely to heap further pressure and anguish upon a group of particularly vulnerable individuals. It seems to me to fly in the face of the Scottish Government's declared aims and objectives.

As a bare minimum an applicant who has submitted and "**paused**" an application to Redress Scotland within the 5 year period should be allowed to conclude their civil damages without the threat that their application may be deemed to be withdrawn.

**Call for changes in the law**

The Scottish Government could do more to assist survivors in the litigation process. The introduction of the Limitation (Childhood Abuse) (Scotland) Act 2017 reversed the burden in relation to limitation.

Consideration should be given to introducing legislation to allow identified insurers on risk for the period of abuse to be sued directly where the identity of the appropriate party to sue is difficult to ascertain or where that party no longer exists.

Additionally, consideration should be given to introducing legislation to replicate the situation in England and Wales by introducing a statute to transfer the liabilities to an identified entity to allow viable claims to proceed against an identified defender.

This is perhaps best explained by an example: In the Supreme Court case of Various Claimants v Catholic Child Welfare Society [2012] UKSC 56 the case proceeded against the "managers" of the school *and* the religious order involved in the running of the school. The case was about physical and sexual abuse at St William's School, Market Weighton, in the Roman Catholic Diocese of Middlesbrough. Unlike Scotland there was a transfer of liabilities from "the managers" (often respected local dignitaries) to the Archdiocese. It is for this reason that the claim could proceed against "the Middlesbrough defendants (The Archdiocese). By contrast in Scotland no such transfer of liabilities took place and therefore although there should by law be a record of these "managers" in practice the records may no longer exist or cannot be traced. The "managers" would be long dead in any event and in order to pursue a claim their executors would have to be traced and pursued. This is an access to justice issue and is unpalatable, particularly where insurance exists to meet any potential claim.

In a recent decision of the Sheriff Appeal Courts dated 6 December 2019 Sheriff McCulloch dismissed the third party notice served on the "Managers" of a List D school because he was not satisfied that they were the correct legal personality as they were managers but not *the* managers at the time of the abuse.

**The people who are eligible to apply to the scheme**

Eligibility is dealt with in Part 3 of the Bill.

There can be no logical basis for the use of any date other than the date of the inception of the scheme. Section 16 (2) ought to be revised to that extent. The notion that institutional child abuse ceased abruptly when Mr Swinney stood up to address the Scottish Parliament is both absurd and disingenuous. The only intelligible explanation for this provision is as a cost-limiting measure.

Section 16 (2) should be amended from “occur” to “commence” to reflect the situation where abuse begins before the 1 December 2004 but extends beyond this dae.

**The Bill’s Definition of Abuse**

In section 17 (1) the word “means” should be replaced with the word “includes” to properly reflect the definition contained within the Limitation (Childhood Abuse) (Scotland) Act 2017.

**The dates used to define “Historical Abuse”**

I acknowledge that the scheme includes those who suffered abuse prior to the 26 September 1964 and this is to be commended. However as previously outlined I believe that Section 16 (2) ought to be replaced with the date of inception of the scheme.

**The Bill’s definition of “In Care” and the places in which that care took place**

Consideration ought to be given to defining “long - term” in Section 19 (1) (A) with reference to “Residential Care Facility”.

**The process of applying for Redress and what advice, support the applicants might need, particularly in relation to the waiver scheme.**

Section 27 provides that the application form and the accompanying information will be in such form and accompanied by such information or evidence as Ministers require.

It is therefore not yet clear what evidence the applicant will have to provide to establish eligibility under Section 16. It is suggested that evidence of residence at the locus of place of harm (if available) would be relevant.

A practical solution would be, on receipt of an application, to require the organisation identified to produce any records that it holds in relation to the applicant. Only on confirmation that no records to prove residence are held would the onus reverse back to the applicant.

It should be acknowledged that if an applicant is required to provide, for example, their Social Work records then assistance may be required not just for the practicalities of how to request or recover such records but support to an individual who may not previously have been aware of distressing facts from their early life.

It would be entirely reasonable for an applicant to elect not to read such records. It is therefore submitted that representation or support may be needed for the ingathering and processing of material which may be required in support of the application.

It should be recognised that the application process and any subsequent representation at appeal will be within the capability of some but by no means all applicants.

It is not as yet clear whether a report to the Police will be a pre-requisite of eligibility.

It is not yet defined what evidence will be required to establish that abuse took place in care. The level of support and advice in large part will be determined by what is required in the application and the supporting evidence.

While the Bill gives power to The Scottish Ministers to commission reports it is imperative that applicants have the right to produce their own independent medical evidence to accompany their application. It is well recognised that childhood trauma is likely to result in significant psychological consequences. A GP report would not, in my view, be appropriate to provide a diagnosis and prognosis on the long term effects of the abuse. It should be noted that the CICA Scheme expressly provides that any psychiatric/psychological injury must be supported by a report from a psychiatrist or a clinical psychologist.

**The Waiver Provision**

The inclusion of the Waver Provision in Section 45 is clearly one of the most controversial aspects of the Bill.

It necessitates legal advice. To require a survivor to waive their civil rights is a major step, designed to benefit only the scheme contributors.

It over complicates the process.

The advice is not without risk to the legal advisor as it is unclear what level of investigation is expected to be carried out prior to providing the advice.

For survivors who act quickly and seek legal advice on the implementation and creation of Redress Scotland there is some prospect of pausing their applications pending the conclusion of any civil claim but inevitably some will be too late in doing so. The Bill has a sunset provision. Even an applicant who seeks legal advice within 18 months of the 5 year deadline may well come under intense pressure to accept a redress payment rather than risk their civil claim not being concluded before the Redress Scheme option is removed. The law removing the previous time limits in childhood abuse cases was only introduced in October 2017. There is as yet insufficient jurisprudence to allow clear guidance to be given.

The waiver system proceeds on the assumption that a claimant's prospect of success is static. Prospects of success in a civil case can and frequently do change. An example may be where a second complainer comes forward to the police. A case which could not proceed either in a criminal or civil context may now have prospects of success particularly if a conviction is secured. A fairer way of dealing

with a redress scheme payment would be an offset provision similar to the CICA scheme. At the very least the scheme should commit to dealing with all applications within 5 years with a provision that the scheme will extend time to allow all applications with linked civil proceedings to be honoured after the conclusion of the civil proceedings.

By insisting on the retention of the waiver applicants who apply to the scheme themselves will require to take legal advice and may well feel pressurised to take what may be a much more modest scheme payment for fear that their civil damages claim will not conclude prior to the sunset provision. Some applicants may be desperate for immediate financial payment and this provision plays upon their vulnerabilities.

**The level of payment offered to the survivor**

Payments under the redress scheme will in many cases fail to adequately reflect the degree of harm suffered. Even the maximum payment of £80,000 for the most serious cases will not begin to compensate for the past and future loss of earnings many of this group of survivors will incur, let alone their psychological injuries. This category has attracted seven figure sums in civil cases.

**What you believe to be a "Fair and Meaningful" contribution to the scheme from the organisations responsible for the abuse.**

This is primarily a response from the survivors. However, the concept of polluter pays is well recognised.

Kim Leslie

Partner

Digby Brown LLP

**Association of Child Abuse Lawyers (ACAL)**

This is an endorsement from the Association of Child Abuse Lawyers of Kim Leslie's attached response to: **Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.**

We wholeheartedly agree with everything stated therein and would welcome to the opportunity to comment further on this.

**East Ayrshire Council**

2 October 2020

Dear Sirs,

**Redress for Survivors (Historical Abuse in Care) (Scotland) Bill – Call for Views**

I write to advise you that East Ayrshire Council (hereinafter referred to as "the Council") welcomes the opportunity to respond to the Education and Skills Committee's call for views as part of its Stage 1 scrutiny of the Redress for Survivors (Historical Child Abuse in Care) Bill.

The Council previously responded to the Scottish Government's pre-legislative consultation on financial redress for survivors of historical child abuse in care. The Council agrees in principle with the redress scheme, acknowledging that financial redress should be made available to survivors of historical abuse in a way that is meaningful, inclusive, and accessible.

However, this Bill will have significant implications for the Council and other Local Authorities due to their unique roles and responsibilities across the entirety of the Scottish care system and the wide scope of their involvement.

The Council would not intend to respond to all the questions posed in the Call for views. Instead, it would propose to respond to those particular matters that it considers it can usefully respond to. Further, I would confirm that in addition to the response provided by the Council, we would also align ourselves to, and agree with, the content of the response submitted by COSLA.

**A Fair and Meaningful Contribution from Local Government**

Whilst the Bill sets out that a fair and meaningful contribution will be sought from Local Government to reflect its legacy of responsibility for abuse in care, the details of this contribution, including the amount, structure, and timeframe, are not specified in the Bill or its accompanying documents.

A key area of concern for the Council is the unknown quantum of the proposed contribution. Whilst the Financial Memorandum assumes that the cost of redress payments will be £350m, this will be conditional upon several factors including the number of applicants to the Redress Scheme, whether applicants choose a fixed rate payment or an individually assessed payment, as well as any other assessments that will be made to help determine a contribution amount. Given these unknowns, there is a potential variance of +/- 30% in calculating the total payments to the Scheme that, in turn, contribute to the extent of the financial contribution by the Council.

Traditionally, when the Council receives funding from Scottish Government, it is mainly distributed through the Settlement and Distribution Group, which is chaired jointly by Local and Scottish Government officials. Recommendations are made by the group to distribute funding based on relevant data and indicators, such as rurality, deprivation, pupils who receive Free School Meals, individuals in receipt of Universal Credit. The scale of the potential contribution for the council could be significant and this will undoubtedly be

compounded by the risk levels set within the historic insurance cover arrangements put in place by previous councils and burghs authorities which may not now provide any material financial support to meet the contributions. A further issue that could lead to increased and unnecessary costs is the local arrangements being put in place within local government to deal with current claims. These are being dealt with by each council and it is clear that a more structured and joint approach will reduce costs, improve consistency and increase timescales.

As a matter of principle, the Council would favour an approach that aligns contributions to needs-based indicators, but in this instance, it is unclear how this could account for the Council's contribution when local government re-organisation took place in 1975 and then again in 1996. Determining who is now responsible to contribute towards redress, and to what extent, will be challenging given the geographical extent of predecessor authorities having the Social Work function. However, options around 'indicator-based' contributions should be explored further to avoid a scenario where a few councils bear the financial brunt given the location of 'relevant care settings'. An approach using needs-based indicators could also provide a level of certainty and stability for Councils and assist with financial strategies to ensure the costs associated with this Bill can be met.

Whilst the details of the contribution are further assessed, consideration must be given for an extended period of payment in order to spread the financial impact for Councils. Payment over ten years would be a reasonable suggestion as it profiles the contribution over a longer period, lessening the in-year financial impact, and the consequent impact on funding available for core services delivery. It would also allow time for the closure of the scheme (which is anticipated will run for 5 years) and a final reconciliation of redress payment costs.

**Insurance Cover**

We, like other Councils have paid into insurance cover to protect ourselves and reduce the financial risk arising from a variety of issues, including civil liability. Insurance cover is fundamental to minimising exposure and ensuring that the Council finances and operations are protected to the maximum extent possible. The design of the redress scheme means that it is unlikely that the Council will be able to draw on historic insurance cover to help fund the Local Government contribution. Less stringent evidentiary requirements and the lack of determination of liability means that the Council would likely fail to access historic cover for this specific purpose, despite having purchased cover in good faith, to provide a level of protection from these and other related risks.

Further, the scheme will require that claimants who wish to accept a redress payment waive their right to continue or raise civil action in respect of the abuse against providers who have made a fair and meaningful contribution to the scheme.

Whilst the intention of the waiver is to offer survivors an alternative to litigation, and to minimise contributors' exposure to litigation, the reality for Local Authorities, like the Council, is that financial liabilities will now lie across both the collective contribution as well as civil litigation proceedings that are either ongoing or arising as a result of a decision by a survivor not to pursue or accept a redress payment. This will result in the Council potentially paying for historic matters via two separate and distinct processes, adding to the already significant financial pressures faced by the Council.

The Council would therefore suggest that further consideration be given to the fair and meaningful contribution from Local Government in order that they can continue to support, and deliver for their local communities.

I trust that the foregoing adequately explains matters meantime.

Yours sincerely,

Fiona Lees

**Chief Executive**

**East Lothian Council**

This is a response by East Lothian Council. We have responded in relation to the areas about which the Committee was particularly interested to hear views.

The Committee should note that we do not wish to provide evidence in person.

1) **The people who are eligible to apply to the scheme**

East Lothian Council agrees with this definition and welcome the encompassing of the UNCRC, ensuring the definition covers under the age of 18.

East Lothian Council notes that this definition could (theoretically) cover the abuse of a child by another child in a residential setting. Whilst recognising the ethos behind the bill, we are concerned that this may lead to unintentional consequences for any young people in the future who display sexually harmful behaviour. Rather than residential establishments seeing this behaviour within the context of a trauma-based response, we question if these establishments will be willing to work with any young people displaying sexually harmful behaviour, which will in turn impact on their outcomes and future risk to others. East Lothian Council assume that the eligibility exceptions regulations will propose to exclude cases where the providers of care were unaware of the actions of another child.

East Lothian Council notes that the Bill omits abuse occurring in placements in England which were made by Scottish local authorities. While this was not a frequent occurrence, it is nevertheless something which happened on occasion.

We note that eligibility exceptions in s21 are written in broad terms and left to Regulations to define more narrowly. While the technicalities may require further thought, and any secondary regulation will be subject to the affirmative process, there may be a hesitancy in approving such blanket permission for exceptions at this stage without a clearer indication of what is intended. East Lothian Council would ask for there to be further consideration given to the identification of these exceptions.

2) **The Bill's definition of abuse.**

East Lothian Council agrees with the definition of 'sexual, physical and emotional abuse and abuse which takes the form of neglect'. We note that corporal punishment that was lawful at the time it was administered, does not constitute physical abuse for the purposes of the Bill. We welcome that approach. As noted above we have concerns about the inclusion of peer abuse within that definition.

3) **The dates used in the Bill to define 'historical abuse'**.

East Lothian Council notes that the cut-off date which is proposed (1st December 2004) is the date on which First Minister Jack McConnell apologised on behalf of the people of Scotland. We raised no objection to

that date being used at the time of the last consultation. However, the cut-off point used to investigate abuse (referred to as “the past”) by the Scottish Child Abuse Inquiry is 17 December 2014. Therefore, witnesses may have given evidence to the Inquiry about their own past abuse during the decade since 2004, yet be unable to apply for financial redress. This may raise expectations for survivors and should be clearly detailed.

**4) The Bill’s definition of ‘in care’ and the places in which that care took place.**

East Lothian Council has no comment.

**5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.**

The process will need to be simply communicated to anyone that wishes to make a claim. Many people may need practical support to complete the application.

East Lothian Council would support the idea of a waiver. Whilst survivors may waive their right to the case being heard in Court, this approach would be a survivor focused. It is clear that the court process for perpetrators of abuse is lengthy and difficult for all involved. Being able to provide recognition, financial redress and possibly much needed emotional support without that process would greatly benefit the survivor.

However, this does leave the question of consequences for the alleged perpetrator and possible issues regarding risk management. Without a conviction, could effective risk management be undertaken?

This approach will encourage contributions from organisations. However at this point in time, it is unknown what input for individual applications will be required by the Local Authorities for individual claims, and East Lothian Council note that there are powers in the bill to compel individuals or organisations to provide evidence. We ask redress Scotland to consider the impact of this upon social work business.

The scheme would need to ensure that proper checks and balances are in place to ensure that the different options for survivors are explained and they make an informed decision re options.

**6) The level of payments offered to survivors.**

Survivors will have different motivations for going through the scheme. Whilst financial redress is important, it is also vital that the services to support and counsel people through their experiences are available. East Lothian Council would hope that survivors of abuse see this added benefit of this scheme.

However, it is worth nothing that, while there have been very few reported cases since the recent repeal of the statute of limitations for this area of

litigation, the awards by the courts have been considerably more than the maximum allowable under this scheme.

**7) What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.**

East Lothian Council welcomes the underlying ethos and principles for the Redress for Survivors Bill. However East Lothian Council has, over the qualifying dates, been subject to local government reorganisation from the larger Lothian Region to a much smaller East Lothian Council in 1995. This will add complexity to accountability for particular periods. East Lothian Council notes no detail has been offered on a how fair and meaningful contribution will be assessed based on likely liability. We would welcome further discussion on this, to ensure liability will be weighted accordingly and appropriately across Local Authority areas.

Local Authorities have previously purchased Liability Insurance to cover such incidents. It is unclear whether insurance will cover the length of time involved leaving local authorities exposed to significant financial costs.

East Lothian Council would urge the Scottish Government to consider the difficult financial position of Local Authorities at this time. Whilst East Lothian Council agree with the underlying principles of the Bill, this cannot be at the expense of current services to vulnerable children and young people that Local Authorities provide.

**8) The process for dealing with applications to the scheme from people who have serious convictions.**

East Lothian Council is of the view that the scheme should not take account of any previous convictions whatsoever. Furthermore, we note that the Scottish Government's analysis of the pre-legislative consultation stated at page 35: *"Respondents were largely supportive of the proposal to allow individuals with criminal convictions to apply to the scheme. In this context, some respondents pointed out that many victims / survivors are likely to have criminal convictions; others argued explicitly that the experience of abuse in care may lead to offending."*

However we also note that views expressed by respondents opposed to the proposal "*typically centred on particular types of convictions. It was argued, for example, that anyone who had committed very serious offences (and, in particular, offences involving children and / or sexual abuse) should be deemed ineligible."* East Lothian Council therefore understand the reasons for allowing the Panel discretion to refuse applications in certain cases (murder, rape and other violent offence imprisonable for +5 years) and appreciate that a blanket ban on these serious convictions is not being proposed. We also appreciate the possibility of appealing the decision to deny redress and the separate entitlement to other support which we understand would not be affected.

However, East Lothian Council stand by our original position that the scheme should be open to all, irrespective of the actions of individual applicants.

9) **The process for family members to make an application on behalf of a survivor who has since died.**

East Lothian Council agrees with the proposal to limit the financial redress to £10,000 for next of kin. The redress was intended to compensate survivors directly, rather than to provide an inheritance for their family, but this amount is a tangible and not-insubstantial acknowledgement of the impact of abuse on their relative, and a vindication of their application, which we trust will provide a measure of comfort.

10) **How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors**

In relation to apologies, we consider that the Information Commissioner's apology guidance in relation to complaints "How to make a good apology" (https://www.spso.org.uk/sites/spso/files/communications_material/2018%20SPSO%20Apology%20Guidance.pdf) is a simple but very helpful model.

**Former Boys and Girls Abused in Quarriers Homes**

**August 2020**

Former Boys and Girls Abused in Quarriers Homes written evidence submission to the Scottish Parliamentary Education and Skills Committee. This submission relates to the Redress for Survivors (Historical Child Abuse in Care) (Scotland) (SP Bill 79) as introduced in the Scottish Parliament on the 13th August 2020.

FBGA welcome the introduction of this proposed Redress for In Care Survivors legislation.

**Background Information**;

2017- Survivor Consultation.
2018- Interaction Review Group in conjunction with CELCIS – reports and recommendations to the Scottish Government.
2019- Pre-Legislative Consultation.

## 1. Operational design and detail of the Scheme

Survivor involvement is crucial before and throughout the life time of the Redress Scotland processes/scheme to ensure trust, confidence and integrity in the Redress Scotland Scheme and processes. We welcome the proposed Survivor Forum in the Bill as this will help achieve these overarching principles.

The Redress Scotland Scheme should be accessible and adaptable to the needs of the applicants. It should be prompt and efficient, empathic, enabling, rights based and survivor centered in design and processes.

