

John Swinney urged to axe rule for abuse survivors to sign waiver to get payout

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The National; 15th November By [Kathleen Nutt @kacnutt](#) Journalist//



Abuse survivors would be required to sign a waiver giving up their right to civil action in order to get financial compensation

JOHN Swinney is under pressure to drop a controversial clause in a government bill requiring survivors of abuse in children's homes to sign a waiver giving up their right to take civil action against the institution where they suffered before they can receive financial compensation.

Lawyers and groups representing former residents have criticised a provision in the legislation as “a fundamental flaw” and an attack on their rights.

They also point out that victims could get higher payouts going to court than accepting payments from the new scheme.

Under the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, survivors have to sign a document stating they will not seek civil action against organisations which ran the homes in order to receive any payout. The Scottish Government has said this is to ensure care providers will contribute to funding the scheme.

But campaigners argue making abuse survivors sign a waiver to receive financial compensation undermines their rights.

They have taken their case to the **Holyrood** committee which is examining the bill with MSPs’ about to draft their report.

The Scottish Parliament is due to vote on the general principles of the bill in December with the legislation due to pass at that point in the process.

However, amendments are likely to be lodged when the bill returns to the committee at stage 2 seeking the government withdraws the waiver.

Survivors' groups railed against the policy at an evidence session held by the Education and Skills Committee last month saying it erodes the rights of those who suffered abuse.

Harry Aitken, of the Former Boys and Girls Abused in Quarriers Homes group, said: “It’s 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, the obligation of a government that they protect citizens' rights."

David Whelan, who also represents those abused at Quarriers, said: "I think you're taking away choice. I think you're taking away a right and that right is choice. It shouldn't be one or the other."

Whelan advocated an "offsetting" system, in which any settlement given through Redress Scotland – the body which the bill would create to deal with claims – would be deducted from a subsequent civil action.

Lawyers attacked the waiver with Iain Nicol, of the Law Society of Scotland, describing it as a "fundamental flaw".

Una Doherty QC, of the Faculty of Advocates, said: "Requiring an applicant to say at the outset that they would give up all right to a court process is fundamentally wrong."

Alex Neil, one of the **SNP** MSPs on the committee, asked whether it should be compulsory for providers to pay into the system.

A Scottish Government spokesperson said: "As with many other redress schemes around the world, our scheme has been designed as an alternative to court – giving survivors a choice of options.

"The waiver can help ensure organisations who were responsible for the care of children at the time of historical abuse acknowledge that responsibility and contribute to the benefit of survivors who do not want to go to court.

"Survivors will only be asked to sign a waiver in respect of organisations which make fair financial contributions to the scheme and will not affect any criminal proceedings or rights to report anyone for criminal acts."