OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

# Education and Skills Committee

**Wednesday 28 October 2020**

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

# Wednesday 28 October 2020

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## EDUCATION AND SKILLS COMMITTEE
**24th Meeting 2020, Session 5**

**CONVENER**

*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

*Daniel Johnson (Edinburgh Southern) (Lab)

**COMMITTEE MEMBERS**

*George Adam (Paisley) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Iain Gray (East Lothian) (Lab)
*Jamie Greene (West Scotland) (Con)
*Ross Greer (West Scotland) (Green)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Harry Aitken (Former Boys and Girls Abused in Quarriers Homes)
Simon Collins (In Care Abuse Survivors)
Flora Henderson (Future Pathways)
Helen Holland (In Care Abuse Survivors)
Tom McNamara (Scottish Government)
Maree Todd (Minister for Children and Young People)
David Whelan (Former Boys and Girls Abused in Quarriers Homes)

**CLERK TO THE COMMITTEE**

Gary Cocker

**LOCATION**

Virtual Meeting

# Scottish Parliament

## Education and Skills Committee

*Wednesday 28 October 2020*

*[The Convener opened the meeting at 11:01]*

## Decision on Taking Business in Private

**The Convener (Clare Adamson):** Good morning, and welcome to the 24th meeting of the Education and Skills Committee in 2020. I remind everyone to turn off their mobile phones for the duration of the meeting.

Agenda item 1 is a decision on whether to take item 6 in private. As no members object, we agree to take item 6 in private.

The next agenda item was to be a declaration of interests. I understand that George Adam has some technical difficulties, so, if members are content to do so, we will return to the item after our next agenda item.

## Subordinate Legislation

### Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 [Draft]

11:02

**The Convener:** Agenda item 3 is consideration of draft subordinate legislation that is subject to affirmative procedure. Consideration has two parts; first, the committee will have the opportunity to ask questions of the minister, then we will turn to the formal debate on the motion.

I welcome Maree Todd, the Minister for Children and Young People, and Tom McNamara, who is head of youth justice and children's hearings at the Scottish Government. I invite the minister to make an opening statement.

**The Minister for Children and Young People (Maree Todd):** Thank you for the opportunity to introduce the draft instrument. The Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 make provision concerning children's advocacy services under section 122 of the Children's Hearings (Scotland) Act 2011. Section 122(2) includes a requirement on the

"chairing member of a children's hearing to inform the child of the availability of children's advocacy services"

unless

"the chairing member considers that it would not be appropriate to do so."

Section 122(7) defines children's advocacy services 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",

so, it is specifically about advocacy for children who are referred to hearings.

Section 122(4) contains a regulation-making power allowing the

"Scottish Ministers to make regulations for or in connection with—

(a) the provision of children's advocacy services."

The objective of the draft regulations is to ensure that the right support is available for children and young people, and that the arrangements for providing children's advocacy are effective. The draft regulations set out the qualifications that are to be held by persons who provide children's advocacy services and the training that they are required to undertake.

The regulations also make provision regarding payment of expenses, fees and allowances by the Scottish ministers.

The primary role of children's advocacy is to support children and young people to express their own needs and views and to make sure that their rights are respected. That will support decision makers to make informed decisions on issues that influence children's lives, when those issues are considered in children's hearings.

If they are passed, the regulations will apply where the Scottish ministers have entered into arrangements with a service provider, under section 122(5) of the 2011 act, for provision of children's advocacy services.

Persons will be qualified to act as advocacy workers in children's hearings under the scheme only when they have completed training and qualifications in accordance with the regulations. Under regulation 4(2), the Scottish ministers must provide or arrange that training and qualification for current and potential child advocacy workers.

Regulation 5 specifies the matters on which training must be provided, including the legislation that is relevant to children's hearings, possible outcomes of hearings, rights of children and young people, and the roles and functions of the child advocacy worker and other key children's hearings actors.

Section 122(5) of the 2011 act enables the Scottish ministers to enter into agreements—contractual or otherwise—with any person other than a local authority, Children's Hearings Scotland or the Scottish Children's Reporter Administration for children's advocacy services.

Following careful evaluation of expressions of interest last year, grant funding was offered to 10 third-sector providers. In combination, they will offer Scotland-wide coverage to children. The use of third-sector providers ensures the independence of new services from the named public bodies. That allows grant funding to be made to providers, and one-off payments for expenses, fees and allowances to child advocacy workers, where appropriate.

Provisions under regulation 7 mean that the Scottish ministers can consent to continuation of pre-existing advocacy relationships at the point of commencement of the regulations. That will offer an element of choice to children and young people as to who may provide advocacy in their hearings.

We will consider all evidence that emerges from the new services and we will explore how best to support children and young people who come to hearings.

Working collaboratively with stakeholders, our efforts have ensured that the services are ready—they are already operating informally—to support children and young people.

**The Convener:** Does anyone have any questions for the minister?

**Jamie Greene (West Scotland) (Con):** I have read through the documents and have a few questions, the first of which is about consultation and engagement on the regulations. The committee papers say that no formal consultation was carried out, but that there was engagement with relevant stakeholders. Why was it decided not to have a formal consultation for the affirmative procedure? Who was consulted, how were they consulted and what was the feedback?

**Maree Todd:** We have an expert reference group that consists of stakeholders who helped us to develop the regulations and who have connections with a variety of organisations in the sector. We felt that that covered appropriately what was required.

One of the criticisms of the situation that we are in is how long it has taken to develop the advocacy service. The service has been robustly scrutinised all the way through development. There have been a number of pilots and opportunities for people to raise questions. Although that has taken time, it has enabled us to hit the ground running with a system that we know will work, and with which the vast majority of people are comfortable.

**Jamie Greene:** That is very reassuring.

The policy note for the regulations states that their purpose is to

"set out, amongst other things, the qualifications to be held by persons providing children's advocacy services and the training they require to undertake."

The obvious question is whether the regulations will prohibit anyone who currently provides advocacy, either because they are not qualified or because they have not received the necessary training. What will they have to do to qualify? What support will the Government give individuals or organisations who currently provide advocacy, but might not be able to continue to do so because of the prescriptive list of qualifications and training that they must now undertake as a consequence of the regulations?

**Maree Todd:** A bespoke course on making advocacy real in modernised hearings goes along with the regulations. The bulk of people who are operating will achieve the qualifications easily. About 60 to 90 people already offer advocacy in the system and about the same number—more than 70—completed the course over the summer. The qualifications will not be a barrier to people who are operating in the system, and the evidence is that over the summer we vastly increased—

almost doubled—the number of people who can work in the system.

**Jamie Greene:** That is equally reassuring.

**The Convener:** Ms Wishart is the last member who wants to ask a question.

**Beatrice Wishart (Shetland Islands) (LD):** My question was about consultation, and the minister answered it in responding to Jamie Greene.

**The Convener:** That concludes questions from members.

Agenda item 4 is the formal debate on motion S5M-22706.

*Motion moved,*

That the Education and Skills Committee recommends that the Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 [draft] be approved.—[*Maree Todd*]

**The Convener:** No members have indicated that they want to speak. I apologise for my phone ringing—I do not know whether people heard it.

The question is, that motion S5M-22706 be agreed to.