Potential trauma and impact should be minimalized and appropriately managed. Trauma and practical support services should be available throughout the process for participants before during and after.

- Victim-Survivor representation should be significant and meaningful. There has to be meaningful participation in the design and delivery of the Scheme.

- Any Financial redress scheme should not be overly restrictive nor discriminating. Its processes must be credible and robust. The Redress Scheme has to be wholly equitable and inclusive for all Victims-Survivors who participate in the Redress Scotland Scheme.

- The Redress Scotland Scheme should be designed wholly transparent and accessible to meet the different needs of individual survivors at each stage of the application and payment process throughout.

- Support and choice should be at the heart of the processes such as practical support, emotional, counselling support, independent financial advice, advocacy and independent impartial legal advice. All applicants should be treated fairly and with respect.

- Appropriate practical, emotional support, advocacy, legal and financial support information and guidance should be available in various accessible formats.
- It is important to state that FBGA's position is that no victim-survivor should have access to anyone's redress application and evidence for any purpose whatsoever to maintain absolute confidentiality.
- Including as member of the Survivor Forum. We do not envisage a victim-survivor of in care abuse being a panel member due to confidentiality and data protection issues.
- Trauma and other emotional and practical support by Future Pathways and other such agencies including suitably qualified practitioner's chosen and identified by participants.

**2. Eligibility**

We support the provisions in the Bill

**3. The Bills definition of "Abuse" and " In Care"**

Section 17: as read with Section 16; Meaning of "abuse" we support this definition as proposed in the Bill:

Section 18-19: Meaning of "relevant care setting" Meaning of "residential institution"

We support the provisions in the Bill including the subsection (4) which enables Scottish Ministers to modify the meaning of "residential institution" by regulations (subject to affirmative procedure).

**4. Survivor involvement can be achieved in a number of ways including;**

- Victim-Survivor participation In the Public appointments process for the appointment of all individual Redress Scotland Panel Members with independent representation of survivors in the appointment process. Similar to the previous NCF public appointment process.
- Survivor Forum representation throughout the operational lifetime of the Redress Scheme and in the design stages prior to it actually being operational.

**5. Redress Scotland Panel membership;**

A range of knowledge and understanding should be represented in any Panel set-up which will have decision making roles in the Redress Scheme.

It is important to stress that no panel member should have a connection whatsoever directly or indirectly with any organisation that has been under investigation or where any complaints of child abuse have been raised previously or currently.

All Panel members should be wholly independent, impartial with integrity to arrive at decision making which is open to full scrutiny internally and externally.

**Suggested professional backgrounds may include the following;**

- Advocacy, Finance, Human Rights Law, Health-Trauma, Social Care, Legal and financial experience in determining and assessing such child abuse case awards.

**6. Fixed rate and individually assessed redress payments**

This twin approach is in line with the Scottish Review in partnership with CELCIS and the Interaction Review group in September 2018 which published a set of reports and recommendations and thereafter the pre-legislative consultation undertaken in 2019.

- The processes should be robust and credible in determining fixed and assessed redress payments, all such payments should be based on the facts, circumstances, experience and merits of each individual case.

- Taking account of a range of factors such as nature and type of abuse, severity of abuse, longevity of the abuse, the period of abuse, loss of opportunity and the lifelong consequences of the abuse.

**7. Accepting a Redress Payment or applicants to choose between accepting a Redress payment and a Civil Court Action.**

The Scottish Human Rights Commission we understand does not believe “applicants to choose between accepting a Redress payment and a Civil Court Action” is best practice. SHRC consultation response 2019.

- The Scheme should allow victims-survivors access to a range of avenues open to them without having to choose one or another

- The Scottish Civil Court process has the ability to take into account any previous financial award from the redress scheme just as it does with criminal injuries awards when awarding damages in any future civil action.

- The importance of independent and impartial legal advice cannot be understated how important this is given this proposed approach. Victims-Survivors have to be enabled and supported to make informed decisions on any potential award and the amounts.

**8. Contributions to the Scheme from organisations who had a responsibility for the care of children at the time of the abuse. Linkage of waiver to contributions.**

**What is a Fair and Meaningful Contribution?**

What is being proposed is that it offers such organisations to be part of a National scheme which seeks to address the wrongs of the past and in doing so are part of a National effort in addressing such wrongs.

- While FBGA did not support this approach initially in the Review Group and had serious reservations how this could be achieved given the range of institutions affected and taking account of the Irish experiences and other factors. Some survivors felt that at the time this was a matter wholly for the Scottish Government to deal with these institutions given the uncertainty and complexity of the issues.

- However, given that this is actually now proposed in the Bill and especially since it is now waiver linked to contributions. Then it is very important that Victim-Survivor voices are heard, and input is facilitated into these specific matters.

- FBGA still have concerns and reservations about how this will be achieved and operate in practice. We do see merit in organisations directly affected by this abuse making fair and meaningful contributions.

- There are however a number of difficulties and legitimate concerns relating to this approach and these issues. We recognize that not all survivors currently support this due to its linkage to the waiver of rights that the Bill process is seeking to implement.

- To address some of these difficulties and concerns we would propose. That a robust, credible fair and meaningful formula has to be in place and agreed in advance while being publically available. Pertaining to all organisations that had a responsibility for the care of children at the time of the abuse.

- Who will independently determine how and what determines an organisations contribution is fair and meaningful financial contribution? Will victims-survivors have any role in these deliberations and decisions?

- In addition, the transparency of such contributions and the formula for assessing such contributions or their determination as fair and meaningful has not been agreed. Victims-Survivors should have meaningful input into this part of the process.

- FBGA have also recently proposed that substantial payments must be upfront from such organisations prior to the Redress Scotland going live. All such financial commitments by all such organisations made thereafter must be received by year 4 of the operational of the Redress Scotland Scheme and 1year prior to the closure of the Redress Scotland Scheme if extended by Scottish Ministers.

- The apparent linkage of contributions to the Waiver of Rights – Our understanding is this “Waiver “ was never directly raised or referred to in Survivor consultation in 2017, nor in the Review group consultation –report-recommendations in September 2018 or in the Scottish Government Pre-Legislative consultation 2019.

- Reference was made to other countries that had such waivers but at no time was it confirmed or alluded too that this would be the approach undertaken by Scottish Government until the introduction of the proposed Bill.

- Will the waiver include a provision of confidentiality this is a serious major concern to victims-survivors? The Scottish Government needs to be upfront on the actual wording of the waiver and bring this forward to this committee for scrutiny.

- Victims-Survivors who relinquish Rights by signing and agreeing to such waivers yet the potential for organisations not to meaningfully and fairly contribute are a major concern. What about organisations that no longer exist or have no insurance cover for the period?

- What about organisations who may have settled civil court proceedings including out of Court to-date relating to such cases since the Timebar Law was changed and in confidence including issues of confidentiality in such agreements?

- If such organisations are bound by confidentiality agreements then how can they then divulge or discuss such cases and provide the total financial amounts in negotiations with Scottish Government that they or their insurers paid out?

**9. Unintended Consequences**

**Unintended consequences and any likely impact on those survivors on benefits arrangements need to be in place prior to the launch of the Redress Scotland Scheme .**

FBGA have raised the unintended consequences issues many times in the Interaction Review Group in our discussions and in communications with the Scottish Government civil servants and others.

- Arrangements have to be put in place with DWP prior to the Redress Scotland Scheme going live. What will these arrangements be? There must be no hidden surprises for Victims-Survivors!!

- FBGA would like to see such Redress Scotland awards not impacting on an applicant who is in receipt of benefits of any kind. There must be no giving of a financial award on one hand and then deducting any benefits amount from that award that an applicant may be in receipt of.

**10. Legal Costs**

- We welcome and support the proposal to provide independent and impartial legal advice throughout the engagement by a survivor with the Redress Scotland process.
- Some survivors may require independent advocacy and support throughout also.
- Important that survivors are enabled to make informed choices and decisions.

**11. Next of Kin payment and eligibility**

**The stated purpose of the Next of Kin payment is to recognize and acknowledge that a victim-survivor died without having had the opportunity to receive a Redress payment.**

- The cut-off date whereby a victim-survivor died on or after the 17th November of 2016 is arbitrary and discriminatory in our view and fails to take into account a number of circumstances and raises a number of serious concerns.
- That legitimate cases exist whereby deceased victims-survivors families will not benefit due to this cut-off date being so late. By setting out the cut-off date as late as possible. Opportunities for the families of deceased victims-survivors is very limited now. Currently this appears to us to be discriminatory and certainly not fair and reasonable.
- What about victims-survivors who are deceased prior to 17th November 2016 and who have previously given Police statements in cases where there have been convictions?
- What about evidence provided to the Scottish Child Abuse Inquiry, reflected and highlighted in the Inquiry Findings, Reports and Witness statements?
- What about victims-survivors deceased prior to 17th November 2016 who reported mistreatment while in care?
- What about official organizational in care documentation that is available and supports that a former resident who died before 17th November 2016 reported being mistreated and abused at the time? Yet was penalized and in some cases removed from the said institution.

**12. Payment structure and levels**

**We believe that currently the maximum financial award proposed fails to take into account the most complex and serious cases of abuse and**

**additional factors including the duration and intensity of the violation. It also fails to address the Migrant issues fairly and adequately.**

- We would like to understand how the Scottish Government arrived at the formulas of these amounts being proposed in the Bill and that these formulas are publicly available.
- We would strongly advise that an extreme complex exceptional circumstance/case and child migrant formula is added to enable the Redress Panel to determine such serious complex abusive cases and the unique features of such cases independently with a view to increasing the maximum amount in such complex and exceptional cases.
- We would recommend that the maximum financial amount for Child Migrant and exceptional cases are increased. Recognizing fully the compelling facts, unique features and merits of these individual cases. The Redress Scheme of Northern Ireland currently has Child Migrant awards set at 100k.
- FBGA would like to see this Redress Scotland scheme recognize the Child Migrant cases and the exceptional complex extreme circumstance cases
- FBGA propose that this is raised to 100k plus and that the panel has the discretion to determine such complex extreme serious cases. Given the unique circumstances, the nature of the abusive experience and individual merits that such complex serious abuse cases fall within.
- They have done this in other Redress Schemes namely in Australia and Lambeth where a limited number of cases have resulted in payments of over 125k plus.. We would argue that this is entirely equitable and reasonable.
- In addition the UK Government has a scheme which we understands pays 20k to Child Migrants the 20k which would be deducted from the agreed Scotland Redress award. We also believe it is equitable in all such cases for the Scottish Government to reclaim such UK Scottish migrant awards from the UK Government.
- An exceptional complex extreme circumstance case with mitigating facts, compelling evidence available and factors pertaining to the circumstances of such a case and the migrant case and any other available evidence.
- Including factors that the victim-survivor in such cases is mentally incapable of going through the stress and rigours of a Civil Litigation proceeding and would prefer to use the Redress Scotland scheme.
- FBGA would like to see experienced practitioner’s with experience of assessing financially such child abuse cases independently and impartially represented on the Panel proposed or embedded within the Redress Scotland administration

team. We believe this will help to ensure awards are impartial, independently assessed, fair and reasonable.

- FBGA support the Review mechanism in the proposed Bill.

**13. Assessment and Evidence required**

- Standard of Proof being used has to be publicly available. Standard of proof must retain the confidence of the victims-survivors and the general public.
- Signed declaration of Oath of Affirmation undertaken by all (encompassed in the application form). Similar to the advance payment's declaration enshrined in the form currently in place.
- Oral and written evidence that which is required and evidence which supports an application.
- Evidence threshold required should be determined by the Redress Scotland Panel taking into consideration any recommendations and advice from the Interaction Review Group and the Survivor Forum and other affected parties.

**14. Non-Financial Redress and how you can meet the needs of applicants**

**Past attempts at this have failed namely in the SACRO process following Time To Be Heard for a number of reasons including a disregard of the basic needs of the victims-survivors. A lack of communication and follow-up on commitments previously made. The lack of involvement of the victim-survivor in the decision-making processes pertaining to them.**

**Non-Financial Redress has to be victim-survivor centered while individual cases being managed effectively and promptly with communication up-dates to the applicant at all stages of the processes.**

- Non-Financial Redress, this can be in the form of practical and emotional, counselling, advocacy and other support services such as those provided by Future Pathways or suitably qualified practitioner's chosen by the participant themselves.
- Apology support. We would like such apologies to be person centered and agreed wording in advance with the applicant prior to agreement and appropriately managed at all stages.
- Meaningful apologies by the State and the organisations directly affected by this abuse are an opportunity to contribute to help right a past wrong.
- However we stress it is for the individual victim-survivor to determine what the terms of such an apology are and if acceptable for them with appropriate independent support.

- Redress Scotland liaising with third parties by individual case management on behalf of the applicant pertaining to the application where an applicant has given prior permission and informed consent.

**15. Data Protection and Confidentiality issues**

It is important that prior permission and consent are obtained from all participants to the Redress Scotland Scheme where there is proposed sharing of information.

- Victims – Survivors have to be enabled to make fully informed decisions including relating to any consent and sharing data matter pertaining directly to a Redress participant.

- There are serious concerns raised by victims-survivors concerning confidentiality and data protection issues by those who may not wish their information to be shared between 3rd parties, other bodies and organisations.

- Victims –Survivors to-date may not have consented to the sharing of personal information when accessing services prior to this proposed Redress Bill.

**16. The process for dealing with applications to the scheme from people who have-had serious convictions.**

Section 58-59: We agree in principle with this provision in the BILL and its reference to the public interest. We await the guidance to be published by Scottish Ministers.

:

**Further submission from FBGA, 29 September, regarding the waiver**

The Waiver in its current form FBGA cannot support.

FBGA believe there are alternatives to the waiver such as a Discharge Summary which are more beneficial to the interests of the victims-survivors and could be built into the Redress Scotland Bill which would also give confidence to contributors large and small no matter their current circumstances.

The Discharge Summary would also be signed at the end of the process.

The Discharge Summary is also not dependent of large financial contributions either in our view and supports organisations such as Quarriers who may not be in a position to financially contribute large amounts.

Please find attached what we have submitted to the Scottish Government as one alternative which is a legal discharge there is also offsetting in place of the Wavier.

Can I just confirm organisations are neither admitting liability in this Discharge Summary approach?

There are two discharge summary examples attached to give you an idea of what the legal wording would be.

1, Example one is lighter approach and focused solely on the institution in this case as an example Quarriers.

2, Example two seeks to encompass any number of organisations that a former resident may have been in too.

3, FBGA paper on the pros and cons of Wavier and Discharge Summary.

In terms of third parties being suggested and used by Quarriers such as insurance companies clearly there are serious concerns given the past behavior and approach taken by Quarriers insurers in the civil proceedings. I would direct to our submission on Timebar via the Justice committee where we highlighted the past negative practices and actions of Quarriers insurers and representative's in the civil proceedings.

FBGA would seek unequivocally written commitments and assurances that in future civil cases that the institutions in this case Quarriers insurers would commit solely to the use of non-adversarial means to settle historical abuse future civil cases pertaining to Quarriers. Otherwise I cannot currently see how FBGA can support third parties in this instance Quarriers Insurers paying Quarriers contributions to the Redress Scheme.

As I stated FBGA would support a nominal contribution from Quarriers based on its current financial position with no involvement of third parties as this would be the Quarriers Charity and organization taking sole responsibility of the past while FBGA recognizing its current financial position.

We also think that there are other ways Quarriers could raise a fair andeasonable contribution such crowd funding and approaching their major donors without the involvement of the Insurers.

In addition we have always stated that there should be no impact on front line services that Quarriers delivery today or in the future.

There is also the offsetting approach which we discussed and which as I understand it Quarriers feels this is not a viable option.

| **Pages 1-2** | **Former Boys and Girls Abused in Quarriers Homes** |
|---|---|
| **CURRENT WAIVER** | **Legal Discharge Summary** |
| Applicants having to choose one route over another ie Redress Scotland or Civil Proceedings | Applicants at the beginning know that as part of the process once they are happy to accept |

| | |
|---|---|
| | a final award they have to sign a discharge summary<br><br>They are not giving Rights nor control away at the beginning of a process |
| Currently victims-survivors angry with the waiver proposal as it takes away “Rights” and control | Rights are not impacted as the victim-survivor knows the process at the beginning and is able to made the informed final decision once an award is offered having signed nothing to-date |
| There is a built-in review system proposed but this is after the applicant has already signed the waiver | The Review system is in built and no one has signed away any rights as the legal discharge document is signed at the end of the process and when the applicant is accepting it. |
| Waiver has to be Signed at 10K<br><br>Yet the Advance payment scheme was administered differently- perceived as discrimination relating to the same group of victims-survivors | The legal discharge summary is only signed when the applicant has accepted the award as full and final settlement at the end of the process |
| Dependent on contributions and applicants signing the waiver | Institutions know that this part of the process is inbuilt so can scale contributions at the beginning without fear of further litigation |
| Applicants may decide to test the system and refuse to sign the wavier<br><br>Applicants are being asked at the being of a process to sign a waiver which impacts on their ‘Rights” and have no control over. | Applicants have made the decision themselves to participate in the scheme knowing they have to sign a legal discharge summary at the end.<br><br>Applicants know the process that they are participating in and are signing at the final award acceptance<br><br>Those who do not wish to accept an award that is their right and decision and they have not given up any rights to-date to pursue another avenue |

| | |
|---|---|
| The Scottish Government appears to have committed to only underwrite the 10k<br><br>This in our view will impact on organisations willing to participate who may perceive this as their contributions must be greater | Organisations may see not wish to see increases in payments to victims-survivors.<br><br>Which the survivor groups are seeking for certain complex categories of serious abuse and child migrants<br><br>They may view this as a possible impact on their contribution's levels when in fact they are not the primary stakeholders so they have undue influence despite limited contributions |
| Dependent on contributions and applicants signing the waiver | Legal Discharge not dependent on contributions as it is built into the process<br><br>Organisations can contribute in good faith and can have a continuous review of applicants awards matched with contributions throughout the lifetime of the Redress with confidence. |
| Victims-Survivors retain rights throughout and control of a process that is for primary them. | |
| Application of fair and meaningful may price out well intentioned organisations who wish to contribute but are constrained by resources- and current financial position<br><br>Organisation will seek to outsource this to third parties such as insurance companies who have vested interest and it is fully recognized that payments are generally not matched by awards in civil proceedings. | Organisations can contribute at all levels no matter what knowing that there is discharge summary in place that protects those who contribute from future litigation that the participant has accepted this as part of the final settlement.<br><br>Contributions can be scaled towards participants numbers from each institution creating a fair system of contribution.<br><br>The legislation therefore needs to secure participation in the scheme from the widest possible group of civic institutions and charitable organisations. |
| The language currently used re: the civil proceedings being adversarial is giving a green light to insurance companies and organisations to act in this way which is unacceptable give past experiences | |
| **Do not have contributions at all** | **Government only funded Scheme** |

## DISCHARGE Example one

I ---------- (Date Of Birth ) residing at ----------hereby agree to accept from Redress Scotland ---address---------- on behalf of (insert institution (s) Quarriers – Quarriers Village, PA11 3SX the sum of ---------- ---- (£)thousand pounds(amount in figures) (£)Sterling in full settlement, satisfaction, and discharge of all and every present and future claims which I may have against Quarriers in respect of any loss, injury and damage, whether now or hereafter to become manifest, caused by or consequent upon any abuse suffered by me whilst a child in the care of Quarriers. (insert a different institution (s) where applicable.

