



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND SKILLS COMMITTEE

AGENDA

25th Meeting, 2020 (Session 5)

Wednesday 4 November 2020

The Committee will meet at 9.00 am in a virtual meeting and will be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.
2. **Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Viv Dickinson, Chief Executive Officer, Social Care Council, Church of Scotland;

Derek Yule, Advisor, Local Government Finance, COSLA;

Dr Judith Turbyne, Senior Manager, Policy and Improvement, OSCR;

Dr Ron Culley, Chief Executive Officer, Quarriers;

and then from—

John Swinney MSP, Cabinet Secretary for Education and Skills, Scottish Government.

3. **Review of evidence:** The Committee will consider the evidence it heard earlier.
4. **Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill - consideration of approach:** The Committee will consider a paper on the drafting of the Stage 1 report.

ES/S5/20/25/A

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The papers for this meeting are as follows—

Agenda item 2

SPice briefing paper- Redress Bill panel 7 ES/S5/20/25/1

SPice briefing paper- Redress Bill panel 8 ES/S5/20/25/2

Submission pack ES/S5/20/25/3

Agenda item 4

PRIVATE PAPER ES/S5/20/25/4 (P)

**Education and Skills Committee
Redress for Survivors (Historical Child Abuse in Care) (Scotland Bill)
4 November 2020**

The paper below outlines potential issues for the evidence session with the panel of contributors and the Office of the Scottish Charity Regulator (OSCR) on 4 November 2020.

WAIVER – GENERAL PRINCIPLE

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

Charities are in favour of the waiver. For example, [Quarriers states in its evidence](#) that it supports the waiver because:

“it prevents compensation being paid twice and creates the incentives necessary to support the participation of insurers. Realistically, many charities, however willing, will not be able to find the necessary resources from reserves. As such, there is likely to be a requirement for liabilities to be capped by a waiver scheme”

[The Church of Scotland Social Care Council \(CrossReach\) states](#) that the waiver:

“is an essential element of the Scheme ... on the ground that it will further support organisations to make a genuinely fair contribution by allowing us to engage with insurers, on the basis that they would be protected from civil claims.”

[COSLA](#) stresses that the combination of civil claims and redress payment will add, “to the already significant financial pressures faced by Local Government” and that:

“For the waiver to operate effectively, it must clearly and specifically outline the time period, people and organisations, and instances of abuse for which the survivor is accepting the redress payment.”

Members could explore with the witnesses why they think the waiver is necessary.

In particular, Members could ask witnesses to explain:

- **why they think the waiver will create an incentive to contribute to the scheme**
- **why the waiver would allow for engagement with insurers and what discussions with insurers have taken place to date**
- **what the impact would be on their finances if the scheme did not include a waiver.**

WAIVER – REMOVAL FROM THE CONTRIBUTOR LIST

Organisations which are removed from the contributor list at a later date (for example because they default on paying), will still benefit from the waiver (section 12(7) of the Bill).

Members could explore with the witnesses whether they think this provision is necessary, or fair to survivors.

ALTERNATIVES TO THE WAIVER

A number of survivors, survivor groups and their representatives want the waiver to be removed. One alternative suggested is that future civil damages could be offset against redress payments. Charities such as Quarriers and CrossReach have also suggested they are open to discussing potential alternatives.

Members could explore potential alternatives to the waiver with the witnesses.

FAIR AND MEANINGFUL CONTRIBUTIONS

Section 13 requires the Scottish Ministers to publish a statement of principles on determining whether bodies have made a “fair and meaningful” contribution.

Submissions by charities include arguments that:

- There is a lack of transparency as to how the “fair and meaningful” contribution test will operate in practice (e.g. in distinguishing between children who were in long term care and those who were temporarily in care) and also whether contributors will be consulted prior to publication.
- The principles should be included in the Bill or in a statutory instrument
- The level of payments required and the need for up-front payments will threaten charities’ future operations. For example, [Quarriers states that:](#)

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

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

[COSLA](#) and local authorities have indicated that:

- there is a lack of clarity as to the likely amount which will need to be contributed
- payments need to be spread across an extended period rather than being “front-loaded” so that the impact on council services is minimised.