*Motion agreed to.*

**The Convener:** I thank the minister and her official for attending the meeting.

# Interests

11:12

**The Convener:** We go back to item 2. I welcome George Adam as a returning member of the committee. Does he have any interests to declare?

**George Adam (Paisley) (SNP):** I am sorry that I was a wee bit late. That is not a very good start.

I have absolutely nothing to declare in relation to the committee. Anyone who wants to check can see my entry in the register of interests, which is published on the Parliament's website.

# Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Stage 1

11:12

**The Convener:** Item 5 is an evidence session on the bill from organisations that work directly with survivors. I welcome David Whelan and Harry Aitken from Former Boys and Girls Abused in Quarriers Homes; Flora Henderson from Future Pathways; and Helen Holland and Simon Collins from In Care Survivors Service Scotland—INCAS. I invite the witnesses to tell us a little about their organisations.

**David Whelan (Former Boys and Girls Abused in Quarriers Homes):** Thank you for inviting us. We are a campaign group. We set up officially in 2005 and campaigned for a couple of years before that. We have been involved in the issues in the bill since 2002. Initially, our members were elderly. We do not keep a member registration list, but we have an informal group that we continue to consult across the board. There are former residents from different generations in Quarriers—[*Inaudible*.]—consult migrant children in Canada and Australia when we put together a policy.

Over the years, we have tried to represent the best interests of former Quarriers residents, but our ethos is to ensure that anything that is set up is for all survivors.

The end of the work should result in reconciliation for all parties and, for us, that is about reconciling the issues with Quarriers. On that basis, we have engaged with senior management at Quarriers over a number of years, and we are in discussions with Quarriers on the issues that it or we might have in relation to the bill, in order to try to find common ground.

11:15

**The Convener:** Does Mr Aitken want to add anything to that?

**Harry Aitken (Former Boys and Girls Abused in Quarriers Homes):** I do not need to; David Whelan has covered what we do quite well.

**The Convener:** I ask Flora Henderson to go next, on behalf of Future Pathways.

**Flora Henderson (Future Pathways):** Thank you very much for having me.

Future Pathways is Scotland's in-care survivor support fund. We were set up by the Scottish Government in 2016. We are overseen by an alliance leadership team that includes alliance partners, the Scottish Government and survivor representatives. Our alliance partners include Health in Mind, the Mental Health Foundation, Penumbra and the Glasgow health and social care partnership, in relation to the Glasgow psychological trauma service.

We are a needs-led service, and we exist to help people who have experienced childhood abuse or neglect in care to live healthier, more fulfilled and independent lives.

The response has been significant. More than 1,600 people are now registered with Future Pathways, and we have directly worked with 1,200 people. We work with people of all ages, from 18 to 89. Most of those people live in Scotland, but smaller numbers live across the United Kingdom and oversees.

We were developed to be a person-centred service, in appreciation of the fact that the impact of abuse can be wide ranging and lifelong. We have found that individual support needs vary considerably.

We have had plenty of experience of supporting people through the Scottish child abuse inquiry and other difficult processes, such as civil actions, and work in anticipation of the redress bill, which is now before you.

**The Convener:** I invite Helen Holland to go next, on behalf of INCAS.

**Helen Holland (In Care Abuse Survivors):** Good morning. First and foremost, I highlight that INCAS stands for In Care Abuse Survivors, not In Care Survivors Scotland as the agenda states, but that is absolutely fine.

INCAS started in 1998, but it was formally formed in 2000. We have been involved from the very beginning. Initially, we just offered support to survivors, and then we had to go on the campaign trail to try to raise the issue of in-care abuse in the Scottish Parliament.

We have very much been involved in the process from the very beginning, through a petition that was lodged in Parliament. The Public Petitions Committee considered the petition, then there was a debate in the chamber, so we have been involved throughout the whole process.

We are a non-funded organisation. Hundreds of survivors are registered with us. We try to offer concise and accurate factual information to survivors because, for me, that is the most important thing. I have engaged with the Government on many occasions through every process.

We were also involved in the consultation on the bill. At that point, we asked the Scottish Government to make the consultation clearer

because, initially, there was misunderstanding among survivors. Some people were struggling with the questions, so the Scottish Government said that it was prepared to come out and speak to groups of survivors, and offered to speak to groups and agencies that were representing survivors. INCAS took up that offer and held three meetings in Glasgow, two in Aberdeen, one in Perth and one in Dundee. We tried to go across the country to ensure that survivors understood the consultation, and to encourage as many survivors as possible to engage with it.

I am pleased to be here this morning and will be able to answer questions as they arise.

**The Convener:** Thank you. I apologise—my script is wrong. We will ensure that we get the name right in the future.

Would Simon Collins like to add anything?

**Simon Collins (In Care Abuse Survivors):** Since 2014, I have been the legal adviser for INCAS in relation to lobbying and preparing for the child abuse inquiry. I represented INCAS at the inquiry, but I have also done work on redress.

For the past six years I have had the pleasure of working alongside Helen and the INCAS committee to help them. I have observed the work that Helen, David, Harry and other survivors do so selflessly to promote appropriate redress for and recognition of survivors of abuse.

**The Convener:** Thank you. We had an informal session with survivors this morning, which brought to the fore some interesting lines of thought that I am sure that the committee will pick up on. One of the themes was non-financial redress and apologies. In the spirit of David Whelan's comments about reconciliation, I ask my colleague Ms Wishart to speak.

**Beatrice Wishart:** I want to ask about the public apology process. What are your views on the value of a public apology to survivors and what form might such an apology take?

**The Convener:** I will go to the representatives of Former Boys and Girls Abused of Quarriers homes.

**David Whelan:** It is up to the individual survivor. It has to be person centred. We have an apology law, which FBGA helped to get enacted, which enables the organisations to make an apology without fear of liability. We also believe that the organisations have a role to play in the non-financial redress process. Quarriers has an aftercare service. My understanding from the chief executive, Ron Culley, is that Quarriers has put substantial financial resource into that to address some of the historical abuse issues, to help survivors access records and to support relatives to locate families and so on. The terms of non-financial redress are very important.

It is really up to the individual survivor but, for me, a meaningful apology made directly to the individual from the organisation would be one of the most powerful and important things.

**The Convener:** Do you want to come in, Harry?

**Harry Aitken:** Good morning, Clare—I am sorry that I did not say that earlier. It is nice to see your smiling face.

I endorse what David Whelan has said. Recently, Professor Prue Vines visited Scotland from Australia to tell the people of Scotland how the apology in Australia had been managed. She ran a seminar and it was packed to the gunwales. The two things that I came away with were that any apology had to be meaningful and delivered at the right level of the organisation or Government and that it had to be validated. The apology must be made to a survivor with validation that authenticates it and shows that it has been done at the right level. The suggested level is the chief executive or chairman of the organisation. In the Government, it should be at the level of the First Minister. The First Minister already knows many of us and has worked with us, so I am sure that she would be quite happy to do that.

An apology has so much meaning to survivors. In some cases, if there were no redress scheme, the apology would be sufficient. We know from the people we deal with that it means a great deal to the survivor and to the family.

**Flora Henderson:** Future Pathways will not feel able to represent survivors directly on that matter, simply because we are aware that survivors will have a range of views about what is appropriate for them. We exist to be able to help irrespective of each person's views on redress.