**IN WITNESS WHEREOF ----------**

**Date ----------**

**Signed Witness ----------**

**Address----------**

## DISCHARGE Example 2

I, XXXXXXXX, (DOB: ) residing at [INSERT] , HEREBY ACKNOWLEDGE that solicitors (insert solicitors if applicable) appointed on my behalf, ----------, have accepted the sum of XXXXXXXX(£) STERLING from [insert Institution and or Scottish Government NAME AND ADDRESS], and their insurers and I discharge the said all claims, questions and demands competent to them in any manner or way in respect of loss, damage and personal injury now or hereinafter manifest sustained by me in consequence of the acts of XXXXXX (insert Name of Institution (S) ; AND I ACKNOWLEDGE that payment is made without admission of liability and solely by way of compromise; AND I ACKNOWLEDGE that my solicitor's fees (if applicable) have been paid as agreed: IN WITNESS WHEREOF these presents are subscribed by me:-

at (place). Redress Scotland address:

Signed on behalf Redress
Scotland:……
on (date) ……

before the witness hereto subscribing whose designation is appended to their signature.

(Witness Signature) (Signature of )

…….....

……

(Witness Name – in block capitals) .....

(Witness Occupation) …….

(Witness Address)……..

**Glasgow City Council Glasgow City Health & Social Care Partnership**

1) The people who are eligible to apply to the scheme.

We agree that those eligible are covered by the definition in the Bill.

Eligibility should relate to the experience/ impact of abuse by the care giver (i.e. those discharging parental responsibilities).

2) The Bill's definition of abuse.

The definition of abuse ("sexual abuse, physical abuse, emotional abuse, and abuse which takes the form of neglect") appears commensurate with child protection policy and procedures (taking into account the prevailing laws on the use of corporal punishment during the period covered by the Scheme).

3) The dates used in the Bill to define 'historical abuse'.

The changes made in child protection legislation, policy and practice in 2004 provide a cut off point for access to the Redress Scheme, as well as noting the timing of the public apology by the First Minister at that time.

4) The Bill's definition of 'in care' and the places in which that care took place.

The care settings (foster placements, children's home, penal institution, residential care facility, school-related accommodation and secure accommodation) appear to reflect the full range of settings which should be included, as arranged by the local authority or by a voluntary organisation on behalf of the local authority.

5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.

Glasgow HSCP supports the development of the Redress Scheme, as an alternative to the Court process, and underpinned by a trauma-informed approach. Given the fundamental importance of the 'trauma informed' process and function of the Redress Scheme, it may be beneficial to define the meaning of 'trauma informed' in this specific context. Moreover, to operationally define this for all involved in supporting the delivery of the Scheme and to ensure that applying to the Redress Scheme does not compound the impact of the abuse already experienced by survivors.

In response to some public claims relating to the injustice of the Scheme, it may be necessary to strongly emphasise the *choice* of survivors to claim through the Scheme, or to pursue legal action. Given the possibility of cross-examination in Court, we support this level of choice, and would challenge the notion that the experience of Court is as suggested cathartic, although we acknowledge that pursuing Court action will be the most appropriate course of action for some survivors and that the choice is of key importance in this regard. As acknowledged, it will be necessary to fully inform survivors of their choices, and the implications of each, in order that they can make an informed choice on the most appropriate course of action.

6) The level of payments offered to survivors.

Glasgow City Council strongly supports the principle that the financial redress will be directed solely to survivors accessing the Scheme, who will not be required to pay legal costs. It is anticipated that most survivors will opt for an individual assessment, and this is also supported by Glasgow City Council.

7) What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.

This will need to relate to the number of claims, and the extent/ impact of the abuse on each applicant. Glasgow city council would welcome further guidance and information on how these financial claims will be assessed and indeed how contributions from local Authorities will be calculated and determined.

8) The process for dealing with applications to the scheme from people who have serious convictions.

Given the Scheme is operationalising a trauma-informed approach, this should arguably not affect the eligibility/ process for making an application to the Redress Scheme, except possibly in relation to serious convictions for fraud. Circumstances relating to criminal convictions should be assessed individually, using a trauma-informed framework, and taking into account the added stress across the life course, and the potential impact of redress on the survivor (through, for example, addressing poverty).

9) The process for family members to make an application on behalf of a survivor who has since died.

The four week period for notification of a review of the panel decision may be difficult for next of kin dealing with a recent bereavement. Consequently, Glasgow city council would suggest a further reflection and review to consider again the period of notification.

10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.

An acknowledgement of system failures, and the impact on individual children, is as important as financial redress. This needs to strongly acknowledge the impact of the abuse on survivors throughout their lives and build on the research literature relating to the impact of trauma. Mental health support will be an important element of the Scheme and should be procured from organisations working applying a trauma-informed approach, so that all aspects of the Scheme are working in close alignment, and that survivor's experience consistently high quality, trauma-informed support from all individuals supporting the implementation of the Scheme.

**IN CARE ABUSE SURVIVORS (INCAS)**

REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) BILL

INCAS welcome the Bill to provide a redress scheme for those survivors of abuse whilst in the care of the state. The need for such a scheme, part of our campaign for many years, has been obvious for a long time. Sadly, over the last 20 years many members of INCAS who were instrumental in the campaign, and in supporting their fellow survivors, have died before they could see or benefit from the outcome of all their work. INCAS wish to recognise that the Scottish Government has tried to ensure that survivors' views were received and heard throughout the consultation process. Equally, INCAS wishes to acknowledge the lengths and efforts to which those involved in the consultation process have gone to ensure that survivors understood the process and were able to contribute to it.

Many INCAS members are aged 60 years or over and would welcome not having to go through the lengthy process of civil action but engaging with the redress scheme needs to be a process that allows the survivors to feel they have finally achieved some justice in order to get closure and move on with their lives. In welcoming the Bill, INCAS has certain concerns and issues, set out below, that it would ask the Scottish Government to consider and address to improve on this welcome development.

**Waiver**

It is recognised by the Committee and members of INCAS that, throughout the consultation process, it has been clear that the provision of a waiver will be a key requirement for accessing the redress scheme. INCAS are aware that the provision of a waiver is a cause of concern for other survivor groups, who have made submissions in this regard. INCAS acknowledge those concerns, and would not seek to add further to what has been submitted by others in this regard.

The waiver proposed in section 45 of the Bill applies in all cases to future action against the Scottish Ministers or against a "relevant scheme contributor". It is understood that the public authority or voluntary organisation that was responsible for the care of the survivor (the care provider) would be a relevant scheme contributor if it is included in the contributor list at the relevant time. The terms of the Bill in this regard give rise to the following concerns on behalf of INCAS:-

I. A relevant scheme contributor is one who satisfies the Scottish Ministers that it is making, or has agreed to make, a fair and meaningful contribution to the funding of redress payment. INCAS welcomes the requirement for care providers to contribute in a fair and meaningful way. This is the most significant factor in satisfying survivors that the receipt of a payment from the fund will involve an element of acknowledgement and redress from the care provider. As such, it is essential that the contributions made by the care providers are open and transparent. If the level of contribution is not disclosed, survivors will have no way to be assured that the contribution has, in fact, been fair and meaningful. For obvious reasons, it is not considered sufficient for survivors to have to rely upon the Scottish Ministers' assessment of that contribution.

INCAS would ask that section 12(5)(a) of the Bill be amended to include a requirement to publish the agreed level of contribution.

II. The rationale for a survivor signing a waiver is that the care provider has contributed or is going to contribute to the fund. If the care provider does not agree to contribute, there will be no requirement for a waiver in respect of that provider. It is a concern to INCAS that the provisions of the Bill would allow a care provider to agree to become a scheme contributor, thus securing waivers from survivors preventing future civil action against them, only to later default on the agreement. That is an outcome that has been experienced in other jurisdictions, including in Ireland. Should those circumstances arise, the survivor will have signed a waiver, where the practical effect is that the care provider has not ultimately met the conditions for such a waiver. To avoid such an occurrence the terms of section 45(6)(b) should be amended to reflect that a relevant scheme contributor who fails to satisfy the undertaking given will cease at from time to be considered a "relevant scheme contributor". If the waiver is worded to make reference to a relevant scheme contributor, the change of status would no longer prevent future action by the survivor. The treatment of survivors at the hands of the care providers, and the reaction of care providers to schemes in other jurisdictions, mean that there is can be no trust afforded to these organisations by survivors. If survivors are asked to waive their rights of action, they must be satisfied that there will be full compliance with any agreement, or that they will have recourse to the courts.

**Payment levels**

The payment levels set out in sections 37 and 38 of the Bill are considerably lower than those of the equivalent Irish redress scheme. INCAS would ask why survivors who were abused at the hands of one organisation in Scotland should be told, in effect, that the harm they suffered is less significant, in terms of redress, than someone who suffered the same abuse, at the hands of the same organisation, in Ireland. It is understood from the process of consultation that the Irish scheme has been used as a model for the scheme proposed in the Bill. It is also acknowledged that there were concerns expressed about the level of expenses incorporated into the Irish scheme, particularly legal expenses. The scheme proposed by this Bill should appropriately aim to reduce such expenses, but it is not acceptable that survivors are treated in a way that suggests their suffering is considered less significant in the eyes of the state than those in Ireland. INCAS seeks that the payment levels be set to reflect those in Ireland. The Irish scheme involved stage payments of 50,000, 100,000, 150,000, 200,000 and 300,000 Euros. The upper level payments will only be appropriate in exceptional cases, but it is not clear why the Scottish Scheme should set an upper limit that is so significantly lower than the Irish scheme.

**Pre 1964 survivors**

INCAS is concerned that the provisions of the Bill do not meet the undertaking given by Angela Constance and John Swinney to INCAS in connection with those whose abuse ended before 1964. INCAS met with Angela Constance immediately prior to her statement to Parliament where she undertook to address the issue of time bar. She acknowledged that the removal of time bar would not assist those "pre-64" survivors and undertook to provide a solution that would mean they were treated equitably when

compared to those who had a right to pursue claims in the court. This undertaking has been restated on many occasions since by John Swinney. INCAS has lobbied consistently for the establishment of a scheme for redress payments to be made to pre-64 survivors equivalent to the level of payment they may have otherwise received through the courts. The current Bill does not provide for such a scheme. Those who were abused post 64 can elect to accept a payment from the Scheme or to pursue a claim in the civil courts. No such option exists for the pre-64 survivors. As such INCAS expects the Scottish Government to live up to its promise to survivors, and to remove the maximum limit of payment in those cases. Pre-64 survivors deserve to have their redress set to meet the abuse they suffered, and, in those case where a payment of more than the prescribed limit is merited, the Redress Scheme should make an individual assessment and meet that payment from the fund. The number of pre-64 survivors is small and diminishing, and the cases where a payment significantly in excess of the prescribed limit will be justified will be relatively few, but they have an expectation that requires to be met.

**Next of Kin**

INCAS does not accept the restrictions that have been placed on applications by the next of kin of survivors. Next of kin will only qualify under the present scheme if the survivor died after 17 November 2016. INCAS is currently engaging in a process through the Scottish Child Abuse Inquiry, which is due to consider delays on the part of the Scottish Government in dealing with child abuse for which the State is responsible, including the call for survivor redress. Survivors have been petitioning the Government since 2002 for such a measure, and those who died whilst their petitions were ignored should not lose out as a result. Further, it is the very essence of the abuse suffered by survivors that they were unheard, ignored or summarily dismissed when reporting abuse either at the time it was happening or in later life. The families of deceased survivors have suffered with them and suffered themselves as a result of the damage caused to their loved ones. INCAS expect the Bill to be amended to allow the next of kin of any survivor who can establish that they made a report or claim of abuse during their lifetime, to be admitted to the scheme.

**Legal Fees**

INCAS welcomes the commitment to the payment of legal fees contained in sections 88 to 90 of the Bill. The process of seeking redress is one which survivors will not find easy, and dealing with authorities (even ones established to assist them) is a daunting task. INCAS acknowledge the desire to avoid legal costs spiralling to the extent that was observed in the Irish redress scheme, and, as such, acknowledge the requirement for controls to be put in place regarding levels of expenses. INCAS would stress, however, that the process of advising survivors regarding this process, and of assisting them with it, is unlikely to be straightforward, involving, as it will, the requirement to satisfy survivors that they can trust the process. Specifically, the issue of advising whether to accept a payment, and to sign the required waiver, is a matter of huge legal significance to the survivor. It is INCAS' position that, when levels of payment are assessed and provided under regulations, the payment should be sufficient to enable a survivor to seek appropriate advice from a suitably experienced solicitor, and, in connection with the waiver, to obtain appropriate advice on the significance of the rights that they will waive. It is the view of INCAS that that requires the provision of an

opinion from Counsel as to the potential for success in civil action, and the level of damages that may be recovered if successful. The absence of such advice would mean that the decision to waive rights to civil action would be one which is uninformed. INCAS seek a commitment from the Scottish Government at this stage that the level of fees provided will be sufficient to meet that test.

**Unintended consequences**

It is not clear at present what impact a payment under the scheme will have upon the financial arrangements of a survivor. These payments will be a recognition of abuse committed against the survivors when they were children. The redress has to be seen as redress for the deficit caused to the child, rather than a source of income to be set against existing benefits or pensions. INCAS seek an assurance from the Government that payments under the scheme will not be offset against benefits or pensions.

**North Ayrshire Health and Social Care Partnership**

While we note that the Call for Views does not specifically address the issue of funding, we have particular concerns that the Bill does not detail the level or methodology for calculating the financial contributions anticipated from local authorities.

The Bill proposes that all organisations who currently carry out, or have in the past carried out, functions in relation to the safeguarding, protection or care of children will make fair and meaningful contributions to the Scheme but does not define this.

Without knowing the extent of any financial exposure which North Ayrshire Council may face as a result of this legislation, we are unable to provide comments on this aspect of the Bill.

However, there is a recognition through the COSLA Directors of Finance group that the issue of local authorities' financial exposure should be addressed at a national level. This may result in the development of distribution modes whereby local authorities contribute on an agreed distribution basis or, alternatively, there could be a top slicing of government grant in relation to this. The benefit of the top slicing approach is mostly one of speed, i.e. individual local authorities would spend less time disputing the historic boundaries for potential liability.

I hope that those brief comments are helpful.

Yours Sincerely

David MacRitchie

Chief Social Work Officer 28th September 2020

**OSCR**

**The Scottish Charity Regulator**

## 1. Background

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Office and part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament.

We are the independent regulator and registrar for around 25,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

## 2. OSCR's response

We welcome the opportunity to submit our views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. We also welcome the engagement we have had with Scottish Government to date as the Bill has been crafted.

We fully understand the desire to remove any real or perceived barriers faced by charities who wish to participate in the scheme, and appreciate the need to address the harms of the past.

However, we have some concerns and comments. We will focus on sections 14, 15 and 45 of the Bill:

- Section 14 applies where a charity makes a financial contribution to the Redress Scheme and sets out how such a contribution should be treated.
- Section 15 gives Scottish Ministers the power to make regulations regarding charities' use of restricted funds to make financial contributions to the Redress Scheme.
- Section 45 provides that, in order to receive a redress payment under the Redress Scheme, an applicant must agree to abandon any relevant civil proceedings, and to waive their right to raise such proceedings in the future.

We have also set out our response to the specific questions posed in the Call for Views where relevant.

### 2.1 Section 14

Charity trustees have legal duties under the Charities and Trustee Investment (Scotland) Act 2005 ("2005 Act"). These duties include the duty to act in the interests of the charity and to act with the care and diligence that is reasonable to expect of someone managing the affairs of another person.

We have some concerns that the effect of the provisions at section 14 might undermine charity trustee's duties as set out in the 2005 Act. For example charity trustees, following detailed consideration of the impact on their charitable activities, might reach the view that, on balance, a significant contribution to the Redress Scheme is not in the interests of the charity due to the adverse impact it might have on current and future services and beneficiaries. However, given the nature of these provisions charity trustees may feel compelled to do so. Should this be the result this could undermine the voluntary nature of the scheme.

We have offered to assist SG in producing guidance for charities on what the regulations mean in practice and how they interact with the 2005 Act and trustee duties. This is a complex area and the ability to explain trustee duties and OSCR's role in this context should provide reassurance to charities – we are not proposing that this should be statutory guidance.

### 2.2 Section 15

Restricted funds

In our view, the proposed use of restricted funds to contribute to the Redress Scheme raises some fundamental issues. Restricted funds are given to a charity for a specific purpose – sometimes to deliver a special project or a distinct piece of work or to be used only for one charitable purpose where the charity has more than one. The person or organisation giving those funds has done so on the understanding that the charity will use the funds for that reason and no other.

There is a major possible unintended consequence. Legislating to remove donor conditions on restricted funds and enabling them to be used in a manner which does not further the charity's purposes may affect donor, funder and public confidence in charities. Legislating in this way may undermine the fundamental principle of trust that underpins charitable giving and could impact on future donations –

not just for the charities covered by the Redress Scheme but more widely. Such an unintended consequence would be extremely unfortunate given the perilous financial position many charities currently find themselves in.

Legislating to remove donor conditions in the manner proposed in the Redress Bill contradicts and could also be seen to undermine existing charity law. The Charities Restricted Funds Reorganisation (Scotland) Regulations 2012 sets out the clear policy intention for the reorganisation of restricted funds. This is to enable the resources of these funds to be applied to better effect for the charity's purposes only where it is not possible to ascertain the donor's wishes. In the majority of cases payments to the Redress Scheme will not necessarily further the charity's stated purposes.

Charity trustees have an overriding legal duty to act in the interests of their charity. Whilst providing a statutory basis to enable restricted funds to be used for this purpose may allow charity trustees to consider larger redress contributions it does not (and indeed should not) compel them to do so. In making such a decision the charity trustees must take into account the interests of the charity, be they financial, operational or reputational, in the present context and longer term.

The voluntary nature of a contribution to the Redress Scheme may lose further weight if there is a statutory basis for removing donor conditions and ultimately a charity is faced with no alternative and feels compelled to look to their restricted funds in order to contribute.

In addition, it is important to seek clarity about what such regulations would mean for cross-border charities (that is, charities established under England and Wales law, but registered in Scotland).

There is also potential to open up a major difference in how restricted funds of Scottish charities are treated compared to those in England and Wales or any other jurisdiction.

Current stress on charities

Our recent COVID-19 impact research shows that 85% of charities report some level of threat to their financial viability, with one in five charities reporting that this is a critical threat for them. This figure increases for those working in the area of children and families.

Fundraising capacity and service delivery across the charity sector have been severely impacted. While charities are working hard to adapt, there is no doubt that as the restrictions continue, so many charities will struggle to raise finance and, for many, to respond to the rising demand in their sectors. The longer-term impacts could be serious, particularly when funds for the recovery given by government and independent sources come to an end.

In this environment significant redress contributions from reserves or restricted funds may put charities in a very difficult position, leaving current beneficiaries vulnerable and exacerbating the strain on other third sector organisations

### 2.3 Section 45

We consider the requirement for any applicant to sign the specified waiver to be extremely important for charities. As noted above, charity trustees must act in the interests of the charity in any decision they make about contributing to the Redress Scheme. When making such a decision they need to consider the whole breadth of their charity's operations, including the impact of payments on current and future vulnerable beneficiaries. Without the certainty that a waiver could provide, it would be more difficult for charities to commit to a significant contribution, as there would

still be a risk of awards of damages being made against them by the Courts. If the charity did not have relevant insurance cover, these payments would have to be made from the charity's reserves and this could have a detrimental effect on the charity, its services, and therefore its beneficiaries.

### 2.4 Questions posed in the Call for Views

Questions 1 – 6 and 8 - 10

We have no comment in relation to these questions.

Question 7

Again taking into account the duty of charity trustees to put the interests of the charity first, we consider what constitutes a fair and meaningful contribution to be a crucial factor in the decision making process that charity trustees will be required to undertake.

Following correspondence with Scottish Government we have advised we are happy to engage with them regarding the principles that will apply to charities.