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

Members could explore in more detail with the witnesses what their concerns are in relation to the proposed “fair and meaningful” contribution test.

COSLA could be asked to expand on some of the arguments made in its written submission on how “fair and meaningful” contributions should operate within local government.

Members could also ask the witnesses for an update on discussions they have had with the Scottish Government on the “fair and meaningful” contribution test.

INSURANCE COVER

COSLA’s view is that historic insurance cover is unlikely to help fund contributions. [COSLA states that](#):

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

[The Association for British Insurers \(ABI\) explains in its submission](#) that:

- public liability insurance policies (covering vicarious liability for the direct acts of an organisation’s employees) are not mandatory and that there will be many cases where there is no cover or where cover is only provided with a large excess or with a low limit of indemnity cover
- insurance policies covering personal injury may not apply as these will only be triggered where legal liability is established and it is not clear whether the level of evidence required for redress, “meets the standard required under civil law to trigger an insurance policy.”

It concludes that:

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

Members could explore with the witnesses:

- **whether they can expand on arguments that there is unlikely to be insurance cover for redress payments.**
- **whether they think that the Bill needs to be amended to provide more clarity in relation to insurance cover.**

LEVEL OF REDRESS OFFERED

A number of survivors, survivor groups and their representatives view the levels of redress proposed as too low. In contrast, certain charities are concerned that increasing the levels could impact on their ability to contribute. For example, [Quarriers states in its submission that](#):

“We note too that survivor groups are requesting that the proposed limits be increased. We support their right to maximise rightful compensation, however we

are worried this could impact on charities' ability to contribute to and participate in the scheme. We anticipate that higher levels of compensation would be paid directly by participating charities, given that the Scottish Government has indicated that it will only underwrite the first £10k of an award. This will make participation more challenging for organisations like Quarriers, particularly if the insurance companies are not part of the process."

Members could explore with the witnesses what the potential impact would be on charities and local government if the levels of redress were to be increased.

CHARITY LAW

Section 14 of the Bill provides that contributions to the redress scheme fall within the powers exercisable by charity trustees. Section 15 of the Bill gives the Scottish Ministers the power to make regulations to allow charities to use restricted funds to contribute to the scheme ([for more details see the SPICe Bill briefing](#)). Before making regulations, the Scottish Ministers must consult the Office of the Scottish Charity Regulator (OSCR).

Charities have negative views on these provisions. For example, [Quarriers states that](#):

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

[OSCR, indicates in its submission](#) that it has some concerns with section 14 of the Bill and that it has offered to assist the Scottish Government in producing guidance for charities. It states:

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

OSCR also notes in relation to section 15 that:

"In our view, the proposed use of restricted funds to contribute to the Redress Scheme raises some fundamental issues. Restricted funds are given to a charity for a specific purpose – sometimes to deliver a special project or a distinct piece of work or to be used only for one charitable purpose where the charity has more than one. The person or organisation giving those funds has done so on the understanding that the charity will use the funds for that reason and no other.

There is a major possible unintended consequence. Legislating to remove donor conditions on restricted funds and enabling them to be used in a manner which does not further the charity's purposes may affect donor, funder and public confidence in charities. Legislating in this way may undermine the fundamental principle of trust that underpins charitable giving and could impact on future donations ..."

Members could explore in more detail with the witnesses what their concerns are in relation to sections 14 and 15 of the Bill.

Members could also ask the witnesses (in particular OSCR) for an update on discussions they have had with the Scottish Government on this matter.

ABUSE COVERED BY THE BILL

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

Corporal punishment isn’t covered where it was, “permitted by or under any enactment or rule of law at the time it was administered” (Section 17(2)).

The [Explanatory Notes to the Bill](#) state that the definition includes “abuse by peers within a relevant care setting” ([see the SPICE Bill briefing for details](#)) However, neither the Bill nor [the Explanatory Notes](#) provide details on how to distinguish between situations where an institution should be considered responsible for abuse by peers and incidents where the peers themselves are responsible. The intention is that guidance under section 97 of the Bill will be issued on this point.