**Helen Holland:** An apology is very much about what makes sense to an individual. For some survivors, an apology is far too little, far too late. The damage has already been done and, sadly, a lot of survivors carry resentment and anger about what has happened to them. They have still not been able to process it and they are still dealing with the trauma. Their attitude is therefore that they do not want an apology. I am simply being up-front about the various views that our members have given.

There are other members for whom an apology is the most sacred thing that could come out of this, because it would acknowledge the abuse that took place and because it would be an apology not only from the Government but also—in some respects, even more so—from the care providers themselves. It cannot be simply a tokenistic

apology; if it is a tokenistic apology, it will create more damage.

It very much depends on what the individual is looking for from an apology. It would be wrong for me to answer that question on behalf of survivors. If, however, you asked me to answer based on what it means to me, as a survivor myself, I would be able to give you a personal view.

For me, an apology needs to come from the Government in relation to why legislation was not followed, why all that abuse was allowed to take place in those institutions, why nobody followed it through, why social workers were not following up with the children and why children were locked up and forgotten about. To me as a survivor, that is what it felt like. The doors to those institutions were locked. We were not prisoners, but we had absolutely no rights and nobody bothered to ask us what was happening in those places. If anybody tried to tell somebody what was happening, they were accused of lying. There is a lot there.

Many years ago, I received an apology from an individual from the organisation that I was in, and I accepted that as a heartfelt apology at the time. However, to be totally honest, sadly, things that have happened since then have tarnished it a bit. I would like to try and hold on to my initial response to that apology rather than the tarnishing of it.

The apology is a difficult issue, because it very much comes down to the individual. The whole redress scheme is about individuals, their experience and what is meaningful for them. The only person who can say what is meaningful for them is the individual survivor.

**Simon Collins:** It is difficult for me to add to the views of or to speak on behalf of those who are survivors. I endorse what Helen Holland said in that, in many ways, it has to be a very personal matter.

What INCAS has been asking for by way of an apology is nothing new. Before the then First Minister's apology—such as it was—in 2004, there was consultation on the terms of the petition that was lodged by Chris Daly. At that point, INCAS made clear that the apology that was being sought had to be sincere and heartfelt and it had to be delivered on behalf of the state and those responsible.

It is such a personal issue that it is hard to gauge what an apology might mean to the individual survivors. The committee has heard a range of views expressed on that. What an apology would be required to be was made clear by INCAS as far back as 2004, when the consultation was undertaken. It is no secret that an apology must be heartfelt, sincere and delivered on behalf of those who are responsible. Unfortunately, I am not sure that that was the result that came out of the consultation in 2004—in fact, I know that it was not—but the views of INCAS have been clear for some time.

11:30

**The Convener:** I want to ask whether the provisions in the bill for support for applicants are adequate. I am talking not about legal support but about emotional support and any other kind of support that might be required. I am not looking for detailed answers at this point

**David Whelan:** The short answer is that I think that the Government has put in the right support; we will not know whether it is the right level of support until we know what each individual requires. However, we are pleased that the bill covers counselling and trauma support.

**Harry Aitken:** I agree with David Whelan. The Scottish Government redress scheme support teams are already showing their mettle. We know that that will continue when the scheme is up and running.

The support teams from the Scottish child abuse inquiry have been extremely helpful. If the redress scheme teams can be of the same quality, that would be wonderful for the survivors.

On the matter of support, it is surprising that support groups are being set up by survivors themselves. There is the FBGA and INCAS, and there is also a group called Safe. We heard recently that a lady up in Aberdeen has started a group of more than 20 people, some of whom were in foster care. Most of us have contributed in some way to initiatives that have been started by survivors.

**Flora Henderson:** We would echo the importance of making support available early to any individual who is considering participating in the scheme. Future Pathways has learned that many people can underestimate the personal impact of participating, so it is important not only that the support is made available as early as possible but that people have choices. Although individual support needs may differ, the theme that we would draw out, based on our experience of working with 1,200 people, is that psychological assessment and support is important. Out of the 1,200 participants, 493 people have accessed that from Future Pathways.

Counselling is also very important, and 518 people have accessed that. We work with 40 professionals and organisations. I say that to highlight how important it is for people to be able to choose what support they require, and for the support provider to do all that they can to ensure that people get the support that they need.

Finally, we should not forget the importance of practical support. That might be about managing the practicalities of the application procedure or interpreting what can be quite large amounts of information. People might need support through the whole process.

It would be remiss of me not to mention the importance of access to records. It is not only about accessing information from institutions and authorities; it is about the availability of emotional support alongside that, and the sincere and authentic involvement of social work, or the institutions themselves, so that the information is provided in the best possible way. Too often, people do not know what information is held and when they can access it. Sometimes, after long periods, they find that no information is available. That information is crucial for people who seek to proceed through the process.

Support will be required for the organisations that have shepherded people through the process and for the local authorities and institutions that should be providing the information in a way that is timely and easier to make sense of. We must appreciate that we are talking about people's lives, so the issue is hugely significant not only for redress but for someone's identity and understanding of their life.

**Helen Holland:** Support must come at two levels. There are two different types of support: life support and support through the redress process, which is a different thing entirely. I think that the support through the redress process should be equivalent to the support that is available to survivors through the inquiry process. I can honestly say that, despite the inquiry process being difficult for survivors, I have not had any survivor complain about the support that they have received from the support team as they went through it.

However, that relates only to the process of giving evidence for the inquiry. An independent support mechanism that is set up to take survivors through the redress process is totally different from the on-going support in their life—that is a different level of support altogether. However, those things are of equal importance.

The redress process will be more difficult for some than it will be for others. If we take the legal side out of it altogether and just deal with the emotional side, the exact same issues applied in relation to the inquiry process. I cannot think of anything more emotional than giving evidence to the Scottish child abuse inquiry. I gave evidence to it, so I know the emotional impact that it had on me, and I consider myself to be a particularly strong survivor. Support was available for every single step of that process, and that same level of support for survivors needs to be in place for the redress scheme.

The support must be independent, because there are so many views out there—this has been going on for far too long; for 20 years, people have been influencing survivors. A lot of things are going on now, which we will probably talk about as they come up.

The reality is that the process needs to be done in a way that is in the best interests of the survivor, not those of an organisation, a group, a survivor group or anything like that. The survivor must get the best possible information, and that information must be clear. There must be no pressure on them whatsoever, pushing them in one direction or another. They have to know that they are getting all the support that is required to go through the process, for however long it takes.

**Simon Collins:** I do not think that there is anything that I would seek to add, other than to echo that, although the child abuse inquiry and the redress scheme are totally independent of each other, there are such similarities not only in the people they are dealing with—the survivors—and their needs but in the work that they are looking at. There is the opportunity to learn from the experiences of the SCA inquiry.

For what it is worth, my observation is that the inquiry has put together a strong and effective support package. That may not be everyone's experience, but that has been given to me throughout the inquiry. If you are looking for a model on how to provide support, that is a good example.

**The Convener:** I will move to the issues of waivers and fair and meaningful contributions. Two colleagues, Mr Gray and Mr Neil, have indicated that they want to come in on those issues.

**David Whelan:** Sorry, convener, I wanted to—

**The Convener:** Sorry, David—I missed you. You had highlighted that you wanted to come back in.

**David Whelan:** I agree with Helen Holland. Survivors have their own independent support mechanisms. We are not a support group, so we always refer survivors to the agencies, or wherever. For us, it is about the survivor being able to choose; some survivors are accessing qualified professionals and getting counselling and so on and we would want that to continue if that was that survivor's choice and for the redress scheme to endorse that.