## 3. Conclusion

We understand that the scheme is seeking to remove any real or perceived barriers faced by charities who wish to participate in the scheme. In our response we have raised some concerns about the way in which the Bill might impact on current and future beneficiaries, undermine aspects of Charity Law and ultimately impact on public trust and confidence in charities. We have raised the same concerns with Scottish Government during the crafting of the Bill.

Given the potential impact on some charities and the various consequences the Bill could have on individual charities and ultimately their beneficiaries, it is important that OSCR continues to be involved as the legislation progresses.

We are content for the information we have provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

Mary Togi - Policy Manager

**Police Scotland**

**'Redress for Survivors (Childhood Abuse in Care) (Scotland) Bill'**

**1) The people who are eligible to apply to the scheme.**

Police Scotland agrees with the eligibility criteria outlined in the Bill.

**2) The Bill's definition of abuse.**

Police Scotland agrees with the definition of abuse outlined in the Bill.

**3) The dates used in the Bill to define 'historical abuse'.**

Whilst this is not a matter for Police Scotland, we are of the opinion that 'historical abuse' should relate to any abuse that was experienced up to and including 17 December 2014.

Our rationale is that this was the date that the Scottish Child Abuse Inquiry was announced and the Inquiry consider abuse until this date. For this reason, Police Scotland think it would be appropriate for the Redress Scheme to use the same date.

**4) The Bill's definition of 'in care' and the places in which that care took place.**

Police Scotland agrees with definitions of 'in care' and the places in which that care took place as outlined in the Bill.

**5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.**

Police Scotland agrees with the redress application process, the provision of advice and support, including the specific measures regarding the waiver scheme, as outlined in the Bill.

**6) The level of payments offered to survivors.**

Police Scotland agrees with the fixed-rate and individually-assessed levels of payments outlined in the Bill.

**7) What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.**

Whilst this is not a matter for Police Scotland, we are of the opinion that the costs should be split at least 50/50 between Scottish Government and organisations responsible for the abuse, with organisations contributing in line with the volume of applications received in respect of their organisation.

**8) The process for dealing with applications to the scheme from people who have serious convictions.**

Police Scotland agrees with the process outlined in the Bill for dealing with applications from people who have serious convictions.

**9) The process for family members to make an application on behalf of a survivor who has since died.**

Whilst this is not a matter for Police Scotland, we are of the opinion that there should be no cut-off date. Where a survivor, who would have been eligible to apply, has died prior to implementation of the Scheme, then Police Scotland believes that their next-of-kin should not be disadvantaged by when their relative died.

**10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.**

Police Scotland believes that the non-financial aspects of the Scheme will meet the needs of survivors both through the measures outlined in the Bill and also through establishment of a Survivor Forum (as outlined the Policy Memorandum) to ensure that survivor views/feedback are listened to and responded to.

**Quarriers**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Overview**

1.1 Quarriers is a national charity that provides care and support to around 5,000 people across Scotland. We provide a wide range of services including: supported living and short breaks for disabled people; residential care and short breaks for disabled children; the assessment and diagnosis of complex epilepsy (in partnership with NHS Scotland); support for people with addictions and mental health problems; support to unpaid carers; early years support for disadvantaged children and families; and youth homelessness services. We work in 19 of Scotland's 32 local authorities, employ around 1,700 members of staff, and receive support from several hundred volunteers.

1.2 Quarriers is committed to working with all parties in support of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. Our aspiration is to participate in the scheme, and we continue to work with the Scottish Government and wider stakeholders to create the conditions that would allow for our participation.

1.3 Quarriers supports a human-rights based approach to the remedy of abuse and therefore supports the rights of survivors to seek justice, apology, and redress.

1.4 Quarriers reiterates our apology to anyone who suffered abuse while in our care.

1.5 Quarriers believes that to properly address the abuse of children in care, the legislation should sit within a wider context of remedy, truth, and reconciliation. That involves a commitment across civic institutions and third sector providers to transparency, accountability, and learning. The legislation therefore needs to secure participation in the scheme from the widest possible group of civic institutions and charitable organisations. However, we are concerned that the application of the fair and meaningful test might mean that many willing organisations are unable to participate due to the impact it would have on their financial sustainability.

1.6 Quarriers would welcome the opportunity to give oral evidence should the committee wish us to do so.

**Quarriers' principles and values**

2.1 Quarriers is committed to working with people who were abused as children while in our care, and we believe that reconciliation comes in part by listening to survivors' testimonies, by acknowledging the pain and lasting impact caused by abuse, and by providing a meaningful apology. We are committed to doing this as part of the Scottish Child Abuse Inquiry, and we recognise it is necessary to do this within a recognised process, at a time that is right for the survivor.

2.2 We consider ourselves to be a caring and considerate organisation that is proactively addressing the abuse that took place in our past. We have taken

significant steps to engage with survivors and the Scottish Child Abuse Inquiry, and we have worked proactively with the Scottish Government and other stakeholders as the national redress scheme was conceived.

2.3 The principles guiding the support we currently provide across our services also underpin our participation in the Scottish Child Abuse Inquiry and Redress Scheme. These are:

- A mission to transform lives by enabling the people we support to realise their true potential.
- Supporting people to have greater independence and inclusion in their communities, and to be active citizens who are in control of their support.
- Organisation-wide values of human rights, respect, excellence, dignity, honesty, openness, and aspiration.

**Policy aspiration**

3.1 Quarriers agrees that to properly address the abuse of children in care, the legislation should sit within a wider context of truth and reconciliation. This involves a commitment across civic institutions and third sector organisations to transparency, accountability, and learning. The legislation therefore needs to secure participation in the scheme from the widest possible group of civic institutions and charitable organisations.

3.2 We acknowledge the aspiration of the policy memorandum in seeking maximum participation from civic society but are concerned that the financial memorandum constructs a test that may prove to be too difficult to pass, preventing willing organisations from participating. This is discussed in more detail later in our submission.

**Definitions and dates**

4.1 We think it is right that people excluded from civil claims due to the law of prescription will be able to access this fund under the proposed legislation.

4.2 We accept the Bill's definition of abuse as it serves to be sufficiently open and inclusive, recognising the complex and multifaceted nature of abuse.

4.3 December 2004 could be considered the recent past and not 'historical' in the ordinary sense of the word. Although some abuse perpetrated may be historic, we recognise that for many the impact continues today. The Scottish Child Abuse Inquiry dropped the term 'historical' and we suggest that the Redress Scheme also considers this.

**Supporting survivors**

5.1 An individualised approach is preferred to a blanket approach to non-financial redress. The key principles are:

- Access to relevant information concerning abuse and reparation mechanisms

- Equal and effective access to justice
- Adequate, effective, and prompt reparation for harm suffered
- Meaningful apology
- Therapeutic and practical support

5.2 In general terms, the bill does not give sufficient recognition to the importance of non-financial redress. A commitment to survivors goes far beyond the payment of compensation. By focusing so heavily on the former, the bill could allow for the participation of organisations with deep pockets but with no real commitment to a process of reconciliation with survivors and exclude organisations who are committed to the well-being of survivors but whose financial circumstances preclude participation.

5.3 Quarriers supports the rights of survivors to seek justice, apology, and redress – and we reiterate our apology to anyone who suffered abuse while in our care.

5.4 Quarriers first apologised in 2004, although we acknowledge that this did not go far enough for many survivors. Quarriers then participated in Time to be Heard (2010), a pilot forum designed to test one model of acknowledging and helping to heal any hurt relating to abuse in residential care. In June 2017, Quarriers made a full and unequivocal apology at the Scottish Child Abuse Inquiry to anyone who suffered abuse while in our care. This has been repeated at every opportunity offered through the Inquiry and elsewhere.

5.5 Further guidance is sought on how to mediate meaningful and appropriate individual apologies. We recognise that apology law exists but that restrictions apply to organisations who want to create the conditions for remedy, and that such actions have insurance and legal implications.

**Financial thresholds**

6.1 We recognise that the levels of payments proposed within the Redress Scheme are potentially less than those which may be awarded through civil claims. We also acknowledge that this may be the only amount available for those affected by the law of prescription and whose civil case may not be successful. We support a process that does not re-traumatise survivors, and yet we recognise that this difference in payment level reflects the removal of a contested process: a civil claim will be defended, often by insurance companies, where there are reasonable lines of defence to either liability (e.g. the basis of the claim) or alternatively quantum (the value of that claim).

6.2 We note too that survivor groups are requesting that the proposed limits be increased. We support their right to maximise rightful compensation, however we are worried this could impact on charities' ability to contribute to and participate in the scheme. We anticipate that higher levels of compensation would be paid directly by participating charities, given that the Scottish Government has indicated that it will only underwrite the first £10k of an award. This will make participation more challenging for organisations like Quarriers, particularly if the insurance companies are not part of the process.

6.3 We would further highlight the importance of assessing and then reassessing what organisations can afford to contribute. We would suggest this should be reviewed within defined periods - perhaps every 6 months or annually. Such a provision means if there is an unforeseen spike in the number, or total value, of claims then there is a possible trigger date to reassess contributions to the scheme.

**Supporting charities' participation**

7.1 Quarriers currently provides services to around 5,000 people across Scotland, and while our intention is that our participation in the scheme should **not** be to the detriment of the people we support, it will have and indeed already has had an impact on the organisation's activities. We are active participants in the Scottish Child Abuse Inquiry (SCAI) and associated activities, but this incurs significant costs, legal fees in particular. As such, contributions need to be carefully sourced in a manner that does not seriously affect the financial viability of the participating organisation. We estimate that Quarriers has spent £700,000 in support of our work with the SCAI and wider efforts to address the legacy of abuse. However, the legislation does not currently allow for that cost to be considered in relation to our participation.

7.2 The period over which payment to the Scheme is to be made is a key factor in whether organisations can participate. Participating organisations will recognise a redress liability where they meet the measurement test (a present obligation arising from a past event) but the fact that the liability may be repaid over a number of years could allow more organisations to participate.

<u>The 'fair and meaningful' test</u>

7.3 The Scottish Parliament ought to consider whether the legislation should aim to secure the largest number of organisations participating in the scheme or secure the maximum possible financial contribution from each organisation that wants to participate. As it stands, the application of the fair and meaningful test leans towards the latter, and in consequence many willing organisations would be unable to participate as it would represent an unsustainable financial burden. This stands at odds with the policy intention.

7.4 Our experience to date is that actuarial calculations around a proposed financial contribution underpinning the fair and meaningful test are wholly out of keeping with the financial reality facing charities. Furthermore, the reputational damage that might ensue for willing organisations who wish to participate but are unable to do so because of financial constraints could be significant.

7.5 Realistically, if charities are to protect the services they deliver, contributions will need to be paid from free reserves. Following ten years of austerity, the impact of COVID-19 and legacy issues such as pension deficits (not commonly recognised as a challenge outside of the sector), many charities do not operate significant reserves or hold wider assets.

7.6 The grounds of participation therefore should be repositioned to require organisations to:

- Issue a public apology to survivors of abuse.
- Demonstrate that they are committed to working with survivors as part of a process of reconciliation and non-financial redress.
- Commit to and publish a voluntary level of funding to the Redress Scheme which is affordable, and which will not be to the detriment of people currently being supported.
- Commit to providing records and supporting survivors' request for information.

The waiver and alternatives

7.7 As it stands, Quarriers supports the Scottish Government's proposed waiver because it prevents compensation being paid twice and creates the incentives necessary to support the participation of insurers. Realistically, many charities, however willing, will not be able to find the necessary resources from reserves. As such, there is likely to be a requirement for liabilities to be capped by a waiver scheme.

7.8 On the other hand, we acknowledge that survivors are dissatisfied with the waiver because it is perceived to diminish their rights. To that end, we have engaged positively in debate about alternatives to the waiver and are committed to further discussion.

**Charity governance**

8.1 Charity law will be profoundly affected by this legislation. In particular, it could erode the confidence of donors to charities since the financial support they provide might be used for purposes other than that which they intend.

8.2 If the proposed changes to charity law are to be enacted, then charities would need to inform donors of the change. In these circumstances, individuals and grant-makers may wish - or indeed be legally obligated - to withdraw their donation. There may be a loss of donor trust and therefore a potential impact on the ability of charities to raise funds to support their mission. This could have implications that stretch far beyond the terms of the legislation being considered.

8.3 It is also important to note that the fiduciary duties of a charity's Board of Trustees require that they act in the best interests of the organisation. It is our view that there could be circumstances in which charities *cannot* participate in the scheme, even if they wanted to. For example, where a Board of Trustees would knowingly be taking an organisation to a position of financial distress because of a voluntary payment to the scheme, it is our view that this would be inconsistent with the fiduciary duties of Trustees. In these circumstances, a voluntary contribution is effectively debarred.

## Conclusion

8.4 Quarriers supports the Scottish Government's ambition to legislate to ensure effective remedy for survivors of abuse in care. We further support the Scottish Government's recognition that redress should be supported by civic Scotland as a whole and should not simply be a responsibility of the state. This in turn supposes that the success of the legislation and policy will be determined by its ability to attract contributions from a wide range of participating organisations. However, in the end, the financial test may well be too great for willing charities to participate and would be to the detriment of the people that we support today – it would be disappointing and contrary to the Scottish Government's policy ambition if organisations like Quarriers were effectively priced out of participating because of the application of a contribution requirement that is at odds with the financial realities that charities face.

1st October 2020

**Scottish Council of Independent Schools (SCIS)**

**The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

The Scottish Council of Independent Schools (SCIS) is responding to the call for views on behalf of those boarding schools called to give evidence to the Scottish Child Abuse Inquiry. All of those schools are responding accurately and in detail to requests made by the Inquiry team, as well as actively encouraging contact from any potential applicants wishing to raise historical issues related to any of the schools. SCIS has also offered further information on the boarding school sector and SCIS training of school staff.

In the main, the membership of SCIS supports the basic principles of the Bill; covering the establishment of Redress Scotland, scheme eligibility, definitions, and non-financial redress.
However, in Section 18.2 the Bill states explicitly that:
*"a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—*
*(a) with a relative or guardian of the child, or*
*(b) under arrangements between a parent or guardian of the child and another person unless that other person was either—*

> *(i) a public authority, or*
> *(ii) a voluntary organisation exercising functions in relation to the safeguarding 30 or promotion of the welfare of the child or the protection or furthering of the child's interests."*

This would exclude almost all pupils based in boarding schools during the period up to 2004 (and after) from the terms of the Bill and remit of Redress Scotland. As such, it does not appear to be appropriate to offer comment on aspects of the Bill covering the application for, and provision of, financial redress through the terms of the Bill.

Whether or not schools are in a position to respond to any request to contribute to a redress scheme will depend on the nature and volume of applications made by former pupils, providing those pupils are not seeking alternative forms of redress from schools directly. Such schools will also be required to study the outcome of Sections 14 and 15 of the Bill, which cover the legal ability of registered charities to make financial contributions under the terms of their individual charity covenants.

SCIS is ready to engage with the Committee in the conduct of scrutiny of the Bill.

**SCVO and Chartered Institute of Fundraising Scotland**

**Summary**

SCVO and the Chartered Institute of Fundraising Scotland have concerns around the implications of sections 14 and 15 of the Bill for charity law and the potential knock on effects of this on the actions of charity Trustees and on fundraising practice. In particular, SCVO raises concerns that these clauses can be interpreted as Scottish Ministers seeking to control the action of Trustees, and that the inclusion of these clauses in the legislation sets a precedent for Ministers to take similar action in other situations in future. The Chartered Institute of Fundraising Scotland highlight the implications of these changes for fundraising.

**About us**

The **Scottish Council for Voluntary Organisations (SCVO)** is the national body representing the third sector.

There are over 45,000 voluntary sector organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers, managing an annual income of over £6 billion.

The **Chartered Institute of Fundraising Scotland** is the professional membership body for UK fundraising. We support fundraisers through leadership and representation; best practice and compliance; education and networking; and we champion and promote fundraising as a career choice. We have around individual members and organisational members who across the UK raise more than £9 billion in income for good causes every year.

**Response from SCVO**

It is our understanding that sections 14 and 15 of the Bill are designed to remove any barriers to charities from making a voluntary contribution to the financial redress scheme. We believe, however, that these sections are disproportionate to this policy intention.

Section 14

Charity trustees have a legal duty to make case by case decisions in the best interests of their charities. They are guided in this decision making by the charitable aims of their organisation. We do not believe that Scottish Ministers should be able to alter the charitable aims of groups of charities; rather, any change to charitable aims and objectives should be a matter for the individual charity. Where Trustees wish to make a contribution to the financial redress scheme but face a barrier to doing so through their current charitable aims, they could make an application to the charity regulator to amend those aims to allow them to make a donation. This would be the appropriate course of action for any charity wishing to alter the focus of their work or where they direct their resources and leaves the decision to do so in the hands of the individual charity.

**We do not believe that Scottish Ministers should be able to make changes to the charitable aims of charities, and are concerned that this legislation sets a precedent for other situations in which Ministers may seek to do so.**

*Section 15*

Charity law is clear that those making a donation to a charity are able to place restrictions on the ways in which that donation can be used. We do not believe that Scottish Ministers should be able to make changes which allow or potentially compel these funds to be used in other ways.

We endorse the view of the Chartered Institute below on the potential impact of these regulations on fundraising, and on public trust and confidence in charities.

In addition, we note again that decisions about how to use funds in the best interests of the charity must sit with Trustees and not Ministers. Where Trustees identify restricted funds which they are no longer able to use for the purposes for which they were given, there are already procedures in place for application to OSCR to amend the use of those funds.

We do not believe that Scottish Ministers should be able to make decisions about how charitable funds are spent, and are concerned that this legislation sets a precedent for other situations in which Ministers may seek to do so.

**Response from Chartered Institute of Fundraising Scotland**

The Chartered Institute of Fundraising Scotland endorses the views expressed by SCVO which we believe would set a precedent for Ministers to amend charitable objectives and change the designation of restricted funds for activity contrary to its purpose. We believe this will have a negative impact on Scotland's fundraising sector.

**Public Donations**

Scottish donors are amongst the most generous in the UK (CAF UK Giving 2019) and give in full confidence that a charity will ensure their gift is used appropriately, with gifts often donated for a specific (and restricted) need or purpose. These gifts will often be the result of longstanding and trusted relationships between a charity, its fundraisers and the donor who gives to their cause.

Using restricted funds for different objectives to those that attracted the gift in the first place would, in essence, go against the wishes of the donor, and could place the charity at risk of legal action and negative public response.

**Trusts and Foundation Fundraising**.

Similarly, when funding is granted by a trust or foundation, the conditions of the grant will usually require a charity to use the funds awarded for specific purposes, usually restricted to the ethos and mission of the awarding trust or foundation. This proposal could result in funders choosing to withdraw or limit their support for certain organisations, particularly if they were considered likely to be at risk of losing the ability to direct how their funds were being allocated and used.

Now more than ever organisations are utilising their reserves to survive and continue to meet their objectives in line with the Charities Restricted Funds Reorganisation (Scotland) Regulations 2012. Taking away another lever of control that charities have over their funds brings organisations a step closer to the risk of closure, which – in this bleak financial climate – is an additional risk charity don't need to carry.