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

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

Members could explore with the witnesses what their views are on the general definition of abuse.

In particular, witnesses could be asked for views on:

- **The exclusion of lawful corporal punishment**
- **The need for the Bill to cover “abuse by peers” and the fact that the Bill does not define what this means.**

HISTORICAL CUT-OFF POINT

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

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

Members could discuss with the witnesses whether they think the 2004 cut-off point is justified.

EVIDENCE AND PROCEDURES

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

The Bill doesn't, however, provide details on:

1. the evidence of abuse which panels should look to when considering applications for an individually assessed redress payment; or
2. how panels should determine which level of payment is justified.

[CrossReach](#) states that contributors need to be satisfied that the process followed by Redress Scotland is robust and credible. It argues that the Bill should as a minimum stipulate the evidence which will be sought from organisations and that organisations should be given a full opportunity to “comment on the evidence produced by an applicant” and to “submit their own evidence, before an application is determined.” It argues that this is a “fundamental issue of fairness.”

[COSLA](#) also indicates that consideration needs to be given to how to support organisations providing evidence as this is not a cost-free exercise

Members could explore in more detail with witnesses:

- **their views on why the Bill needs to contain more details on the evidence needed**
- **the need for financial support for organisations providing evidence**
- **what their views are on giving organisations the right to submit their own evidence to panels**
 - **in particular, can the witnesses indicate what evidence might be involved, how it would be shared with the Redress Scotland Panel/survivors and how this will work in a non-adversarial process?**

NON-FINANCIAL REDRESS

The scope of non-financial redress isn't defined in detail in the Bill. Instead, the Bill gives the Scottish Ministers a general power to fund emotional, psychological or practical support (sections 85 and 86). [The Policy Memorandum](#) emphasises that a priority area for support will be for therapeutic support and counselling (paragraphs 316-318)

Section 91 of the Bill also requires contributors to prepare an annual redress report for the Scottish Ministers including information on non-financial redress such as:

- funding for emotional, psychological or practical support
- advice and assistance on accessing historical records
- advice and assistance on tracing and reuniting families
- activity relating to the provision of an apology to such individuals.

CrossReach argues, referring to other countries, that “care provider organisations have funded support services, separate from any contribution to financial redress”. It states that it believes that:

“the Scheme, as presented, fails to make sufficient provision for any form of reparation other than financial compensation.”

Quarriers makes a similar argument noting that:

“In general terms, the bill does not give sufficient recognition to the importance of non-financial redress. A commitment to survivors goes far beyond the payment of compensation. By focusing so heavily on the former, the bill could allow for the participation of organisations with deep pockets but with no real commitment to a process of reconciliation with survivors and exclude organisations who are committed to the well-being of survivors but whose financial circumstances preclude participation.”

CrossReach also argues that section 91:

“imposes a dual burden on contributors, and presents additional challenges ... for charities who wish to support the aims of the Scheme in a tangible way but cannot, in doing so, prejudice their very existence.”

Members could ask the witnesses to expand on the arguments that the Bill is too focused on financial redress and bodies which have the financial resources to contribute.

Members could also ask witnesses to outline their concerns on the operation of section 91 of the Bill.

APOLOGIES

The details of the public apology process are yet to be determined. However, [the Policy Memorandum](#) states at para 328 in relation to the consultation that:

“It was noted that a personal apology could be meaningful, demonstrated acceptance of responsibility for abuse and affirmed that the victims were not to blame.”

Members could explore with the witnesses what their views are on how personal apologies should be made to survivors and who should make those apologies.

**Angus Evans
SPICe Research
30 October 2020**

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The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

**Education and Skills Committee
Redress for Survivors (Historical Child Abuse in Care) (Scotland Bill)
4 November 2020**

The paper below outlines issues which could be raised with the Cabinet Secretary for Education and Skills during the Committee’s meeting on 4 November 2020.