The model that the child abuse inquiry is using in relation to dealing with trauma and dealing with applicants and victims is exemplary; I went through it and, as Helen Holland said, we may be

considered strong survivors, but the trauma that we endured is lifelong and it is very difficult even for someone like me. The support that I had through the child abuse inquiry was exemplary, and I have had feedback from other former residents of Quarriers who say the same thing, so it would be helpful to base something on that model.

**The Convener:** If committee members want to come in on other areas, it would be helpful if they could indicate that in the chat function. Iain Gray has a question on the area of waivers and fair and meaningful contributions.

**Iain Gray (East Lothian) (Lab):** Colleagues will know that the bill contains a requirement for those who access the redress scheme to sign a waiver that they will give up their right to pursue a civil claim, and the Scottish Government has argued that that is necessary to incentivise the contribution to the redress fund from organisations that were responsible for the care of survivors in the past. Does the panel believe that that is desirable, necessary or acceptable?

**David Whelan:** Mr Gray, I noticed that you spoke in one of the first evidence sessions to Joanne McMeeking. In the 2017—[*Inaudible*.]

**The Convener:** We have lost Mr Whelan at the moment.

**David Whelan:** [*Inaudible*.]—consultation there was no mention of a waiver—[*Inaudible*.]

**The Convener:** David, I apologise, I have to interrupt—can I stop you there? Can broadcasting mute Mr Whelan? Mr Whelan, we cannot hear your contribution at all at the moment. The clerks will speak to broadcasting colleagues to see whether we can get you back on a better connection. We will let them do that in the background. Does Mr Aitken want to come in on the issue of the waiver and Iain Gray's question?

**Harry Aitken:** The first thing to say regarding the waiver—

**David Whelan:** I think I lost you there.

**The Convener:** Mr Aitken, can you continue? We will try to sort out Mr Whelan's connection.

**Harry Aitken:** I was just about to say that, in line with the European report, it is not acceptable that any Government should demand that a survivor or a citizen should sign away their rights—in fact, it should be the duty and obligation of a Government to protect citizens' rights. We know that there are other ways of going through the redress process—for example, offsetting has been put forward by a number of people, and David Whelan has put forward suggestions to the interaction review group. I think that you have a copy of that.

However, one anomaly—it is probably stronger than an anomaly—involves the difficulty that has arisen with pre-1964 category applicants to the redress scheme. Since the Limitations (Childhood Abuse) (Scotland) Act 2017 came into force, many survivors have an unobstructed path to accessing justice. However, the application of the law on prescription denies pre-1964 survivors access to the civil courts. As a result, the proposed redress scheme does not meet either their needs or their expectations. To compensate those survivors for that deficiency, and to comply with all elements of the Scottish Human Rights Commission's framework, the Scottish Government should give careful consideration to effectively rebalancing that discrepancy.

From the perspective of the number of submissions made to the committee, the issue is whether there is a groundswell of overwhelming non-support for the waiver. That is an indicator of how widely that is felt in the community.

11:45

**Flora Henderson:** Again, Future Pathways will not feel able to represent survivor views directly, simply because they are varied and we are governed in partnership with the Government.

**Helen Holland:** To be honest, my initial response to the waiver was that it would protect abusers more than survivors.

The other reality is that, even if a survivor were to go down the civil court route, once an agreement had been made and they had agreed that it was of the right level or amount for them, they would sign something at the end of that process. So, even within the redress process, survivors should not be asked to sign anything up front. In Northern Ireland, survivors are asked to sign a waiver before the process even starts. At least in Scotland we are saying—and will continue to say—that no waiver should be signed until a survivor has been given 100 per cent of the information that they require to enable them to make a decision on whether the redress payment that they have been offered is correct for them and they feel that they are happy with it. Only when someone feels that it is the right choice for them should they sign a waiver.

As for saying that the scheme denies survivors the option of going down the civil courts route, the reality is that the time bar has been lifted since 2017. If a survivor had the body of evidence required to enable them to go down that route, the process should already have been started.

The situation for survivors is difficult. I know that some of them will be listening to this meeting, which is why I am trying to make my point clear. The reality is that there are choices. I hear people

saying that survivors are being denied their rights. However, at this moment in time, they are not. No waiver will be signed until a survivor agrees that doing so is the right thing for them, at which point they will also be given legal advice.

It is true that there is an element in the waiver that protects care providers in relation to contributions. Perhaps some amendment could be made to that. If a care provider signs a waiver and then, further down the line, decides that it is not going to comply anyway, that waiver should be null and void and the survivor should have the right to pursue the provider elsewhere. There needs to be a clear definition of what is covered by the waiver.

**The Convener:** Mr Collins, do you want to come in? [*Interruption*.]

Please allow a wee bit of time. The delay is just because our broadcasting team has to catch up with us. It should be fine now.

**Simon Collins:** I have read a lot of the contributions from other firms of solicitors and the legal views that have been expressed by the Scottish Human Rights Commission. My reaction from a legal point of view—it is also my natural reaction—is to be entirely opposed to the waiver. However, I have to recognise that I represent the interests of INCAS. The committee has also heard Helen Holland's view, which in many ways is a pragmatic one.

A couple of things need to be borne in mind. The first thing that struck me when reading the Scottish Parliament information centre briefing document for today's meeting was that, on page 2, there is a suggestion that

"Applicants will have to choose between redress and civil actions".

That suggests that there is simply a choice of one of two means, but that is not the case. Applicants would choose whether they were simply electing to accept a payment, but they would have to go beyond that—they would have to waive and give up a fundamental right to further action. Therefore, it should never be seen as just a choice. If there was no requirement for a waiver, there would be a straight choice.

The second point that the committee should bear in mind when considering such matters relates to something that was raised, if I remember rightly, in Digby Brown's submission. There might be little or no possibility for civil action at the time at which a waiver is signed. There might not be the evidence, but times can change.

Someone might make a decision based on the fact that, at the time, they stand alone in claiming that they were abused in a particular setting and have no support. Throughout their life, since they were abused as a child, they have been alone and without support, so they might elect, properly and appropriately on the advice that is given, to go down the route of redress. However, a year later, or five years later, someone else might come forward and, all of a sudden, access to the civil courts would be opened, but that person would have signed a waiver that would prevent them from going forward. That might also impact on the other party who had not signed a waiver, because they would not have the support of the previous survivor. Such eventualities are unknown.

The committee needs to bear in mind that the bill provides for error within the payments and determination. In chapter 5 of the bill, section 71 envisages that there might be situations in which, despite the best intentions, a fundamental error is made in making a decision on redress that results in that decision being considered to be inappropriate and having to be revisited.

If the Parliament recognises that there can be error among professionals who are involved in the service, it must also recognise that there might be error on the part of a survivor who makes a decision that they later regret. The difference is that, when an error is made in the redress process, it can be corrected under section 71. When matters come to light later on that result in a survivor thinking that they were wrong to sign a waiver, there is no way back.

I am very anxious to address other issues around the waiver, such as the implication of section 89(3) in relation to the level of advice that is given to survivors and when that is given, and the position when a contributor is in default. I do not know whether those issues need to be addressed at this point, because the question that we were asked was about the waiver in general terms. I am happy to leave it at that just now, but I wish to come back to those other issues in due course.