**South Lanarkshire Council**

**Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill**

| Call for views questions | South Lanarkshire Council's Response |
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| **1) The people who are eligible to apply to the scheme.**<br><br>Who will be eligible? What is a "relevant care setting"? The redress scheme is for survivors who were abused in care in a relevant care setting before 1 December 2004 and were under 18 years. The redress scheme covers two categories of care setting in Scotland. The first concerns children who were "in care" because their families were unable to look after them on a day to day basis and, which led to the children being placed in an institutional care setting (for example, residence in a children's home provided by a public authority or voluntary organisation) or other public care setting (for example, residence with foster carers).<br><br>The second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school, or where arrangements were made by a local authority to send children to board in schools not managed by that authority and the authority met the costs of that). | South Lanarkshire Council agrees with this definition, but is concerned that children placed in schools by parents and admitted to hospitals for long-term medical reasons, who were abused, are not part of the scheme. |
| **2) The Bill's definition of abuse**.<br><br>What is meant by "abuse"? In the context of the redress scheme, "abuse" means sexual, physical and emotional abuse or abuse which takes the form of neglect. | South Lanarkshire Council agrees with this definition. |
| **3) The dates used in the Bill to define 'historical abuse'.**<br><br>Why is there a cut-off date of 1 December 2004? This is the date that then First Minister Jack McConnell made a public apology in the Parliament and when Scotland began to face up to the harm done to children in care in the past. | South Lanarkshire Council agrees with this date. |
| **4) The Bill's definition of 'in care' and the places in which that care took place.**<br><br>Who will be eligible? What is a "relevant care setting"? The redress scheme is for survivors who were abused in care in a relevant care setting before 1 December 2004 and were under 18 years. The redress scheme covers two categories of care setting in Scotland. The first | South Lanarkshire Council is concerned this definition does not consider those abused historically in school setting and hospital settings if they were placed there by their parents**.** |

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| concerns children who were “in care” because their families were unable to look after them on a day to day basis and, which led to the children being placed in an institutional care setting (for example, residence in a children’s home provided by a public authority or voluntary organisation) or other public care setting (for example, residence with foster carers).<br><br>The second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school, or where arrangements were made by a local authority to send children to board in schools not managed by that authority and the authority met the costs of that). | |
| **5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.**<br><br>Key features of the redress scheme:<br>• Independent decision-making - a new organisation, Redress Scotland, will be created to independently assess and make decisions on applications for redress.<br>• Administration and processing - a new team in the Scottish Government will carry out the administration of the redress scheme, for example, processing applications and redress payments. It will not be involved in decision-making.<br>• Eligibility - the redress scheme is for survivors of historical child abuse, meaning abuse which took place before 1 December 2004, in relevant care settings in Scotland.<br>• Time period - the redress scheme will be open to accept applications for a period of five years, although this period may be extended.<br>• Payment structure – the scheme will offer survivors the choice of whether to apply for a fixed rate redress payment or an individually assessed redress payment.<br>• Payment levels - the fixed rate redress payment will be £10,000. Individually assessed redress payments will be set at three levels: level 1 will be £20,000, level 2 will be £40,000 and level 3 will be £80,000.<br>• Assessment - the level of each individually assessed redress payment will be determined following consideration of the nature, severity, frequency and duration of abuse along with other relevant matters. An assessment framework will be published as guidance to provide transparency and consistency in decision-making. | South Lanarkshire Council is satisfied with the process for applying for redress, but concerned about the additional work placed on its resources in respect of Subject Access Requests and the additional cost involved. |

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| • Evidence – the design of the scheme including supporting guidance and the Redress Scotland appointments process will be robust and credible to ensure that survivors, care providers and others can have confidence in its processes and outcomes.<br>• Waiver - redress payments will be conditional upon the applicant signing a waiver, giving up their right to continue or raise civil actions in respect of the abuse, against the Scottish Government and those organisations that have made fair and meaningful financial contributions to the scheme. | |
| **6) The level of payments offered to survivors.**<br><br>How much money might I receive? Survivors will be able to choose at the point of application whether to apply for a fixed rate redress payment or an individually assessed redress payment.<br><br>• The fixed rate redress payment is £10,000.<br><br>There are 3 levels of individually assessed redress payments, each level consists of a set payment:<br>• level 1 - £20,000;<br>• level 2 - £40,000;<br>• level 3 - £80,000.<br><br>If an application for an individually assessed redress payment does not meet the threshold required for a level 1, 2 or 3 payment, applicants will, provided they meet the general eligibility criteria of the scheme, be entitled to a fixed rate redress payment of £10,000.<br><br>In order to determine the appropriate level of individually assessed redress payment, an assessment framework will be published as guidance to provide transparency and consistency in decision-making. These decisions will be made by Redress Scotland, a new body which is not part of Scottish Government. | South Lanarkshire Council do not have any specific comment to make on the redress payment levels and are of the view that survivor groups should be consulted the proposed payment levels. |
| **7) What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.** | South Lanarkshire Council is concerned that no detail on the basis of contributions is in the bill at present. |

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| Who will pay for the redress scheme? Will religious organisations and others be making a contribution to its cost? The redress scheme will be funded by the Scottish Government. However, fair and meaningful financial contributions to the redress scheme will be sought from organisations involved in the care of children during the period covered by the scheme. We understand the importance of these organisations being part of the collective effort to face up to the harms of the past. | It is assumed that Local Government contributions will be a significant proportion of the total cost of redress payments estimated at £350m.<br><br>Council budgets are under pressure and they are facing significant increasing demands. This has been heightened at present due to the Council's response to the Covid-19 pandemic.<br><br>The Council's view is that no funds are available to meet these contributions and that further discussions are required through COSLA on how these significant burdens can be managed.<br><br>If councils have to find money to contribute towards a redress scheme, this will put further pressure on budgets and as a result, the funding available for other services will have to reduce.<br><br>There may be a requirement for councils to record significant sums of liability in this current year. Councils do not have funding to accommodate this.<br><br>The allocation basis requires to be fair and proportionate. South Lanarkshire Council's view is that there should be a link between the claims stemming from predecessor authority areas and the financial contributions sought. |

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| | We believe the Council is also at risk of further claims being intimated through litigation as a result of the scheme and advise that the Council has received a low number of claims to date.<br><br>The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination. Ultimately we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks.<br><br>Contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured. |
| **8) The process for dealing with applications to the scheme from people who have serious convictions.**<br><br>Can I still apply if I have a criminal conviction? Yes. Survivors of abuse or next-of kin applicants with criminal convictions are not excluded from applying for financial redress. However, Redress Scotland will consider whether, giving a redress payment to people who have been convicted of serious criminal offences, particularly involving serious levels of abusive conduct, would be in the public interest. Serious offences are murder, rape and a sexual or other violent offence, which has resulted in a sentence of imprisonment of five years or more. | South Lanarkshire supports this. |

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| **9) The process for family members to make an application on behalf of a survivor who has since died.**<br><br>Will next-of-kin of deceased survivors be able to apply? Some next-of-kin of survivors who died on or after 17 November 2016 will be eligible to apply for a next-of kin payment, which is the same amount as the fixed rate redress payment. For the redress scheme, next-of-kin means spouses, civil partners or co-habitants of the deceased person. Where the deceased person had no spouse, civil partner or co-habitant, children of the deceased will be eligible to apply. Where there are multiple children of the deceased, the fixed rate redress payment will be divided equally between them. | South Lanarkshire supports this. |
| **10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.**<br><br>Non-financial redress – the redress scheme will offer access to acknowledgement, apology and therapeutic support in addition to redress payments. | South Lanarkshire Council fully supports this and believes that survivor groups are best placed to advise the Scottish Government on how these supports should be provided and implemented. |

**Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)**

Response to Education and Skill's Committee Call for Views: Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

SOLAR is a professional public sector organisation whose aim and purpose is to support the work of those professional officers employed in local authorities and associated organisations in Scotland.

**Introduction**

1. This response is from the Social Work Legal Officers Child Law Group of SOLAR and informed from discussions between members and knowledge/view sharing and direct discussions with COSLA and Social Work Scotland. We believe they and other councils have also responded directly to the call for evidence.
2. SOLAR previously responded to the Scottish Government's pre-legislative consultation on financial redress. SOLAR agrees in principle with the redress scheme and the legislation and appreciates concerns have been raised about financial issues relating to the scheme and other issues, but does not consider those are for SOLAR to comment on at this time.
3. The dates proposed for the date of historical abuse is appropriate: that which took place before 1 December 2004 and despite prescription rules to the contrary, allowing claims for abuse before 26 September 1964, meaning it is more inclusive than the previous financial redress scheme.

**Definition of Abuse/In Care - Eligibility**

4. The definition of abuse is set out in the legislation and appears to now include "abuse by peers within a relevant care setting." We note the exemption of "Corporal punishment that was lawful at the time it was administered" from constituting physical abuse for the purposes of redress.
5. Neither of these points were consulted on prior to the legislation being drafted or presented. There are various implications of including peer abuse. It should be explained why this has now been included and was not previously in order to allow consideration of the appropriateness of this inclusion.
6. Corporal punishment is rightly no longer legal, however at the time it was legal the administration of that could still amount to abuse of a child. A complete exemption could therefore rule out a possible claim by a survivor where they were abused by corporal punishment. This would appear to be the case even if the punishment was extreme. Consideration should be given to whether some form of clarification or guidance needs to be issued with this.
7. Clarification of how 'in-care'/relevant care setting' may be adjusted and whether further consultation would be carried out should be provided by Scottish Government. The Advance Payment Scheme was run for a limited period of time and for a limited purpose. Comparisons with the intended new scheme are limited and suggestion of the power to modify the definition of

‘relevant care setting’ being available should be limited unless further scrutiny and monitoring of that is in place. Leaving this to be freely varied or modified would mean applicants not being clear at any one given time about their ability to make an application. Further changes risk uncertainty in terms of retrospective applications or contributing organisations being asked for further payments/contributions to the scheme because of a widening of the definition. If the experience Scottish Government has of the advance payment scheme tells them it may need modified then it is unclear why they are unable to commit to a full definition for the purpose of this scheme at the outset. We consider clarity at this stage to be very important.

**Fair and Meaningful**

8. The term is used to reflect how organisations contribute to the scheme. It is anticipated that all local authorities will be asked to contribute regardless of the level of potential claims or contributions they might be liable for. A standard contribution determined by Scottish Government may be possible, and no doubt other organisations will provide evidence about the implications of this.
9. To only allow organisations who have provided a fair and meaningful contribution to be determined by Scottish Government and contained in the s12 list of contributors, without any further detail or definition of what this is means organisations could be unfairly exempt from the scheme or the waiver (s45), which a survivor is being asked to sign to receive their compensation.
10. The legislation should permit organisations who have been unable to contribute to the scheme for valid reasons to still benefit from the waiver signed by the survivor, as ultimately Scottish Government has offered to largely fund the scheme and support organisations who are unable to pay. So, to suggest the waiver will only apply on a fair and meaningful contribution basis is possibly misleading and could lead to a survivor being able to seek civil compensation against that organisation.
11. If settlement is sought through the scheme by a survivor and they agree to accept payment from the scheme they should entirely waive their right to make a further claim, regardless of whether the organisation has or not made a fair and meaningful contribution to the scheme. The sole purpose and operation of this phrase is to support Scottish Government to request funds from organisations. A direct request for a contribution could be made, or a minimum percentage set at which the organisation can then benefit from any waiver. Clarification on the approach by Scottish Government to contributions by any organisation, not just local authorities or public bodies must be provided before the legislation is finalised.

## Waiver

12. Any waiver will need to be unambiguous in its terms about the claim which has been made, reasons for settlement, agreement to disclose the terms of it if further civil litigation action is taken, parties involved and ultimately full disclosure of this and the opportunity to comment by the organisation which it directly affects.
13. The terms of proposed waivers should be available for initial comment by contributors.
14. Survivors should be supported to obtain independent legal advice on the terms of that waiver and all aspects of the scheme, including their options to pursue other forms of dispute resolution.
15. Support is to be offered to survivors more generally and there is no reason for this not to also be broad independent legal advice, without boundaries. A panel of solicitors could be appointed to provide advice, or an individual could choose to seek their own. It is no doubt of concern to Scottish Government that applicants are provided with appropriate legal advice, but this is a matter they can address with the Law Society of Scotland if there are specific concerns. It is inappropriate to exclude provision or support for advice to applicants on civil action and its merits v. the scheme. It is questionable how a survivor could be fully, proficiently or professionally advised about the scheme, without consideration given to the implications of waiving a civil action or other such routes as may be available to them.
16. No provision is made for this scheme to be considered or settlements obtained from it as ‘civil’ claims or action to the extent that insurers will cover the compensation costs or charges for organisations arising out of this scheme. It is understood these concerns have been voiced by other organisations/associations.
17. All waivers may be a matter of personal record for a survivor/applicant, but each organisation affected or on whom it is binding should be provided with the opportunity to review and comment on that waiver prior to completion and signing. Unless there is to be complete standardisation of all waivers by Redress Scotland/Scottish Government.

## Evidentiary Standards/Accountability of Redress Scotland

18. There is a proposed flexibility and approach in the evidence to be provided by survivors, which is understandable when trying to make it more accessible and easier to compensate survivors. Some steps should be taken to protect and minimise advantage being taken of the scheme by applicants, and to ensure that real survivors are fully compensated. A lack of clarify on the level or requirements around evidence could lead to confusion and a lack of understanding by survivors or their representatives of what is required and needed by Redress Scotland to fully consider the application.
19. It is understood that the test for proof or evidence of a claim is not intended to be laid out in such terms as being on the *balance of probabilities.* This is a

well understood term in Scots law and likely to be in reality the approach that will have to be taken by Redress Scotland for individually assessed payments. Indeed, it will be of assistance to applicants that expectations around evidence are clearly explained so they know what is expected of them. Absence of that could lead to confusion, Redress Scotland being unclear about what would justify an individually assessed payment. It is not anticipated that the same level of evidence will be required for fixed rate payment, but that needs to be clarified – little evidence was required for payments under the Scottish Government Advance Payment Scheme and it is expected this would be the same for fixed rate payments.

20. There are without doubt huge challenges for organisations in accessing and obtaining evidence for claims, with much of it historical, possibly destroyed. Offers of help to survivors to understand and consider evidence/records which may be provided to them must be offered directly and quickly or some route provided for more sensitive information to be provided directly to Redress Scotland rather than survivors, to ensure appropriate support is in place before it is shared with survivors.
21. SOLAR, with other bodies will continue to work with Scottish Government and Redress Scotland to look at ways of supporting survivors to access evidence as quickly and efficiently as possible.
22. Data protection legislation must not become an obstacle to survivors, Scottish Government or Redress Scotland obtaining necessary information. Redactions may be necessary, unless Redress Scotland are able to provide specifications for documentary evidence from organisations. Guidance on proper authority for the release of information, consistent with Data Protection legislation, would be helpful in understanding all parties' obligations.
23. If flexibility is key in the success of this scheme around the provision of evidence then so too should organisations and Scottish Government be in their approach to supporting survivors to make claims, without compromising any legal or statutory duties to the survivors or third parties.
24. There are potential implications for organisations, local authorities and all bodies tasked with providing information, documents and information to Redress Scotland, Scottish Government or survivors. There must be appreciation of that and appropriate timescales set, and acknowledgment that some form of legal order may be needed to release files without repercussion or needing an individual to make a subject access request.
25. It is expected that Redress Scotland panel would consist of two members to assess a fixed rate payment, and three for an individually assessed payment. This is to be supported by a review mechanism for the applicant yet no details of how this work, timescales etc are available of this. It is imperative that Redress Scotland and Scottish Government must be transparent in their assessment of initial applications or reviews of those.

26. The legislation is clear that there is to be a close working relationship between Scottish Government, strong advocates, supporters and funders of the scheme and Redress Scotland. Appropriate auditing and checks must be in place to ensure complete transparency in decision making and handling of applications and reviews.

**Conclusion**

27. SOLAR is supportive of the Bill but understands many other associations and organisations have responded and called for clarity on similar points. SOLAR would welcome further engagement with the Scottish Government and other interested parties.

**Stirling Council**

**Response to Scottish Parliament Call for Views.**

The Committee welcomes views on any aspect of this Bill. However, the Committee is particularly interested to know your views on:

1) **The people who are eligible to apply to the scheme.**

The Bill, as framed currently, sets out fairly the criteria to be met for eligibility at Section 16 as noted below.

> ***16 Eligibility to apply for a redress payment***
> *(1) A person may apply for a redress payment if the person or, in the case of an application for a next of kin payment, the person in respect of whom the application is made was abused while— 35*
> *(a) a child, and*
> *(b) resident in a relevant care setting in Scotland.*
> *(2) The abuse must have occurred before 1 December 2004.*
> *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill 7 Part 3—Eligibility and key concepts*
> *(3) In this Act, "child" means a person under the age of 18 years.*
> *(4) But subsection (3) does not apply, in relation to an application for a next of kin payment, to a reference to a child of a deceased person.*
> *(5) This section is subject to section 21.*

2) **The Bill's definition of abuse.**

Similarly, at Section 17, the Bill frames the definition of abuse broadly to incorporate both emotional abuse and neglect alongside physical and sexual abuse. It also clearly qualifies physical abuse relative to corporal punishment. It is expected that definitions of harm defined as abuse still operate to the assessed threshold of significant harm within child protection process and practice.

> ***17 Meaning of "abuse"***
> *(1) In this Act, "abuse", in relation to references to a person having been abused, means—*
> *(a) sexual abuse,*
> *(b) physical abuse,*
> *(c) emotional abuse,*
> *(d) abuse which takes the form of neglect.*
> *(2) For the purpose of subsection (1)(b), "physical abuse" does not include corporal punishment to the extent that it was permitted under or by virtue of any enactment or rule of law at the time it was administered.*

3) **The dates used in the Bill to define 'historical abuse'.**

The redress scheme defines 'historical' abuse as that which took place prior to 1 December 2004. We agree that relative to the then First Minister's public apology on this date and the endorsement of this by the Scottish Parliament as a whole, that this is appropriate

**4) The Bill's definition of 'in care' and the places in which that care took place.**

The Bill's definition of "in care" is captured at Sections 18 to 20 (incl) and this presents as appropriately broad in application to a range of residential care settings while applying a necessary degree of qualification to some boarding and fostering placements at Sect 18 (2).

***18 Meaning of "relevant care setting"***

*(1) In this Act, "relevant care setting" means—*
*(a) a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there,*
*(b) a place, other than a residential institution, in which a child resided while being— 20*
*(i) boarded-out,*
*(ii) fostered.*

*(2) But a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—*
*(a) with a relative or guardian of the child, or 25*
*(b) under arrangements between a parent or guardian of the child and another person unless that other person was either—*
*(i) a public authority, or*
*(ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the 30 child's interests.*

*(3) In this section and in section 20, "residential institution" means—*
*(a) a children's home,*
*(b) a penal institution,*
*(c) a residential care facility,*
*(d) school-related accommodation,*
*(e) secure accommodation.*

**5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.**

Part 4, Chapter 1, Sections 27 through to and including 45 set out the conditions for the "determination of applications for redress payments" including Waiver considerations.
The financial redress scheme will be administered and governed independently of the Scottish Government ensuring that decisions on assessment of applications to the scheme will not be made by the Scottish Government. Redress Scotland is, as noted at Section 4, not an agent of the Crown nor are its staff regarded as civil servants.

Part 5 Sections 85 to 90 sets out the range and character of supports for survivors of abuse who may wish to make application for redress. This appears

comprehensive in its commitment to include consideration of the emotional, psychological or practical support needs of survivors.

Part 6, Section 91 to 93 also captures the need to report on wider redress actions such as those noted at Section 91, (2), (a):

(i) funding for emotional, psychological or practical support,
(ii) advice and assistance on accessing historical records,
(iii) advice and assistance on tracing and reuniting families,
(iv) activity relating to the provision of an apology to such individuals,

**6) The level of payments offered to survivors.**

Part 4, Chapter 1, Sections 37 & 38 sets out Payment Levels rising from a Fixed Rate Payment of £10,000 through a tiered three level payment structure of £20,000, £40,000 & £80,000 as considered appropriate by the Redress Panel. This presents a reasonable framework within which to capture the differing types and consequences of harm experienced. It is expected, and papers around the Bill indicate, that clear criteria and evidential thresholds for payments will be specified, and applications appropriately assessed and subject to required scrutiny.

