



## Former Boys and Girls Abused in Quarriers Homes

Email: [fbga1@aol.com](mailto:fbga1@aol.com)

[www.fbga.co.uk](http://www.fbga.co.uk)

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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 13<sup>th</sup> 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 minimized 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.

## FBGA (of Quarriers Homes)

- 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 17<sup>th</sup> 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 17<sup>th</sup> 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 17<sup>th</sup> 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 publically 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 publically 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 payments 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 3<sup>rd</sup> 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.

**: END:**