**The Convener:** A few other members would like to ask questions now. If those issues are not covered, we will come back to you at some point.

Mr Whelan wants to come back in. I am sorry about the connection issues.

**David Whelan:** No problem. I apologise—I think that I got disconnected.

Our understanding is that legal advice is not being provided on whether to accept the waiver. We think that that is a crucial point. Our current position is that we are not in favour of the waiver. We support the offsetting proposal from the Scottish Human Rights Commission.

Somebody who was involved in the redress process and received, for example, £40,000 from redress Scotland could go down a civil route.

However, if redress Scotland had paid someone, out-of-court settlements, court-awarded damages, payments from criminal injuries, payments from advance payment schemes and other ex gratia payments could all be deducted from the civil court process. We are taking away a right, which is choice. It should not be one or the other. The Scottish Government changed the time-bar law because it was wrong, but we are now putting into legislation something that will tell survivors that they cannot go down a certain route. Why was the time-bar law changed if people did not want us to take up the process?

**The Convener:** If Mr Gray has finished his questions, I will bring in Mr Neil.

**Alex Neil (Airdrie and Shotts) (SNP):** Can we address that issue? The purpose of the waiver provision is to incentivise the offending institutions—if I can put it in that way—to cough up money as part of what they should be doing to account for past errors. Would taking away the waiver provision lead to those organisations making no contribution? Should the bill make their contributions compulsory rather than try to incentivise the institutions that got things badly wrong in the past?

**The Convener:** Does Mr Whelan want to go first? I am just calling witnesses in the order that I introduced them in.

**David Whelan:** The current organisation cannot be allowed to fail on the back of past wrongs. The organisation's financial position needs to be considered, as does the delivery of services now and in the future. We have campaigned for the protection of children in the future. If organisations genuinely cannot contribute a substantial amount, an equitable solution must be found. As I said, organisations such as Quarriers have a good and substantial aftercare service. Should that be taken into consideration as part of redress? We have met Quarriers and it has told us that it has paid about £700,000 in relation to the Scottish child abuse inquiry and historical abuse issues. Should that be taken into consideration?

We never campaigned for all the changes in order to damage the organisation. Alex Neil talks about holding organisations to account, but the redress Scotland body will not do that; it will be there to acknowledge the trauma and the wrong that happened. The primary stakeholder that must take ultimate responsibility is the state, because it failed in its regulatory duty and its inspection duties. Some issues arose because of failures of the state. Yes—we think that there should be contributions.

**Harry Aitken:** I will add a couple of points. It would be right and appropriate for the demands on a former carer or a contributor to be proportionate to the number of survivors who have identified themselves as having been abused, but the very important thing is that the financial status of care homes must not be put in serious distress. The effect on an organisation's capacity must allow it to continue, so that it can provide its services. We have been told that Quarriers services and supports 5,000 people in all kinds of ways. If the debts were called in, that could affect an organisation's status or put it into liquidation. We can take it into account if organisations are giving non-financial support across the board; what they are doing in the community could be added to their contribution.

It is a balancing act. If we are too stringent on contributors, without looking into their financial status—if we expect that their debt must be serviced in some way—it will distress them beyond their ability to survive.

12:00

**The Convener:** Ms Henderson, I understand that your organisation is slightly different from the other two in that you are fully funded by the Scottish Government, so you may not want to comment on the issue.

**Flora Henderson:** Thank you. I have no comment.

**Helen Holland:** Mr Neil asked whether the contributions should be compulsory. My response is yes—absolutely—because the reality is that those care providers allowed the abuse to take place. The majority of the care providers that are still in operation are covered by insurance companies, and the money that is paid out will come primarily from insurance companies and not from the organisations themselves. We know that many of the organisations have huge hidden assets. We had a situation a while ago in which a care provider said that it could not afford something. However, when we told it what was in its offshore account, the money was very quickly paid without any problem.

I see the waiver not so much in relation to contributions. The organisations are saying that, without a waiver, they are open to having to pay twice, but there are ways round that. That does not need to happen.

I am trying to think about it from the point of view of survivors who do not have access to civil court action but have access only to redress. Those survivors may not have the body of evidence or proof to go to the civil courts, or they may be unable to go to the civil courts because they are pre-1964 survivors. They might choose not to go to the civil courts for emotional reasons—that is their right. The most important thing is that the redress is fair and just for any

survivor who chooses to go down that route. It is about justice for survivors, not what is easier for care providers.

I totally get the issues, but the reality is that this is about what happened to survivors. The Scottish Government is responsible in the sense that we were children and under the care of the state. When I was in care, my dad was paying the local authority contributions for my care. How disgusting is that? We are talking about contributions, and, to some extent, part of that contribution is protecting the care providers. Many other survivors were in the same boat. There are survivors who still have all the receipts that their parents kept for the contributions that they were paying towards their children's care. They did not know that their children were being abused in the institutions, because they were not allowed anywhere near their children. That has huge connotations for the impact on survivors.

**Simon Collins:** I appreciate Mr Neil's comment about the need for some form of incentive so that, as he put it, the providers cough up. The question is whether, if the waiver was not there as an incentive, they would cough up. I agree with Helen Holland that the contributions should be compulsory. There is an element of compromise in that, by offering some sort of carrot to providers, it is hoped that they will engage.

The providers have the advantage of engaging anyway, because if survivors are able to pursue a civil action, by resolving matters through the redress scheme, they will avoid the possibility of significant legal expenses. That is an incentive. However, there are many survivors who, as Helen Holland and others have pointed out, will not have any recourse to the courts.

I would put the question the other way round: where is the guarantee that, with the waiver, the organisations will contribute? At some point, I want to discuss the implications of section 12(7) of the bill. However, the simple fact remains that it is entirely possible that an organisation could undertake to contribute in a fair and meaningful way—we will have to take it that that will be transparent and obvious, so that survivors are satisfied that the contribution is meaningful—at the time that the survivor signs the waiver, but, the next day, it could walk away and refuse to pay. It would no longer be a scheme contributor, but it would still be protected by the waiver. That is illogical and dangerous.

It would be dangerous and illogical if it were merely a fanciful suggestion that care providers might indicate that they will contribute but thereafter renege—or default, as it is termed in the bill—on the deal. The issue is all the more important when you realise that that is exactly what happened in the Irish scheme, with care providers that had undertaken to be contributors having thereafter failed to contribute. It is to be expected that some care providers will say that they will be good guys and contribute in order to gain the advantage of the waiver so that, if they do not then contribute, they face the threat of the Government pursuing a debt rather than a survivor pursuing recognition, acknowledgement and proper redress. That is a real concern.

To answer the question, I agree with Helen Holland that the contributions should be compulsory. The best compromise might be to make contributions voluntary but enforceable on pain of the provider no longer being viewed as a scheme contributor if they do not contribute. The bill, as drafted, means that, even when they default as scheme contributors, they still have the benefit of the waiver because they obtained it as a scheme contributor even though that no longer applies to them. That is a nonsensical and dangerous position to leave us in.

I want to address section 12(7), but my comments might have covered the points, and I have highlighted my real concern.