***Payment levels***
***37 Fixed rate payment***
*A fixed rate payment is a payment of £10,000.*
***38 Individually assessed payment***
*(1) An individually assessed payment is a payment, based on an assessment of the matters raised by an application, of—*
*(a) the fixed rate payment, and*
*(b) if the panel appointed under section 33 to determine the application considers a further sum to be appropriate, the further sum of—*
*(i) £10,000,*
*(ii) £30,000, or 5*
*(iii) £70,000,*
*as the panel considers appropriate.*

*(2) Accordingly, depending on what (if any) further sum is considered appropriate, an individually assessed payment is a payment in total of—*
*(a) £10,000 for a fixed rate payment,*
*(b) £20,000 (a level 1 payment),*
*(c) £40,000 (a level 2 payment), or*
*(d) £80,000 (a level 3 payment).*

*(3) But where a fixed rate payment has previously been paid to an applicant, no further fixed rate payment is payable to that applicant when determining an application for an individually assessed payment made by virtue of section 28(2).*

*(4) In considering what further sum, if any, is appropriate for the purpose of subsection (1)(b), the panel—*

*(a) must have regard to the nature, severity, frequency and duration of the abuse to which the application relates, and 20*
*(b) may have regard to* any other matter it considers relevant.

**7) What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.**

Last year's Consultation noted that "*in line with international good practice, providers/institutions should contribute to reparations packages to the extent to which they are accountable*". It also set out the expectation that all those responsible make a meaningful contribution to the costs of delivering a financial redress scheme in Scotland. While accepting of each position this is a matter that requires broader discussion and agreement to determine what a "fair and meaningful" level of contribution would be. Understanding is that, relative to Local Authorities, this matter is being addressed via COSLA currently.

**8) The process for dealing with applications to the scheme from people who have serious convictions.**

Part 4, Chapter 3 gives powers to the Redress Panel to consider if an applicant is precluded from consideration and if any payment award would be in line with or contrary to public interest in situations where applicants have been convicted of serious offences. Further adding to this are Sections 58 & 59 outlining the character of offences included and contextual circumstances taken into account relative to these. Applicants precluded from consideration also have entitlement through Section's 60 and 61 to seek review of the Panel determination. The considerations and measures around applications from those with serious convictions within the Bill therefore seem appropriate.

**9) The process for family members to make an application on behalf of a survivor who has since died.**

Part 3, Section 22 to 26 sets out considerations in regard to the eligibility criteria which apply when the person who was abused has died and the person's next of kin wishes to make an application. Part 4, Chapter 4, Sections 63 to 70 of the Bill also outlines criteria that would apply on the death of an applicant. These seem to give due consideration to matters of relevance for family members who make an application on behalf of a survivor who has since died, including opportunity for review of a decision determining ability to apply on behalf of the deceased

**10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.**

As per exploration of this area in the 2019 Scottish Government Consultation it is agreed that residential service providers and other professional groups in

Scotland should view financial redress in the context of a broader reparation package. Whilst not every survivor will want or need any wider reparation, choice and access to a broad range of remedies is important. These remedies often include acknowledgment, apology and support and in 2019, at the time of the consultation exercise, opportunities for non-financial redress contributions were noted to include:

- Enabling supportive access to records;
- Financial support for counselling sessions;
- Signposting people to a range of relevant supports;
- Tracing and unifying families;
- Offering after-care support;
- Individual sessions to promote reconciliation;
- Individual apology;
- Ensuring that previous residents are aware of the scrutiny by current registration and inspection regimes.

**Survivors First**

As Survivors we have attended many meetings over the years. We have been helped by Future Pathways but not everyone appreciates how Survivors feel. Some Groups or individuals have an agenda that is not beneficial to everyone. The redress Bill covering historical child abuse in care affects thousands of Survivors. After consultation Scottish Government has passed to parliament a bill that strips us of our right to sue.

Waiver

Why is the Scottish government asking survivors of child abuse to sign a waiver to give up their rights to raise civil action against the government or the organisations that committed the abuse in the recently published redress scheme. The Scottish child abuse inquiry was set up so that those who abused the children of Scotland could be held accountable, but how can you have accountability without justice. The Scottish child abuse inquiry was set up so that those who abused the children of Scotland could be held accountable, but how can you have accountability without justice.

Evidence

The bill states that applicants will have to provide documentary information to satisfy the decision-making panel who may not be unbiased. What this means is that survivors will have to produce their records. How many survivors do we know who can access their records? This alone is a dangerous position to put survivors in. This section also states that survivors will be asked to provide a more detailed account of the abuse they suffered and will be required to provide supplementary information. During the Assessment period survivors are going to have go back over the severity, frequency and duration of abuse along with other relevant matters. Where on earth is someone who was abused forty or fifty years ago going to find such information? In my estimation, roughly 90% of survivors who come forward are going to fall at this hurdle and what is so disturbing is that as is normal in Scotland there is no details of any organisations that people can turn to for support. Where is the compassion here from the Scottish government in offering support to survivors to find their records. This really is quite disturbing.

Deceased

Deceased Survivors relatives can be awarded up to 10k this is an insult to everyone who has died especially during the current process. This bill will cripple survivors of historical child abuse and once again the Scottish government is going to cause major distress to the most vulnerable people who were let down as children.

**Thompsons Solicitors**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Stage 1 Submission**

**This is a legacy moment for the Scottish parliament. A defining moment in the history of the Parliament.**

**Survivors of historic in-care abuse naturally and understandably have very little trust in authority, including politicians and the Government. On an entirely cross-party basis the Scottish parliament have over many years taken brave and positive steps to support, protect and provide means of securing justice to [for?} survivors of historic abuse. In so doing, the Parliament has built up a degree of trust among the survivor community.**

**If the Redress Bill is enacted in the current form all of that cross-party work will have been for nothing. The waiver is viewed by a large proportion of survivors as a form of high pressure sales tactic that serves only to save the Scottish Government money in the long term; and collusion with the institutions where abuse took place to save those institutions money. The waiver particularly, but other provisions too in the Bill, have caused anger and distress to survivors.**

**What legacy does the Scottish Parliament aim and aspire to deliver in relation to survivors of historic in-care abuse? If the Bill remains unchanged the legacy will be that of a Parliament that built up false trust and hope among the survivor community; only for that trust and hope to be dashed. If the Bill is amended the legacy of the Scottish Parliament can be that of one of the most progressive, empathetic and compassionate Parliaments in the world in relation to historic child abuse.**

**Further, the Scottish Government's Pre-Legislation Consultation process was flawed. Respondents with a clear financial vested interest should not be counted; the key question regarding the waiver (q26) was badly worded and misunderstood by a very large number of individual respondents. Properly viewed, the majority did not support the waiver.**

## Introduction

Since our firm was founded in 1979 Thompsons Solicitors have only pursued personal injury and employment rights claims. We have never and will never act for a defender. We are committed to fighting for financial justice for survivors of historic abuse in every setting. We have a specialist department of trauma informed solicitors who only pursue claims on behalf of survivors of historic abuse. We understand that we are the only law firm in Scotland to have such a team that works 100% exclusively in this field. We represent many hundreds of survivors and over the years have gained a deep understanding of their views of the law, society, the establishment and authority.

Our experience and insight provides us with a clear picture of what the majority of survivors expect from a Redress Scheme and what should not form part of a Redress Scheme. Further, we have discussed the content of Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill [hereinafter referred to as the "Bill"] with many of our clients over recent weeks and we know exactly what their concerns are regarding the Bill. They are concerns that we share and shall set out in this submission.

**Areas of Concern**

In our submission the following aspects of the Bill require to be amended or removed:

- The waiver (s45-46)
- Applicants with convictions for serious offences (s58-62)
- Payment of legal fees
- The scales of payments
- The need for the process to be safe and for Survivors to access trusted support

**The Waiver**

There are various grounds upon which we consider the waiver to be inappropriate. Our objections and those of our clients fall into the following general categories, each of which we shall explain in more detail below:

- Requiring survivors to sign a waiver is wrong as a matter of general principle and indeed morality
- There are better ways of insuring institutions contribute to the fund and there is no 'double payment' of compensation seen in other legislation
- A proper statistical analysis of the pre-legislation consultation clearly shows that a majority of respondents do not support the waiver and the majority against the waiver is particularly large when respondents with a vested interest are removed from the tally

*General Principles*

According to our detailed research, the proposed waiver system within the Bill is unique in the history of UK legislation. There have been many examples of the Government introducing compensation schemes for various different purposes over the years. We can find no example of any other scheme requiring the claimant to sign a waiver removing their right to pursue separate civil claims against other wrongdoers.

At the most basic level the Redress scheme recognises that the State had ultimate responsibility for the care of the children who suffered abuse in the in-care setting. It is a right and proper that the Scottish government face up to that responsibility and introduce a compensation scheme. They should be commended for doing so. On the other hand, there is absolutely no reason why the Scottish government should seek to introduce measures to limit the financial liability for other organisations who were equally, if not far more, responsible for the abuse. Without very clear justification (which certainly currently does not exist) a Scottish Government scheme for compensation that serves to protect third-party institutions from their full financial responsibility to pay compensation creates the clear impression of deliberate collusion. Protecting these institutions from the full financial consequences of the abuse for

which they are responsible should play no role whatsoever in the thinking of the Scottish Government.

We recognise and accept that any scheme must insure against a claimant being 'double compensated'. But, there are better and more appropriate methods of achieving this outcome, as will be discussed below, that have formed the basis of other legislation.

The narrative of the Scottish government in relation to the Redress scheme has been the wish to introduce a quick and relatively simple means by which survivors of in care abuse can be compensated. The Scottish government narrative suggests that there are many survivors who do not want and who are unable to bare the pressure of pursuing compensation claims. It is suggested that the Redress Scheme and the waiver serves to benefit these survivors.

We find it strange that the Scottish government feel able and willing to presume to know what is best for survivors and that survivors will benefit from the 'quick and easy' cash available under the Redress Scheme; and for which they should be willing, able and happy to sign away their rights to pursue claims against entirely separate and distinct third-party organisations.

The Scottish government should not presume to know what is best for survivors. Such paternalism is offensive to many survivors. There will be survivors who are happy to receive a payment under the Redress scheme and to take matters no further. There are many other survivors who demand financial justice. They believe that can only be achieved through a compensation claim against the institution. They do not believe it is possible through the Redress scheme. But they equally do not believe that they should be excluded from benefiting from the Redress scheme (and from receiving the important acknowledgement from the state that a payment under of the scheme represents) because they also wish to pursue a civil claim for compensation against the institution where they were abused. Those survivors, entirely correctly, in our submission, believe that they should be entitled to benefit from the quick and efficient payment under the Redress Scheme and, if they so choose, be able to continue to pursue finial justice against the real wrongdoer – the institution.

It therefore ultimately comes down to a matter of choice and empowerment. Survivors should have the choice whether they wish to seek a payment under the Bill, against the institution through the civil courts, or both. The law should serve to empower survivors to be able to make that choice. The Bill as drafted does the opposite. It disempowers survivors. It removes their voice. Many of our survivor clients have described the waiver as a "gagging order ". It is with regret that we must therefore submit that the concept of a waiver is simply not trauma informed; it does not reflect an understanding of adverse childhood experiences.

*Better Ways to Avoid Double Compensation*

One of the justifications for the waiver seems to be the need to ensure that a survivor who receives a payment under the Redress Scheme is not doubly compensated. There also seems to be a desire to ensure that institutions contribute to the pot of money from which the Redress payments will be made.

Neither of these considerations justify the waiver. There is precedent in other legislation which provides a more appropriate method of securing these outcomes.

Instead of a waiver there should be a clawback system. That is to say if a survivor secures a payment under the Redress Scheme and then goes on to secure civil compensation then all or some of the
Redress payment should be recouped from the civil damages. This is the approach taken in various other legislation including the Criminal Injuries Compensation Scheme, The Pneumoconiosis etc (Workers' Compensation) Act and The Diffuse Mesothelioma Payment Scheme.

If a clawback system was introduced it would be a matter entirely for the Scottish government to decide if any of the money recouped should be 'credited' to the institutions in terms of their payments into the Redress fund.

It must, nevertheless, be remembered that part of the purpose of the Bill is the Scottish government recognising that the State ultimately was responsible for the care of those abused and the State's failure must be acknowledged in ways that include a financial payment. We would therefore submit that any clawback system should not provide for the full Redress payment to be recouped. Instead we would propose that 50% may be recouped from any subsequent civil compensation.

*Flawed statistical Analysis of the Pre-Legislation Consultation*

The relevant question in the Consultation was question 26:

"*Question 26: Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action? [ Yes / No] Please explain your answer."*

The official analysis of the responses published on 23 March 2020 indicated that 57% of respondents answered yes and therefore supported the waiver. Even if that analysis was correct we would submit that the majority was simply too narrow to justify such a major policy decision. The official analysis itself highlighted that the question caused confusion in the minds of many of respondents and that there was clear evidence that some of the respondents had answered yes (taking to mean statistically that they supported a waiver) when their explanation clearly showed that they did not support a waiver and their answer was in fact no.

Thompsons Solicitors have therefore committed a substantial amount of time to reading every response to the consultation. Two significant issues arise that establish beyond any doubt that there was not a majority in favour of the waiver.

Firstly, a large number of the respondents had a direct vested financial interest in the outcome of the consultation in relation to question 26. If the majority of respondents had answered "no" and the Scottish Government did not propose a waiver those respondents would face a significantly higher financial burden through civil claims for compensation than they are currently likely to face via simply contributing to the redress fund. The use of respondents included local authorities, former care providers and the umbrella organisation for independent schools. In a similar vein, various legal firms (pursuer and defender) made submissions. The vested interest of those firms is also obvious. We would submit that all of the submissions where the respondent has

a clear financial vested interest should be ignored for the purpose of determining the policy in respect of the waiver.

Secondly, a very large number of individual respondents who answered yes to question 26 (ostensibly supporting the waivers) clearly by their comments did not support the waiver. All of those types of responses require to be re-calibrated and the overall percentage of response to question 26 recalculated.

We attach to this document various spreadsheets showing our detailed analysis of the responses. The headline position is as follows:

- A total of 76 responses who had answered question 26 had, in our reading, misunderstood the question.
    - Of these, 25% misunderstood in that they answered 'No' (allowing both civil action and redress) when they meant 'Yes' (the either-or scenario – no waiver).
    - However, the remaining 75%, or 57 responses, had misinterpreted the question the other way, answering 'Yes' when they in fact supported both redress and civil action being available.
    - This correction had the effect of more than inverting the overall percentages, from 57.9% supporting the waiver, to 58.4% believing that survivors should have the right to accept a Redress payment and still be able to choose to pursue a civil claim. This figure rises to 61.3% when only individual (corrected) responses are considered.
- In terms of the responses of organisations, at face value 58.8% of these responses supported the waiver.
    - However this shifted to 59.1% against the waiver when local authority and related bodies' responses were excluded.
    - This shift against the waiver becomes even more pronounced when other obviously biased organisations, such as former care providers and solicitors representing potential parties to litigation are discounted. When only organisations listed as Other Public Sector, Third Sector and the Faculty of Advocates are included, 90% support both options being available. 100% of Third Sector bodies support both options being available.

We attach a spreadsheet with several pages listing the responses. This includes:

- A full list of all 261 responses as on the site
- A list of the 261 responses after those who had misunderstood the question have had their answer changed to better reflect their intention
- Lists of only organisational responses, only individual responses (one each corrected and uncorrected), and also a list of organisational responses bar local authorities and related bodies
- Two lists of only those who had misunderstood the question, one list with their original answer and one with the corrected answer

- And the all-important data sheet with totals and percentages.

**Applicants with convictions for serous offences**

It is well recognised and documented that adverse childhood experience causes myriad problems in development into adulthood. Survivors of abuse commonly turn to alcohol and drugs. It is not uncommon for survivors to commit serious crime. As currently drafted the Bill fails to fully recognise this difficult issue. It fails to understand that survivors may have committed a serious crime that would on the face of it exclude them from receiving a payment under the scheme because of the abuse they themselves suffered. In short, in our submission, a payment under section 58-62 should only be withheld in exceptional circumstances. That is not the position reflected in the current drafting.

**Legal Fees**

When a contract of employment is terminated in circumstances where the employer and employee enter into a settlement agreement the law requires that the employee receive legal advice and that the employer pay for that legal advice. That is because the employee is potentially signing away significant rights to pursue a claim against the employer. The analogy with the Bill is obvious. Every survivor who receives an offer under the Redress Scheme should be entitled to legal advice of their choosing and the Scottish Government should pay for that advice.

**The scales of payments**

In our submission, the levels of payment are low compared to civil damages and certainly when compared to the abuse survivors have suffered. The basic award of £10,000 is derisory. The scales in our submission require to be revised.

**The need for process to be safe Survivors to access trusted support**

The process of applying for a payment under the Redress Scheme, even at the basic award, has the potential to re-traumatise. There is little doubt that where an individual submits to individual assessment that process will be very demanding and very likely, without proper support, to cause significant distress and trauma.

Similarly, when a survivor receives a payment under the scheme it is vital that they are in a safe place. A large sum of money can present a significant temptation to recovering survivors.

It is therefore essential in our submission that the Bill provides for survivors to have access to survivor support services of their choosing, without the need to go through Future Pathways and that trusted support is paid for by the Redress Fund

**Who Cares? Scotland**

***Response to the Education and Skills Committee Call for Evidence on Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill***

October 2020

Who Cares? Scotland (WC?S) is an independent advocacy and influencing organisation working with people who have experience of the care system. We provide direct advocacy, as well as opportunities for local and national participation. WC?S aims to provide Care Experienced people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience. At WC?S we ensure the voice of the Care Experienced population of Scotland informs everything we do as an organisation.

Introduction

We fully support the aims of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill (the Bill) to establish an independent redress scheme for both financial and non-financial redress for survivors of historical child abuse in care settings in Scotland. We believe redress to be an important part of addressing the inequality and oppression experienced by Care Experienced people growing up in Scotland, in order to achieve a lifetime of equality, respect and love. However, our Independent Advocacy and participation evidence shows that the administrative process of this redress scheme must be designed with a detailed understanding of the lived experience of survivors. Further to the mechanisms of the redress scheme being defined on the face of the Bill, we also expect robust and detailed practice guidance to be utilised in decision-making about redress and by the panel deciding the administration of funds. This should include the types of support available and the type of non-financial redress for individual applicants. This will ensure the redress scheme is as sensitive and accessible as possible for survivors.

Our key asks to the committee in this response are:

- the **lived experience of Care Experienced people and survivors is at the heart of the Bill's design and when developing guidance** on the operation of Redress Scotland. The design of the scheme must be survivor-led to ensure understanding of the varied impacts and lifelong consequences of abuse experienced in childhood – as both 'historic' and contemporary in its effects and as unique for each survivor.
- the **definition of abuse includes the forced separation of siblings and families and the forced migration of children.**
- the **dates used in the Bill to define 'historical abuse' should match those of the Scottish Child Abuse Inquiry's terms of reference** as a minimum.
- the **application of definitions of abuse and its impact when deciding both financial and non-financial redress for applicants are not rigidly applied categories** that erase or discount experiences of abuse for individual survivors – including the definitions of what the impact of abuse may look like (such as a limited to diagnosable mental health conditions.)
- for survivors applying to the scheme, **as much of the burden as possible on the individual to provide new copies of evidence or accounts of abuse**

**must be removed** and the process of submitting evidence or records must be linked to the evidence already held by the Scottish Child Abuse Inquiry. If a survivor has already shared difficult and traumatic life experiences in one forum, it would be unfair and potentially harmful to ask an individual to go through that again in order to access redress.

- all survivors must have **access to choice-led, free, independent, and appropriate legal advice, independent advocacy and support** to navigate the application and appeals process for redress, as they require.