**David Whelan:** If you are trying to effect reconciliation and get as many organisations, large and small, to contribute, yes, I agree that there is not a lot of trust in the survivor community. However, some groups have moved on with their care providers and so on, and they have constructive relationships with them such as we have with Quarriers.

How can you can compel an organisation to give something that it does not have? Some organisations employ the best financial minds and financial advisers, and they are able to hide assets. I think that there is a weakness in the bill anyway, because I do not believe that the Government will be able to chase a debt. The financial world is complicated, and the money will be hidden and protected. The Government will then have to spend money chasing money that it may not be able to get. These people have had years of experience of hiding and protecting assets, so it has become rather complicated when matters did not need to become this complicated.

On people signing a waiver, or signing away a right, I point you to my original comments on that issue.

**The Convener:** Do you want to come back in, Mr Neil?

**Alex Neil:** I will not ask another supplementary question, because we are running out of time. However, it seems to me—this is what I take from the discussion—that we need to separate out two issues: the redress scheme and the and the basis on which the institutions should be making contributions.

The universal point is that the waiver will not act as an incentive to deal with those who should be contributing. I take Simon Collins's point that, even if an organisation agrees to contribute, it can renege on that agreement the minute that the waiver is signed.

There is a lot for committee members to look at. In the interests of time and to be fair to other members who want to ask questions on the subject, I am happy to move on, convener.

**The Convener:** Thank you, Mr Neil. That is helpful.

**Jamie Greene:** I thank Mr Neil for his generosity. I will not labour the point, but there are two schools of thought. Some who have given evidence in writing or orally are intrinsically against the concept of a waiver. On the other side of the coin, some accept the need for a waiver and see its benefit as an acceptable means of encouraging the participation of organisations that we want to contribute, as has been the case under schemes in other parts of the world. Finding the balance will be difficult.

Not everyone needs to answer my next question. Irrespective of what I have described, some people who have given evidence feel that the waiver will strip them of their right to pursue other action. This morning, I read some harrowing evidence in which somebody said that the bill

"strips us of our right to sue"

and that the Government is asking people to

"sign a waiver to give up their rights to raise civil action".

Whether or not that is technically true, that is what people feel the bill will do.

How do we help survivors to understand what the bill is trying to achieve? How do we improve communication about what the bill will and will not do? The waiver issue flags up some of the communication problems that we face.

**The Convener:** I suggest to the witnesses that, if you do not have anything to add, you should not feel that you must respond.

**David Whelan:** We agree with Mr Neil—perhaps the committee needs to separate the waiver from the contributions. If there must be a legal text or a waiver, perhaps the committee could agree the wording, which should be publicised for everybody in the survivor community to see. I am not sure whether that could be put in the bill.

People are concerned about what they are signing away. We keep hearing, "This is for the survivors and the survivor community." If it is for the survivor community—[*Inaudible*.] We are the primary stakeholders in all this—[*Inaudible*.] Everything that I see and read about the waiver—[*Inaudible*.] I doubt it.

**The Convener:** We are having a problem again with your connection, but we managed to hear most of what you said and we have got the gist.

I ask Mr Aitken to raise his hand if he wants to speak. I think that he is content not to contribute. Helen Holland's hand is raised.

**Helen Holland:** I take on board what Mr Greene said. One of the most important points for survivors is that they are given factual information. The redress scheme is an alternative to—not instead of—civil court action. That needs to be made perfectly clear to survivors. There is a lot of confusion out there because there is a lot of misinformation and because survivors are being given a lot of inaccurate information, which does not help anybody.

No matter whether it is survivor organisations or legal representatives, they do survivors a disservice by confusing them even at this early stage. The reality is that redress is an alternative. We are all trying to make it the best alternative that it can be for those who choose in their own right not to go down the civil action route, for those who cannot go down that route and for those who take an out-of-court settlement. Some do not want finance at all—that is their right.

For every survivor, the whole meaning of redress is individual to them, but to make out that it is somehow fighting against a civil court action is wrong—it is an alternative to civil court action for survivors, and the whole point of the bill is to make it the best alternative possible.

12:15

**Jamie Greene:** That perfectly sums up the scenario. Maybe something for us to consider is how the Government could better communicate what the redress scheme does and does not do, and what other options are available to people.

**The Convener:** Simon Collins wants to come in on that.

**Simon Collins:** From a legal point of view, it is clear that there is the signing away of a right. However, what is really being asked—and the point that remains—is what that actually means to survivors, and that depends on circumstances. For example, a pre-1964 survivor who signs a waiver is signing away nothing, because they have no right to access the courts as things stand. For others, it may depend on whether they would have the prospect of success in a civil case if they did not sign the waiver.

That brings in the issue of advice. I want it to be made clear that survivors must be given clear

advice on what the impact of signing the waiver would be for them, as individuals, which would be different in every circumstance. For that to happen, as is envisaged in section 89(2), they must be given advice on whether to accept an offer of payment.

Much is made of section 89(3), which is about whether survivors would be allowed to have advice about accepting redress as an alternative to pursuing civil action. I read that section differently, though, and I want the committee to seek clarification of what is meant by section 89(3). It states that the fees for advice will

"not include any fees incurred in connection with legal advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment."

I agree that, if someone who has not yet engaged in redress is asking for advice from a lawyer on whether they should go down the redress route or consider civil action, it is not appropriate to pay for that legal advice, because you would end up funding every survivor and every individual who wished to have advice on whether civil litigation was appropriate. If that is what that means, that is fine. I do not think that the section precludes someone from taking legal advice on whether to pursue litigation as an alternative to accepting an offer of redress—and survivors must have advice on whether they should accept an offer of redress that includes what their prospects of success in a civil litigation environment are, because, without that, they are signing away a right and they do not understand what they are signing away.

I ask the committee to clarify section 89(3). If it means legal advice prior to making an application and engaging in redress, I accept it. However, if it means legal advice at the point that is envisaged in section 89(2)(d), it is entirely inappropriate to put that condition on it. When survivors sign the waiver, they must know what they are signing away. I do not know whether that could be clarified in the bill, but it could certainly be clarified by the provision of appropriate advice at the time of signing.

**The Convener:** The next person to come in is Daniel Johnson; he had a question on the waiver, but he also has questions on the level of redress offers.

**Daniel Johnson (Edinburgh Southern) (Lab):** If I may, convener, I will ask a brief supplementary question, and then go on to my questions.

Mr Collins and Mr Whelan alluded to a point that I want to make sure I have interpreted correctly. One issue at the heart of the waiver is that that approach perhaps views matters in too starkly a financial way. One of the key things about the waiver is that it will prevent an individual from getting an acknowledgement of culpability or fault, because redress Scotland will be unable to find fault. A payment is not an inference of fault—that is explicit in the bill.

We have heard about the importance of an apology and an acknowledgment of the wrongdoing, from the state and from individual organisations. Is the waiver problematic not just because it prevents access to the courts but because it prevents an individual from possibly gaining a formal attribution of culpability?

**David Whelan:** It is recognised that the redress Scotland scheme is an acknowledgment of the trauma; it is not about liability or accountability. For a number of survivors, accountability has probably come through the child abuse inquiry, although that has not yet concluded.

You are right that some survivors might want to go down another route, and I still think that there should be an option for people to do so. People should have legal advice from the beginning of their contact with redress Scotland—even before they sign the form to say that they are a participant, because there will be a caveat in the form involving an oath or affirmation. People should be given advice from day 1, when they indicate that they want to access the scheme.