Why redress matters to the Care Experienced community

A childhood spent in the care system has life altering consequences for an individual. The process of being removed from home is often a deeply traumatic experience for a Care Experienced person. The impact of their time in care is felt throughout their life and the trauma they carry from this period in their lives can be lifelong. This trauma is further exacerbated for Care Experienced people when they have experienced abuse of any kind in their childhoods. Child abuse continues to impact in adulthood, on future family and intimate relationships, as well as on the physical and mental health, education, career, and financial stability of a survivor.[2] Some survivors may tell someone about the abuse at the time it happens, whereas other survivors hold onto denial, shame, and self-blame for their entire lives without telling anyone. In many cases, abuse experienced by a survivor, and the resulting trauma, never feels 'historic' for that person, no matter how long ago the abuse took place.

It is important to recognise that each Care Experienced person that has experienced child abuse in a care setting feels the impact of their abuse, trauma, and time in care differently. Therefore, this Bill must recognise and understand the diverse individual consequences of child abuse in a care setting, without seeking to create universal categories of experiences of abuse and the possible impact felt as a result.

We know that child abuse has long featured in the history of Care Experienced people's lives in Scotland. The scale of this abuse is being investigated by the Scottish Child Abuse Inquiry (SCAI) and interim reports highlight the culture of abuse which has been present in care in Scotland since the modern-day care system was established. In our own research, we learned of the 'Sons' of Mars', the 6000 orphaned, abandoned and 'destitute' boys who were taken from across Scotland to live on the ex-warship turned training facility (the HMS Mars), which was anchored in Dundee for 60 years. Boys were forced to live under a military-style regime, which involved abusive punishment for misbehaviour including being strapped to gym-horses and being beaten with a tawse.[3] Throughout history, Children's homes and orphanages across the country have been described as places of fear and hostility, and often have enforced regimes of torture and systemic abuse towards Care

[2] APPG on Adult Survivors of Childhood Sexual Abuse (2019), *Can adult survivors of childhood sexual abuse access justice and support?,* available online: https://static1.squarespace.com/static/5c8faf788d97401af928638c/t/5cd05b45eb3931052c31b479/1557158727790/Achieving+quality+information+and+support+for+survivors.pdf

[3] Gordan Douglas, 'We'll Send Ye Tae the Mars: The Story of Dundee's Legendary Training Ship' (2008).

Experienced children.[4] In addition, Care Experienced children in Scotland were selected to be part of a 'government-induced trafficking scheme'.[5] This scheme sent children to live in former UK colonies where the culture of abuse experienced by Care Experienced people in Scotland was replicated on a larger scale and remained unchecked for a longer period of time. Children were forcibly separated from their parents, brothers and sisters, and many of them were made to endure violent corporal punishment, physical, sexual and psychological abuse and neglect.[6]

These moments in the history of Care Experienced people remind us of the stark reality of abuse experienced in Scotland's care system for over 100 years. Many Care Experienced people who experienced these examples of child abuse in care settings are no longer alive to see "the wrongs of the past"[7] addressed or to receive redress. However, this Bill will help Scotland reflect on the reality of child abuse in care settings in order to grow, learn and remember the rich and important history of Care Experienced people.

Definition of abuse in the Bill

The definition of abuse in the Bill should include the forced separation of siblings and families, which we know from our Care Experienced members has led to family relationships being unnecessarily severed, cutting off the potential for loving relationships to be present within their lives. This has been recognised already as a potential form of abuse in the official 'terms of reference' for the Scottish Abuse Inquiry (SCAI). We would expect the Bill to match the SCAI's definition of abuse as the minimum for the Redress Scheme and to be sensitive and flexible in how individual cases of abuse are considered:

> *"'Abuse' for the purpose of this Inquiry is to be taken to mean primarily physical abuse and sexual abuse, with associated psychological and emotional abuse. The Inquiry will be entitled to consider other forms of abuse at its discretion, including medical experimentation, spiritual abuse, unacceptable practices (such as deprivation of contact with siblings) and neglect."*

However, we also ask that the Bill reflect other forms of abuse in specific cases beyond SCAI's definition, such as the forced migration of children. This is a form of abuse has been named publicly by former Prime Minister Gordon Brown, who said that programs of migration amounted to 'government-induced trafficking' during an evidence session

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[4] Professor Louise Ratford (2020), *The Prevalence of Abuse in Scotland,* Scottish Child Abuse Inquiry Research, available online: https://www.childabuseinquiry.scot/media/1211/prevalence-of-abuse-in-scotland-professor-lorraine-radford.pdf

[5] https://www.itv.com/news/2017-07-20/former-pm-gordon-brown-gives-evidence-to-independent-inquiry-into-child-sexual-abuse

[6] Stephen Constantine, Et al, *Child Abuse and Scottish Children Sent Overseas through Child Migration Schemes,* Scottish Child Abuse Inquiry Research, available online: https://www.childabuseinquiry.scot/media/2520/child-abuse-and-scottish-children-sent-overseas-through-child-migration-scheme-executive-summary-june-2020-final-300620.pdf

[7] Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Policy Memorandum (August 2020).

in 2017 to the Independent Inquiry into Child Sexual Abuse, covering England and Wales.[8]

The dates used in the Bill to define 'historical abuse'

Whilst we recognise that this Bill has a specific focus on historical abuse in care settings, we also want to utilise this opportunity to draw attention to the contemporary voice of Care Experienced people who are survivors of abuse. The terms of reference of the SCAI state that, *"the Inquiry is to cover that period which is within living memory of any person who suffered such abuse, up until such date as the Chair may determine, and in any event not beyond 17 December 2014".*

We ask that the committee scrutinise why a decision has been taken to create a different timeline for the survivors seeking redress to those able to give evidence to the SCAI. The Bill's eligibility criteria that 'the abuse must have occurred before 1 December 2004' is not explained in a clear way by the Bill team and we would like to understand and challenge why a choice has been made for this cut-off date to be used.

The level of payments offered to survivors

The decision-making process to determine financial redress payments must consider experiences of abuse on a case by case basis and without inflexible categories being applied to survivors' experiences. It is important that a decision on the level of a payment does not involve Redress Scotland defining what 'counts' as abuse and what does not. If types or categories of abuse are applied rigidly in the redress process, this may impact individual's perceptions of their own experiences of abuse and trauma and cause them to question it. This is also why consideration must be given to how a decision about the level of payment is communicated to a survivor. The process must acknowledge that this may be viewed as a way of a survivor's experience being given a certain value or worth. Although it is appropriate to have differing amounts available to compensate survivors, there will always be sensitivities around calculating a form of abuse as having a specific financial value attached when deciding on the payment offered. Communication about payment decisions by Redress Scotland must be done sensitively and framed in the right way, with the input of survivors being central to getting that right.

A definition of abuse and how this is applied to specific individual's lived experiences, also needs to consider the continuing, lifelong trauma and impact of 'historic' incidents. Understanding the impact of abuse may need to be considered in the redress process when calculating levels of redress payments, when determining the appropriate form of support for a survivor and potentially to understand what non-financial form of redress is required. This process of understanding impact must go beyond identifying diagnosable mental health conditions. Survivors living with the lifelong impact of experiences of abuse may never have received a mental health diagnosis which neatly labels the impact of their experiences. As such, an inclusive, sensitive and case-by-case approach must be used to explore this in a trauma-informed way with individual survivors seeking redress.

How to ensure that non-financial redress meets the needs of survivors

[8] https://www.itv.com/news/2017-07-20/former-pm-gordon-brown-gives-evidence-to-independent-inquiry-into-child-sexual-abuse

The above points on calculating financial payments also apply to understanding the types of non-financial redress which may be required for individual survivors accessing the scheme. Non-financial redress, in the form of an apology or other measure, is extremely important for survivors. When the Minister introduced the Bill to parliament, he acknowledged that the redress process is not about apportioning blame. However, for an apology to be given, there must be a sense of accountability. The importance of this form of redress cannot be overstated, as we have heard repeatedly from our Care Experienced members about the need for apologies from the state or care providers when things go wrong.

Taken alongside any financial redress, non-financial redress may be viewed by individuals as a form of reparative justice. This also links to the fact that the redress scheme is being designed as an alternative process to individual cases of litigation by survivors, which seeks to find fault with a service, organisation or individual. If survivors are waiving their rights to seek justice through the court system for their experiences of abuse, then for those applying for redress process must feel satisfied they are achieving a sense of justice.

Non-financial redress is also potentially powerful in creating a reversal of blame for survivors about the abuse they have experienced. We understand from our experience working alongside Care Experienced people, that an individual may believe for many years that experiences of abuse were their responsibility or fault and not the responsibility of those who were in power. This links strongly with our experience of supporting individuals to give evidence to the Scottish Child Abuse Inquiry. An individual's understanding of their experiences in childhood are not static and we feel the redress process could reveal new insights for a survivor about what was or was not 'abuse' – and therefore who should be held responsible. The self-stigma of experiencing abuse heavily impacts this process and those engaging with redress may be at differing stages with their own engagement in recovery or understanding of their experiences of abuse. If non-financial redress is given which results in accountability for experiences of abuse sitting with an organisation, individual or the state, this may lead the individual to shift the blame away from themselves and contribute to how they personally understand those experiences.

It is also important that non-financial redress is given to Care Experienced people who have died and were known to have experienced abuse – especially if they do not have next of kin who could claim redress on their behalf from the scheme. At Who Cares? Scotland, we understand there are historic cases of abuse, such as those which have resulted in mass, unmarked graves. Included in the Scottish Child Abuse Inquiry is evidence of mass graves at the Smyllum Park Orphanage, where the bodies of at least 400 children are buried, and at Quarriers Village, where 115 grave markers hold the names of the 335 children buried.[9] We are only aware of these graves because of campaigns led by former residents of the two homes who discovered missing headstones and unmarked graves and wanted to ensure the children who lost their life in these institutions were not forgotten.[10] This was has been led by the In Care Abuse Survivors group, who tirelessly campaign for justice.[11] The impact of redress is

[9] https://childabuseinquiry.scot/media/1890/aps-doc-findings-final-hyperlinked-11_oct.pdf

[10] https://www.bbc.co.uk/news/uk-scotland-glasgow-west-49853718

[11] https://access-incas.co.uk/

not only about the very important process of individual survivors receiving due compensation and justice, but also about an acknowledgement of historic failings of the state care system. Redress in this way creates accountability for the abuse of those who have died, and this not only addresses and acknowledges past experiences but also sends a clear message for those living in care today that this will not be allowed to be repeated.

In addition to an apology being an important form of non-financial redress, we welcome that the Bill contains provisions in Sections 85 and 86 for 'emotional and psychological support in connection with the abuse to which the application relates.' We ask the committee to scrutinise how this offer of support will be implemented in practice and ask that there be concrete therapeutic services provided, as individual survivors require.

The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme

For applicants to the redress scheme, it is particularly important to design a process which is sensitive, accessible and flexible to the individual needs of any Care Experienced person. As an organisation, we have extensive experience supporting Care Experienced individuals to navigate bureaucratic and administrative systems in order to access financial and other supports. As a result, we understand what the barriers can be and how to avoid them when designing an application process.

**Providing evidence and records**

It is extremely important that any burden on the individual is removed as much as possible. The need to provide new copies of evidence or accounts of historical abuse should be removed. We want to see explicit detail in the guidance around the gathering of information and the process of evidencing a case of historical abuse. Individual applicants should be supported to find records and files to support their applications for redress. It can be a highly bureaucratic and difficult process for individuals to navigate accessing their public records, for example their social work files.[12] Redress Scotland must have mechanisms in place to make these requests either on behalf of applicants (with their consent) or with support from independent support organisations who understand this process.

In addition, we would like to see the types of evidence which will be accepted within redress applications to be flexible and go beyond statutory service records, such as the police – which may rely on survivors having self-reported incidents of abuse at the time they took place. If the types of evidence accepted by Redress Scotland are too narrow, this could exclude survivors from the scheme who felt unable to report or speak up about the abuse they experienced at the time – or for many individuals, for decades afterwards.

We also want to see an explicit link made between the evidence and records held by the Scottish Child Abuse Inquiry and the evidencing process for applicants seeking redress. If a Care Experienced person has already gone through the difficult process of sharing their traumatic life experiences in one forum, it would be unfair and

[12] Who Cares? Scotland has highlighted the difficulties our Care Experienced members have when trying to access their care records, this work was summarised into a report in August 2019, available on our website here: https://www.whocaresscotland.org/wp-content/uploads/2019/09/WCS-Report-Care-Records-Access-Campaign-August-2019.pdf

potentially harmful to ask an individual to go through that again in order to access the redress scheme. A formal link must be put in place for the Inquiry to share appropriate information, records and first-hand evidence from survivors, in order to create an evidence base for the consideration of a financial payment, apology or other.

**Access to legal advice, independent advocacy and other supports**

We welcome the Bill's inclusion of financial support for applicants being made available through legal aid to access free legal advice for the scheme. However, we ask the committee to make sure this Bill goes further in the concrete support offered to survivors. As an operational body, Redress Scotland must be able to go further in helping survivors to access appropriate legal advice or other support from a supportive source which meets the individual's needs.

We strongly believe support must be pro-actively made available for applicants, which is accessible and free. We know from our experience as an independent advocacy organisation, that ensuring a survivor fully understands their rights under the scheme and their ability to seek redress will be essential in ensuring their access to justice. The burden on an individual to acknowledge and speak out about a highly stigmatised, often traumatic experience of abuse and then also needing to evidence that experience through an administrative process, cannot be stressed enough.

Who Cares? Scotland believe a lifetime of Independent Advocacy should be available to Care Experienced people of any age – as we know many older Care Experienced people cannot access appropriate legal advice or independent advocacy support when they need it. Within the face of the Bill there must be an acknowledgement of the spectrum of representation that exists, including Independent Advocacy. For some survivors, it will be important to have the option for Independent Advocacy working alongside legal representation, in order to provide the right representation at the right time. This would include independent support to understand available options, rights, entitlements and someone to help navigate this complicated system of redress.

Our own experience with supporting several our Care Experienced members to give evidence to the Scottish Child Abuse Inquiry, demonstrated to us the acute need for support to understand the full implications of engaging with a formal process of investigation. The redress scheme can be viewed as a parallel formal process focusing on experiences of abuse, with complex terms of references governing the decision-making processes in order to create redress outcomes for individual applicants about some of the most challenging experiences they have lived through and may continue to be impacted by.

The case study below details an extremely challenging experience one of our Care Experienced members had when going through a 2-year application process in order to receive financial compensation from the UK-wide Criminal Injuries Compensation Authority (CICA):

*A Care Experienced individual shared their experience applying for criminal injuries compensation through CICA, related to sexual abuse they experienced in childhood and the process took them 2 years to complete. During this process, they found the criteria set to calculate the level of payments to be rigid, with no room for individual circumstances to be considered. The process was extremely harmful in how it was designed, with their experience being that their abuse was perceived by CICA as 'not serious enough' as it had to fit into certain categories of assault – which were valued at differing levels. The payment was also calculated by the frequency of the cases of*

*abuse in a set way, that did not consider the sustained impact of individual instances of abuse. The CICA criteria also scrutinised the impact the abuse had on the individual through a highly medicalised lens, in which only diagnosable mental health issues were valued as 'enough evidence' and had to be ratified by a doctor's note in order to be taken seriously and included within the application.*

*Further to this, the burden was on the individual to find their own counselling and mental health records to 'prove' they were impacted, and this went as far as having to submit evidence of attempting to complete suicide. This was an extremely distressing process and involved re-reading and re-living extremely difficult moments in their life. This was made worse when CICA came back to the individual stating that this evidence was not going to be considered in their compensation application – due to a lack of mental health diagnosis. The individual tried all avenues to find evidence for their application, including from social work and formal court records, which detailed how the consequences of their abuse led to relationship breakdowns and them being taken into state care. Yet again, this was all not considered as relevant evidence by CICA. Further to this, due to CICA stating they would need police records of the abuse being reported, the individual had to find the record of when they first reported the abuse to the police – and this involved re-reading for the first time since the incident, what had happened on that day.*

*The impact of applying for compensation in such an uncaring and bureaucratic process was significant for the individual's own sense of their mental health and impacted their journey recovering from the abuse they had experienced. It felt as if their experiences were minimised and that the reality of living with the impact of experiences of abuse was not understood in the process. They described the 2-year process of 'proving' the impact the abuse had on their life as 'demeaning and inhumane'. It even led to them feeling pressurised to re-engage with mental health services, convinced that a diagnosis was the only way the impact of their abuse could be enough for the CICA claim. This was when they realised the claim for compensation had gone too far in its impact on their own life and led them to reluctantly accept the initial offer from CICA. When the award decision came through, the only choice given was to accept or reject the offer, with no information provided about how this would impact their right to appeal in future. The communication from CICA was also almost always through letters, mostly about evidence being repeatedly rejected in the claim – with no follow-up contact or aftercare given. When calling to understand the decision, a call centre with an unknown person on the end of the phone was used to relay the information.*

The Care Experienced member who went through the CICA process has chosen to share this case study with the committee, to demonstrate the damage which can be done when an administrative scheme, which relates to survivors' experiences of abuse, is not designed in a person-centred or sensitive way. As has been detailed, this process was extremely difficult for the individual and they want to prevent others who have experienced abuse from going through anything similar. We urge the committee to understand the responsibility attached to administering a redress scheme, which asks for individuals to come forward and speak about the abuse they have been through. The redress scheme must be scrutinised to safeguard against causing further harm to applicants and the potential to re-traumatise those accessing redress needs to be understood as a severe risk – which would achieve the very opposite of the aims of this Bill.

Should you wish to discuss the contents of this briefing, please contact:

**Lucy Hughes,**

**Policy Officer**

**Education and Skills Committee**

**24th Meeting, 2020 (Session 5), Wednesday 28th October 2020**

**Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Committee Advisor Boarding out in Scotland briefing paper**

The boarding out of children in Scotland started as early as the 16th century when the *Poor Law Act of 1579* made it possible for a magistrate to place a 'beggar's bairns' with someone of the 'honest estate'.[1] While there might be provision for education and training in the 16th and 17th centuries, the emphasis was on servitude.[2] Boarding out became central to Scottish child care and distinguished it from the English system which saw the workhouse as offering greater control over children.

By the start of the 19th century, many children were 'boarded-out' from the Town's Hospital (Glasgow' poorhouse) and, in 1820, this involved over 1,000 children.[3] Such children could be indentured, and they were bound into apprenticeship or work in exchange for food and clothing. Initially, orphans and destitute children were eligible for help under the Poor Law. In 1848, it was clarified that 'the children of fit unemployed adults' could receive relief, even if their parents could not.[4]

Central to the idea of boarding out in Scotland was the separation of children from their lives in the city. The benefits of removing children from the slums to rural districts were highlighted, and the immorality of the city was contrasted with healthy environment of the countryside.[5] This included total separation from their parents.

In the 1840s, a formalised system was put in place, with parochial boards, a national Supervisory Board, and paid inspectors.[6] Although parochial boards could not be

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[1] Malcolm Hill, "Introduction: Adoption and Fostering in Scotland – Contexts and Trends," in *Shaping Childcare Practice in Scotland: Key Papers on Adoption and Fostering*, ed. Malcolm Hill (London: BAAF, 2002), 11.

[2] Thomas T. Ferguson, *The Dawn of Scottish Social Welfare: A Survey from Medieval Times to 1863* (London: Thomas Nelson and Sons Ltd, 1948), 287.

[3] Thomas Ferguson, *Children in Care – And After: A Study of a Group of Glasgow Children Who Came into the Care of the Local Authority* (London: Oxford University Press, 1966), 1. It is important to note that the term 'hospital' could be used to describe an institution for children or for pensioners.

[4] Malcolm Hill, Kathleen Murray and Judith Rankin, "The Early History of Scottish Child Welfare," *Children & Society* 5, no. 2 (1991), 186.