Once that legal advice has been completely exhausted, if the survivor is happy with everything that they have been told, including any options that the advice might give them, and they then want to accept an award, they can receive a piece of legal text that confirms that they are accepting it, as happens with other schemes. We want the committee to consider the legal wording of such documents, which is why our submission includes suggested discharge documents. If people go down that route, it is important to consider whether to name the institution that was involved, a number of institutions or even the Scottish Government. Of our two examples, I would call one soft; the other is harder.

However, there is no acceptance of liability. We need to be honest with survivors and tell them that there is no accountability there. We always envisaged that the process would involve reconciliation. We cannot let such issues go on for years and years; we must address them. We support the principles of the bill, but we want to help to improve it.

I hope that I have answered your question, Mr Johnson.

**The Convener:** Daniel, I am conscious of the time. I see that Helen Holland wants to come in. I am also conscious that we have already covered a lot on this topic and other areas, so I will let Ms Holland in, and then it would be helpful if you could move on to your next area of questioning.

**Helen Holland:** I want to respond quickly to what Mr Johnson said. People can raise a civil court action in relation to the payment side of things, but there is nothing to prevent them from then coming to redress Scotland and asking for a letter of apology that acknowledges that abuse has taken place. They have an opportunity to seek financial redress through the civil court action, but they can also come to the inquiry and ask for an apology and an acknowledgment of what took place. They do not need to sign a waiver in order to do so. My understanding of the redress scheme is that that would be available to them. It would cover people who are going through civil court actions and those who are going through the redress scheme.

**The Convener:** Mr Collins wants to come in quickly. It would be helpful if everyone could keep their answers concise from now on.

**Simon Collins:** Very briefly, on the first point, if a provider makes a meaningful and fair contribution to a redress payment, that will involve a certain degree of acknowledgment, which in many ways will be of comfort to a survivor.

However, I want to come back on the point about the separation of contribution and waiver. My point is perhaps the opposite: the waiver must be conditional on contribution. Without contribution, there should be no protection for providers—otherwise they will just take advantage. They should not be protected in any way if they do not provide a fair and meaningful level of contribution. Otherwise, all that will happen is that the state will pick up the bill and the survivors will get no acknowledgment or redress from those who harmed them.

**Daniel Johnson:** My main question is about the three bands of payment, and in particular about individual assessments. There are two parts to my question. The only principle set out in the bill is on the extent and duration of the abuse that took place. First, I wonder whether that is too narrow. Should matters such as the consequences of the abuse, and whether it could have been prevented, be taken into consideration, and should such factors be put in the bill?

I have huge concerns about the sensitivity of what might be seen as tiering abuse. In a sense, survivors coming through the process will find themselves being categorised. The outcomes of that might be quite detrimental or traumatic if survivors find themselves being placed in one category or another, almost regardless of the levels of payment that might be attached to the three tiers.

What is the panel's response to those thoughts?

**David Whelan:** We do not know how the formulas have been worked out or arrived at. As for the factors that should be included, I refer the committee to Dr Susannah Lewis's submission. One has to ask why the impact of such abuse on a person has not been included. Dr Lewis said:

> "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'."

If the scheme is intended to address what happened to individuals, it should remain person centred and individualised at all times. Why is there no consideration for loss of opportunity, whether it be in education, careers or jobs? We know that members of the survivor community have faced challenges even in participating in wider society because of what has happened to them.

Therefore, a number of factors are missing from the formulas. They should be based on the facts and circumstances that apply to each individual, on their experiences and on the merits of each case. However, we do not know how they were arrived at.

I do not want to be highly critical of the Government, because I appreciate that, like other schemes, this one will involve scales, and we have seen them here. However, we do not understand how the Government has arrived at the levels, and why they go from £40,000 to £80,000. We need to take account of the type, nature, severity and longevity of the abuse, the period during which it happened, the loss of opportunity that it involved, and its lifelong consequences. A number of those factors are missing from the current structure, which could be improved.

12:30

**Helen Holland:** It will not come as any surprise if I say that we do not agree with the levels in any shape, form or manner. That is especially so if we consider them in comparison with the redress scheme in the Republic of Ireland. The same perpetrators were moving from Ireland over to Scotland, abusing children here and then moving back and abusing other children over there. I know that the Irish scheme is slightly different, in that it went through the equivalent of our civil courts. However, the payments offered there started at €50,000 for the lowest level and went up to €300,000 for the highest. With the greatest respect, when the same abusers have been allowed to travel between Ireland and Scotland, and to come over here and abuse children in the same way that they did in Ireland, how can

claimants who were abused here be expected to accept payments between £10,000 and £80,000?

I know that going through the redress scheme might be seen as being a slightly less traumatic experience for the survivor, and I can understand that there might be a percentage of difference between the two approaches, but I cannot understand the level of difference that exists. I will be totally honest and say that, for me, the highest level of £80,000 is an insult to survivors who have experienced abuse. I am talking about people who were put into care as babies, infants or pre-school children. They have been denied their whole childhood, right up until they were aged 15 or 16, and within that period they have been abused at every level. How can a payment of £80,000 compensate for that? I know that it is horrible to have to put a financial sum against abuse but, if we are to do so, it must be a sum that is seen as representing justice for survivors, and an absolute acknowledgment or recognition of the level of abuse that they have been through.

Abuse never leaves a person. It is like a human shadow: sometimes it is behind you, and you can forget that it is there for a little while and get on, but then it moves to the side, at eye level, and you are conscious that it is there, so it starts to have an impact. However, there are other times when that shadow is right in front of you and, no matter how strong a survivor you are, you cannot ignore it and you have to deal with it. You do whatever you have to do to cope with it, including putting in place whatever support you can.

Abuse is a lifelong issue that survivors have to live with. It does not just go away, and nor will it go away once people receive redress—it will always be an issue for them. The damage has been done, and the impact on their lives is there. Sometimes, we can deal with it a little better than at other times, but the reality is that it is with us forever—it is like our arm or our leg. The fact that we have been abused as children does not have to define who we are as adults, but it is certainly still with us when we are adults.

**The Convener:** Thank you.

Mr Collins wants to come in, and then we will hear from Mr Aitken.

**Simon Collins:** Very briefly, on the first point, I am concerned about the broad banding. For example, if there has been a level of abuse that would justify a payment of £10,000 but the bandings go up to £20,000, then £40,000 and then £80,000, it follows that there will be a line in each of those bandings. Someone who falls on one side of that line will be looking at a scenario in which, because they have spent one week or one month less in care, or one less thing has happened to them, that level of grading means that they are assessed as having suffered abuse that has half the value of the next level up.

I will make two points about that. The first is that it does not seem particularly fair, and it runs the risk of survivors again being seen as a commodity, as has happened in the past. I am concerned about that. There needs to be a more individual assessment process.

The second point is that the upper limit must not apply to pre-1964 survivors. Along with Helen Holland, Harry Aitken, David Whelan and others, some of whom are no longer with us, I was in a meeting prior to time bar legislation being announced when Angela Constance told us that a solution for pre-1964 survivors would be provided that would put them on equal pegging with those who have a right to claim in the civil court. That was taken forward by Mr Swinney and others, and that is what we have always been looking at from the point of view of redress.