[5] Lynn Abrams, "Families of the Imagination: Myths of Scottish Family Life in Scottish Child Welfare Policy," *Scottish Tradition* 27, (2002), 50.

[6] Kenneth Norrie, *Legislative Background to the Treatment of Children and Young People Living Apart from their Parents: Report for the Scottish Child Abuse Inquiry* (Edinburgh: Scottish Child Abuse Inquiry, 2017), 1.

compelled to board out children, the Board of Supervision stressed the importance of family life and its cost effectiveness.[7] At first, children could only be boarded out with the consent of their parents, but increasingly there was a more interventionist approach and children were taken against their parents' wishes, for example because they were illegitimate or because the parents were 'unfit'.[8] This shift towards intervention increased in the late 19th century, led by the societies formed for the prevention of cruelty to children. This did not just mean boarding out in Scotland but also emigration abroad.[9] Children with intellectual disabilities were also boarded out with strangers in the towns or in the countryside, and girls tended to assist with the housework, sewing and knitting, while the boys tended to be employed on farms.[10]

Cases of abuse were reported and investigated, and some could lead to criminal prosecution.[11] However, a clean and healthy environment was given a high priority, and lack of cleanliness was a primary reason for removing children. In one case, for example, a child's complaint of being whipped was dismissed but the guardian was rebuked for not dealing with the girl's impetigo.[12]

At times, there was opposition to children being boarded out in country districts because of their impact on the local community. One such complaint concerned their bad influence on other children in the local school, and that they were dirty.[13] There were also complaints about the boarding out of 'imbeciles' or 'mentally defective children' in particular communities.[14]

However, the Poor Law authorities clearly recognized that the boarding out of children to rural areas was 'a mutually beneficial economic relationship with the guardians and the local community'.[15] In 1862, an inspector carried out an investigation into the 130 children boarded out on Arran, and concluded:

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[7] Ian Levitt, *Welfare and the Scottish Poor Law 1890-1948* (PhD thesis: University of Edinburgh, 1983), 8.

[8] Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes from 1845 to the Present Day* (Edinburgh: John Donald Publishers, 1998), 13. Helen, J. MacDonald, "Boarding-Out and the Scottish Poor Law, 1845-1914," *The Scottish Historical Review* LXXV, no. 200, (1996), 200.

[9] MacDonald, "Boarding-Out", 203.

[10] Lachlan McMillan, *Origins and Evolution of Special Education for Children with Intellectual Disabilities in Greater Glasgow 1862-1962*, (PhD, University of Strathclyde, 1998), 19-20.

[11] Ferguson, *Children in Care*, 7.

[12] Marjory Harper, "Boarding Out and Home and Abroad: Rescuing and Rehabilitating Scotland's Destitute Children from the 1860s to the 1960s," *Northern Scotland* 27, no. 1 (2007), 106.

[13] Ferguson, *Children in Care*, 12.

[14] McMillan, *Origins and Evolution of Special Education*, 22. Anne M. Keane, *Mental Health Policy in Scotland 1908-1960* (PhD thesis: University of Edinburgh, 1987), 44.

[15] Abrams, *Orphan Country,* 47. See also Roy Parker, "Some Early Economic Threads in the History of Children's Homes," *Scottish Journal of Residential Child Care* 16, no. 3 (2017), 9.

> …that the crofters and small farmers in Arran were not only benefited by the cash payments on their account and enabled to pay their rents more easily than they could do without them, but have also a present and prospective supply of servants and labourers whose wages are at the lowest.[16]

The boarding out of children continued to be a major part of child welfare arrangements through the first half of the 20th century. At the turn of the century, boarding out of children continued to be the normal response for children not living in their own homes and separated under the Poor Law. [17] A Royal Commission on the Poor Law and poor relief gave figures for the various type of care for children under the Poor Law in 1906

**Table 1: Care of Children under the Poor Law in 1906[18]**

| Age of children | Poorhouse | Other institutions | Boarded Out | Total |
|---|---|---|---|---|
| Under five | 750 | 27 | 315 | 1,092 |
| Five to ten | 620 | 229 | 2,000 | 2,849 |
| Ten and over | 475 | 628 | 3,637 | 4,740 |
| Total | 1,845 | 884 | 5,952 | 8,681 |

At the start of World War I, almost 90 per cent of children placed under the Poor Law were boarded out, and this proportion remained the same until 1945.[19]

It should be noted, however, that many children were placed into the care of the state under other legislation, and most of these were placed in a range of residential institutions. Over the 19th and early 20th centuries, various institutions were developed, reformatories and industrial schools, borstals, orphanages and children's homes, institutions for disabled children, Magdalene institutions and Lock hospitals, fever hospitals and sanatoria.

*The Clyde Committee*

In 1945, the Committee on Homeless Children carried out a systematic examination of the system for children in care in Scotland away from home in Scotland, and reviewed the legislative framework, the provision of residential and foster care (including provision for disabled children), inspection, standards and safeguarding of

[16] Ferguson, *Children in Care,* 9 (citing Mr Peterkin, Board of Supervision Inspector)

[17] Ferguson, *Scottish Social Welfare*, 522,

[18] Helen MacDonald, *Children Under the Care of the Scottish Poor Law, 1880-1929* (Glasgow University, PhD Thesis, 1994), 177.

[19] Abrams, "Families of the Imagination," 42.

children, and aspects of care. It examined the different types of care, including 'boarding out' with foster carers.[20]

On 15 March 1945, there were 17,607 children and young people placed in care under various legislation. Of these, 7,976 children were in foster care (45 per cent) and 9,631 children were in residential care. As noted above, most of those placed in care by the Poor Law authorities were boarded out. Of the 6,436 children placed in care under the Poor Law, 5,377 children were boarded out to foster parents or relatives (84 per cent) compared to 1,059 (16 per cent) placed in voluntary homes.

A larger proportion of children were in residential care under other government departments and legislation. This included the significant number of children in voluntary homes who were not the responsibility of any type of public authority.[21]

The Clyde Committee highlighted the variability of the support from local authorities for boarded-out children. The standard of selection of foster carers was extremely low, and instances of children being placed in homes chosen entirely at random.[22] There was variation in the amount paid to foster parents in different authorities, and in the clothing supplied for the children.[23] The Committee acknowledged that few inspection visits were carried out during the war because of difficulties of transport. However, inspection was very haphazard even before the war, and between 1931 and 1948, Glasgow Corporation only employed four inspectors for some 2,500 children boarded out across the country.[24]

The Committee stated that there had been isolated instances of cruelty to children.[25] It also commented critically on the practice of boarding out children on crofts; 'we strongly deprecate the boarding out of city children on crofts in very remote areas where they have no real contact with other children, where they have no facilities for learning a trade which is congenial to them, or where the living conditions are bad.'[26] It addressed the practice of taking children being regarded as an industry, and child labour enabling guardians to maintain their crofts, and sometimes children on crofts being overworked by their foster parents.[27]

The Clyde Committee, however, stressed the value of the family in addressing the issue of homeless children and it saw the solution in the foster care system. It

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[20] Scottish Home Department, *Report of the Committee on Homeless Children*, [*The Clyde Report*] Cmd 6911, (Edinburgh: HMSO, 1946). The Committee did not consider residential care for young offenders, such as remand homes and approved schools.
[21] Scottish Home Department, 40-1.
[22] Scottish Home Department, 16.
[23] Scottish Home Department, 7.
[24] Abrams, *Orphan Country*, 58.
[25] Scottish Home Department, 16.
[26] Scottish Home Department, 21.
[27] Scottish Home Department, 21.

recommended better selection and inspection of foster parents, along with a standard minimum rate of payment to foster parents.[28]

*The Children Act 1948 and the Boarding-Out Committee of the Advisory Council on Child Care for Scotland*

Prior to the *Children Act 1948* fostering was mainly a form of long-term substitute parenting or *de facto* adoption, with the children and young people not in contact with their parents and not expected to return to them. The new Act introduced the concept of temporary care as a service to parents and children in need. However, for a number of reasons, fostering as substitute parenting continued to predominate.[29]

In 1948, the *Boarding-Out Committee of Advisory Council on Child Care for Scotland* considered the boarding out system and recommended improvements. The Committee argued that there was no longer good reason for the practice of boarding out children in rural areas and set out the advantages of living in a town. It suggested that the transition from city to country could be unsettling and disturbing for boarded-out children. Attention was drawn to certain areas where there was excessive boarding out of children, to the extent that the number of boarded-out children exceeded the number of local children. However, it was satisfied that boarded-out children were not generally required to do excessive work, and instances of overwork were not typical.[30]

The issue of contact with parents continued to be seen as problematic as it would potentially be disruptive to children and prevent them settling down with foster parents. Wherever possible brothers and sisters should be placed together or they should be boarded-out in foster homes near to each other.[31]

This report formed the basis of the *Boarding-Out of Children Scotland Regulations 1959.* Alongside the regulations, the Scottish Home Department published the *Memorandum on the Boarding Out of Children.* In a major shift, however, the fundamental nature of the relationship between the child and their parent was stressed, and that foster parents should receive guidance on supporting regular contact where this was appropriate, particularly in short-term placements when the aim was for the child to return home.[32]

[28] Scottish Home Department, 32.
[29] John Triseliotis, "Foster Care Outcomes: A Review of Key Research Findings," *Adoption & Fostering* 13, No. 3 (1989), 5.
[30] Scottish Home Department, *Report of the Boarding-Out Committee of the Scottish Advisory Council on Child Care* (Edinburgh: His Majesty's Stationery Office, 1950),15.
[31] Scottish Home Department, 15.
[32] Scottish Home Department, *Memorandum on the Boarding Out of Children* (Edinburgh: Her Majesty's Stationery Office, 1959), 14.of c

Foster care policy increasingly highlighted the dangers of separation, the importance of continuity of care, and the maintenance of links with siblings, parents, relatives, and friends.[33] These developments conflicted with the practice of placing children at a distance in the rural areas of Scotland and on crofts. However, this did not happen quickly, and boarding out to rural areas carried on into the 1960s.

*The Glasgow Study of Children in Care*

An important study of over 200 children in care in Glasgow was carried out in the early 1960s, and throws some light on the boarding out of children during the 1940s and 1950s.[34] The children were born in the closing years of World War II and many were placed in care in the 1940s. The 205 children included in the study reached the age of 18 in the years 1961 through to 1963. Almost exactly half of the children taken into care were illegitimate, and this was considered a major factor in their being placed in care. Desertion, the illness or death of parents and child abuse and neglect were other important factors, as was poverty, and many children had 'suffered great deprivation' before being placed in care.[35]

One in six of the children (33) were placed with relatives, two-thirds (139) were boarded out with foster carers, and one in six were placed in residential care or other placements.[36] The research detailed where the children were initially placed and this showed the way in which children were sent to distant, rural areas. Of the 205 children, 42 were placed in Glasgow (20 per cent), 69 in crofting counties (34 per cent); 53 in North-eastern counties (26 per cent); 29 in South-western counties (14 per cent); and 12 in other places (6 per cent). By the time they were 18, some young people had returned to Glasgow, but over half were still living in the rural areas where they had been placed. [37]

Comparative information on the placement of children on 31 May 1961 showed the reduction in placements to the crofting communities. Forty-two per cent of boarded-out children in 1961 were in Glasgow, However, 15 per cent were in the crofting counties, 17 per cent in the north-east, 18 per cent in the south west, and eight per cent elsewhere. However, this was still a significant proportion.[38]

The education of the children was considered 'not unsatisfactory', and, reflecting the markedly different economic conditions in the 1960s, the great majority were

[33] Patricia Jane Aldgate, *Identification of Factors Influencing Children's Length of Stay in Care* (PhD thesis: University of Edinburgh, 1977), 68-72.
[34] Ferguson, *Children in Care.*
[35] Ferguson, 54.
[36] Ferguson, 51.
[37] Ferguson, 57-8.
[38] Ferguson, 56.

employed within four weeks of leaving school, and 90 per cent of the boys and 85 per cent of the girls were self-supporting at their 18th birthday.

The conclusion of the research was that 'the great majority of foster-parents have done a job, often trying, with conspicuous success.'[39] Relations between young people and foster carers tended to be positive—'in 143 cases they were recorded as 'good' and in 16 as 'fair'; only in 6 cases had all contact between foster-parent and young person reported to have been lost by their eighteenth birthday'.[40] While a quarter of the young people had lost contact with their foster carer by the age of 20, 'some 27 per cent. of the boys and 34 per cent. of the girls still continued to live with their foster-parents and many of the young people in other parts of the country and overseas still regarded their foster-home as 'home'.'[41]

*Numbers of Children Boarded Out After the Children Act 1948*

It is difficult to estimate the number of children boarded out to crofting areas and rural parts of Scotland, as Scottish Government statistics did not distinguish between different types of foster care. In 1949 there were 5,519 children in foster care and over following years the number remained fairly constant at around 6,000 children. In 1969, the number of children in foster care was 6,092.

Over this period there was a move away from boarding children out to crofting areas and distant rural parts of Scotland, and other types of foster care were developed.

*Experiences of Boarding Out*

Children and young people's experiences of boarding out differed widely. Some children thrived in their new families, while others were abused, ill-treated, exploited and neglected.[42] The separation of children from their parents and from knowledge of their backgrounds and identities, created long standing emotional issues for boarded out children. '

> Secrecy, deliberate obfuscation and lies by the authorities, ignorance on the part of carers and geographical separation placed many children in limbo in respect of their origins, identity and sense of belonging.[43]

Case studies of children born in the 1930s who were boarded out to the Highlands and Islands emphasised the long term impacts of their ambiguous status as 'foster children' and 'incomers'. Although the children had very different experiences in

[39] Ferguson, 134.
[40] Ferguson, 81.
[41] Ferguson, 134.
[42] Abrams, *Orphan Country,* 37.
[43] Lynn Abrams, "'Blood is Thicker than Water': Family, Fantasy and Identity of Scottish Foster Children," *Child Welfare and Social Action in the Nineteenth and Twentieth Centuries: International Perspectives,* Jon Lawrence and Pat Starkey (eds) (Liverpool: Liverpool University Press, 2001), 200.

foster care, their family stories revealed a type of 'foster-mentality' and they were preoccupied with the definitions of 'family' and of 'belonging'.'[44] One man boarded out on the coast of the Moray Firth between 1938 and 1949 was clear that his foster mother took children for the money, both the allowance from Glasgow Corporation and the income from sending the children out to do farm work. He recalled that they were inadequately fed and deprived of any home comforts. A car full of children would be taken from Glasgow and driven around villages and crofts where they were left with anyone who wished to take them.[45]

Adults who had been boarded out in the Islands in the 1960s had contrasting memories of their relationships with their foster families, some describing emotional coldness or clearly being treated differently to the foster parents' own children, while others saw themselves as part of the family and described their close relationships.[46] Integration into the community could be difficult and boarded-out children may be seen as different, marked out by old and ill-fitting clothing, and subject to name-calling and abuse. This difference could be particularly marked in close-knit communities bound by ties of kinship.

However, large numbers of boarded-out children stayed in their 'adopted communities' or returned later in life.[47] Four adults who had been boarded out to Tiree as children and stayed there as adults were interviewed in a study of language and identity for migrants to Gaelic-speaking communities.[48] Some recalled that they had landed on their feet, and another acknowledged that the work on the croft was hard but that he had enjoyed it. The interviewees did not report any issues in integrating with local children, even though you could tell who was boarded out because of their 'donkey jackets and tackety boots'.[49] They did say that others were not so fortunate and that for some foster parents it was just a way of making money.

Two autobiographical accounts of boarding out give markedly contrasting experiences.

Helen Tennent wrote of her very positive experience of being boarded out on a croft in Inverness-shire,[50] and summed up her experience as follows.

> This then was our new home. Not bristling with modern, uncomfortable furniture, nor filled with the recognised status symbols of the day, but a house

[44] Abrams, "Blood is Thicker than Water," 211.
[45] Abrams, 57.
[46] Abrams, 60-2.
[47] Abrams, 66.
[48] Cassie Smith-Christmas, *Experiences of Children who were 'Boarded-Out' to Tiree*, (Personal Communication, 2013).
[49] Smith-Christmas, *Experiences of Children,* 1.
[50] Helen Tennent, *I Belonged to Glasgow (A Journey Through Care)* (Edinburgh: Deantag Press, 2007).

> glowing with warmth and a promise of love. Within these thick stone walls Meg and I were to be given as fine a home as one could ever hope for.

Helen described her surprise at the lack of electricity, the outhouse, the large zinc tub for washing. She talks of the work involved on the croft, carrying water and fuel, picking raspberries and gathering in and stacking the corn and the hay. However, she talks of these positively, meeting neighbours and friends through the work.

> All was not work that summer. Play took up the major part of the holidays. After the chores were finished, Meg and I would separate and make for our own hallowed spots.

The children received a year's supply of clothing from Glasgow Corporation at the start of the school year.

> All our needs had been catered for—coats, winter dresses, summer dresses gym slips, blouses, jerseys, cardigans, underwear, nightwear, footwear and even beautiful patterned handkerchiefs.

Helen discussed the well-rounded education she received in the local primary school and the encouragement she received.

> If I had any illusions that my schooling here would be inferior, these were soon put to flight. Under the ever-alert gaze of the marvellous Miss Nicholson, I was put through my paces at a rate I have never experienced since, and it came thick and fast.

Helen stayed in the foster placement on the croft for four years until she moved to another foster placement in Inverness to attend Inverness Academy. While Helen paints an idyllic picture of her stay, she recognises that not all were as lucky, and recounts her foster father's impatience with the Corporation inspectors.

> He had always resented visiting officials taking the lids off the pans on our stove to see what was inside, particularly as there were fostered children not far from Culantyre whose harsh living conditions were apparent to everyone except the visiting officials.

As Helen was leaving for Inverness, three other children were fostered with Willie and Jeannie at Culantyre.

> Jeannie who had cared for me would now do the same for the three children at her table. They had nothing to fear. Here they would be safe.

However, Josephine Duthie's autobiographical account of her experiences in foster care in the 1950s and 1960s threw a spotlight on some of the worst excesses of the

boarding-out system in Scotland.[51]This was not only in terms of the abuse and neglect experienced by Josephine and her siblings but in the professional denial that such a thing could have happened when Josephine reported the abuse to social workers.

In 1956, Josephine and her two brothers were placed with 'Auntie' on a croft in Coxton, Moray. In this strange place, their welcome was cold and scary. The children were worked to exhaustion and tried to obey the stringent rules but were punished for any transgression. The children were joined by their youngest sister, now aged three. However, after a brief respite, the beatings, humiliation, verbal and emotional abuse continued along with punishments such as being locked in a cramped, dark cupboard, or their foster mother 'would ritually grab our hair, twisting and pulling it as she shouted and screamed into our faces.' Later, Josephine's brothers could be locked in their room for up to three days without food or water. The children often went hungry. Josephine described the relief of being away from the croft and 'Auntie'; her time at school or snatched moments either by herself or with her brothers and sister. She tells of how 'Auntie' manipulated visitors and inspectors and 'never failed to pull the wool over their eyes.'

Josephine finally escaped the foster placement in 1966, shortly before her 18th birthday, when she took up nursing training in Aberdeen. Her attempts to rescue her brothers and sisters by reporting their abuse to the child care authorities came to nothing, as the official who spoke to her and then visited the placement put the blame on Josephine as a troublemaker. Her brothers and sister often ran away and were returned to the croft by the police, and they were also seen as troublemakers until, eventually, they too escaped. However, all bore the scars of their years of abuse, and that they never saw their parents or relatives again was an 'utmost sin'.

Andrew Kendrick

October 2020

[51] Josephine Duthie, *Say Nothing: The Harrowing Truth About Auntie's Children* (Edinburgh: Mainstream Publishing, 2012).