Pre-1964 survivors have no other means of redress. To cap their award at the top level that is provided here is not to treat them equally. As pre-1964 survivors, they have the right to access the courts. If that promise that meant so much to those who were in that room all those years ago is to be delivered, it requires that pre-1964 survivors should be assessed as they would have been had they been making a claim through the courts.

**Harry Aitken:** On the banding, there is a feeling around the community that the majority of survivors will be placed in the £10,000 band. For a person who has been in care for a year, that would be the equivalent of £27.40 per day. If they had been in care for five years, it would be £5.50 per day; for 10 years, it would be £2.70 per day; and for 15 years in care, it would be £1.80 per day. The method that the Scottish Government has used and the proposed range of awards do not acknowledge the full extent of the impact of a prolonged period in an abusive, neglectful and destructive environment. That is missing from the bill.

Another question that I would like to raise is about why the term has been cut short to five years. Other jurisdictions have given applicants a longer time span to apply. The key factor for the Scottish Government to consider is that the continued funding and duration of the Scottish Government redress scheme should allow that no victim or survivor is disadvantaged by whatever reason they have for delaying in applying.

I was about to raise the pre-1964 issue, but Mr Collins has done it well, so that will be enough from me for today.

**David Whelan:** We support what Simon Collins and Helen Holland have said about the pre-1964

issue; we were also at the meeting that was referred to.

On the levels, we said in our written submission that we would like to see the migrant issue addressed and we have suggested how that could be achieved. It feels strange to us that, in one part of the UK, there is a redress scheme that awards £100,000 to a UK citizen in that part of the UK, but we do not have that here.

We believe that the upper limit does not address the most complex and serious abuse, including the rape of a child over a number of years in an institution. That is just an example. We do not believe that £80,000 is sufficient to address that harm and the trauma that it created. We would like to see the panel being given explicit discretion in making decisions. It seems to us as though the Government has put something together and discretion has been taken away from the panel. We would like the bill to give the panel the discretion to make awards that fit the individual. Also, we still do not understand the gap between £40,000 and £80,000.

I have covered the points that I wanted to cover.

**The Convener:** Mr Johnson, have you finished?

**Daniel Johnson:** I could go on, but I recognise the time pressure.

**The Convener:** Ms Mackay, do you have questions on the issue, or have they been covered?

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** No, they have not, but I do not think that we have time to cover them at this stage.

**The Convener:** I know that several members have not taken part in the discussion—that is because there are areas that we have not been able to get to in the time available.

Before we finish, perhaps Ms Wishart could cover the issue of care settings.

**Beatrice Wishart:** I would like to hear the witnesses' views on the care settings that are not covered by the scheme, particularly boarding schools. We received a submission that cited a scenario in which 10 children, three of whom were state sponsored, were abused at a boarding school. That would mean that three people would receive redress while the other seven would not. As has often been said, abuse is abuse. What are your views on that?

**The Convener:** I ask the witnesses to keep their answers succinct. Ms Henderson, I am conscious that you have not spoken for a while. Would you like to respond to that question?

**Flora Henderson:** Yes. Future Pathways recognises that it can be problematic if survivors who experienced the same abuse in the same setting are treated differently. That can have an extremely negative impact.

We are very much aware of the impact and hurt of abuse in all residential settings. In such circumstances, the day-to-day duty of care was in the hands of the institution. There is a significant vulnerability associated with children who live apart from parents or care givers for an extended period of time and the trust that is involved in that, and institutions should not be absolved of their responsibilities to children in their care.

**The Convener:** Does anyone else want to come in on that issue?

**Helen Holland:** We have always made it perfectly clear that the proposed scheme is a state-responsible redress scheme. The children we are talking about—the children to whom the petition that was submitted to Parliament related—are children who were under the care of the state. My heart goes out to any survivor, regardless of where they were abused, but the scheme is for children who were directly under the care of the state—in other words, children for whom the state had care responsibility.

I absolutely take on board the point that Beatrice Wishart made with the example that she gave, in which three of the children were state sponsored. With regard to the other seven survivors—and I say this with absolute respect, empathy and compassion—their parents could have turned up at the boarding school at any time and said, "I'm moving Helen from this boarding school to another boarding school because she's not happy." Our parents could not do that, because their parental rights were taken from them when we were under the care of the state. There is a massive difference between the situations of those two groups of children in relation to what the redress scheme is about. If that were not the case, the state would be responsible for redress for every kind of abuse, regardless of where it took place. That is not the way that it works. It makes no sense to widen the scheme to the point where what it exists to achieve is not achievable. For me, that is the major point.

Our parents were paying the state contributions for our care, yet there were times when my dad turned up to see me and the door was slammed in his face—he was not even allowed to come in. He could not phone up and say, "I'm going to move Helen from that children's home because she's not happy and place her in another children's home with a better reputation." That option was simply not available.

To me, that is the major difference in relation to the care settings—and I say that with all due respect to anybody who has been abused. In my

opinion, if someone was abused in a care setting that had a board of trustees or other responsible people, they should be suing those people and targeting all their energy in that direction to make sure that they get justice. I whole-heartedly advise them to do that.

We are looking at in-care redress because, until 20 years ago, nobody was looking at the abuse of children under the care of the state, even when we first tried to bring the issue into the public domain and the Scottish Parliament. Many groups did not want to hear about it and did not offer any kind of support. The reality is that we have had to fight long and hard for the state to take on board that responsibility and acknowledge the fact that it was our parents. I hate saying that, but it is true. The state had parental responsibility for every child in the care system, and we are looking to the care system for redress. Children who were supposed to have the parental care of the state were abused instead of being properly looked after and were neglected instead of being cared for—they never had a cuddle, and they never knew what love was. Not all those children were in an abusive situation at an early age before going into care; some children entered care from a home where there was no abuse whatsoever. A parent might have died or a marriage might have broken down; in the society of the day, those children were automatically taken into the care of the state.

We were also financial commodities, because the care providers were given finance to provide a level of care under the state legislation. The Children Act 1948 talks about all the things that should have been in place. I went into care long after 1948 but suffered more than a decade of abuse. Being in the care of the state is entirely different; it is not a case of choices. There were no choices for children taken into the care of the state or for their parents to come and do something in relation to children under the care of the state. I say that with no disrespect to anybody who has been abused in any other setting.

**The Convener:** Thank you, Helen. Very briefly, Mr Whelan will have the final say.

**David Whelan:** If the state had a duty of care, responsibility and inspection and it failed in those duties, it failed those children, whatever setting they were in.

With regard to what Helen Holland said, if the Government cannot address those issues in this scheme, it should do the same thing as Ireland did with the Magdalen laundries, when another scheme came after the main redress scheme. The Government should not ignore the issue but address it, because, ultimately, the Government has responsibility for it.

**The Convener:** Thank you, Mr Whelan. I apologise to Beatrice Wishart; I hope that that has covered her question.

From comments in the chat function, there is a consensus that we have not covered all the areas today that we wanted to. Therefore, the committee needs to go away and think about how best to address that, whether that is through another committee meeting, if possible, or by letter. I apologise to colleagues who wanted to come in today but were not able to.

I extend a huge thank you to everyone who has, again, given their time. It is not the first time that they have helped us with our deliberations, and we appreciate that.

12:49

*Meeting continued in private until 13:14.*

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