WAIVER PROCEDURE AND ALTERNATIVES

Care settings which provide “fair and meaningful” financial contributions will be put on a “contributor list” and protected from future civil actions by applicants who sign a waiver. Applicants will have to choose between redress and civil actions at the point of signing the waiver.

Survivors are not in favour of the waiver as they view it as unfairly restricting their ability to take legal actions in future. Instead they suggest that civil damages could be offset against redress payments.

In contrast, contributors favour the waiver on the basis that it provides an incentive for them to contribute, ensures there is no double compensation and caps their liabilities.

Members could explore with the Cabinet Secretary in more detail why the Bill has included the waiver procedure.

Members could also explore what the Cabinet Secretary’s view is on potential alternatives, include an offset procedure.

WAIVER – REMOVAL FROM THE CONTRIBUTOR LIST

Organisations which are removed from the contributor list at a later date (for example because they default on paying), will still benefit from the waiver (section 12(7) of the Bill).

The Cabinet Secretary could be asked to explain why this provision is necessary and whether it is fair to survivors.

WAIVER – FUNDED LEGAL ADVICE

Section 88 of the Bill puts the Scottish Ministers under a duty to pay legal fees which are reasonably incurred in making applications for redress.

However, Section 89(3) states that legal fees which are reasonably incurred do 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.”

Arguments have been made that section 89(3) means that survivors will not be able to get funded legal advice when considering whether to accept the waiver (for example when assessing the likelihood of success of a future civil action).

The Cabinet Secretary could be asked to confirm whether or not section 89(3) allows applicants to get funded legal advice on the options for pursuing civil litigation before they sign the waiver.

WAIVER – SCOTTISH MINISTERS

Under section 45 of the Bill, the waiver also applies to the Scottish Ministers.

[In its submission, the Scottish Human Rights Commission states that:](#)

“Taking into account the reasons given by the Scottish Government in support of including a waiver in the scheme, for example the need to incentivise providers to contribute to a national scheme, the Commission questions why a waiver should also apply to the Scottish Ministers. The Commission believes provisions allowing the Scottish Ministers to benefit from a waiver should be removed from the Bill.”

The Cabinet Secretary could be asked to explain why the waiver covers the Scottish Ministers and what his view is on the argument that this provision should be removed from the Bill.

FAIR AND MEANINGFUL CONTRIBUTIONS – STATEMENT OF PRINCIPLES

Section 13 requires the Scottish Ministers to publish a statement of principles on determining whether bodies have made a “fair and meaningful” contribution and should therefore be put on the “contributor list”.

Although section 12 allows the Scottish Ministers to include information on the contributor list which it “considers appropriate”, there doesn’t appear to be provision in the Bill for the publication of the decision-making on whether organisations have made a fair and meaningful contribution, or the amount which organisations agree to pay in.

Members could ask the Cabinet Secretary if:

- **he can provide an explanation as to why the statement of principles is not included in the Bill**
- **he can provide more details on how the Scottish Government will assess what is considered a “fair and meaningful” contribution to the costs of the scheme**
- **there could be more transparency in the decision-making process on whether organisations have made a fair and meaningful contribution and how much they have agreed to pay in.**

The Cabinet Secretary could also be asked to explain how payments will be made into the scheme by local authorities and organisations. Will there, for example, be a lump sum payment at the start based on the number of survivors likely to come forward or will payments be made in a staged fashion?

FAIR AND MEANINGFUL CONTRIBUTIONS – FINANCE

In a [written response to the Committee](#), the Bill team indicated that the Scottish Government is committed to a financial contribution equivalent of £10,000 per redress

payment and that, where Redress Scotland determines that a £80,000 payment should be made to the survivor, the organisation will contribute £70,000.

The written response also states that:

“To ensure all survivors receive the redress payments as decided by Redress Scotland, the Scottish Government will pay in full the cost of redress payments to survivors where the organisation named in the application no longer exists, or where the organisation does not join the scheme. Only those organisations making fair contributions to the scheme, as defined above, will join the scheme and be included on the waiver to be signed by survivors. We anticipate that the Government will fund the majority of overall costs of the scheme, but the precise proportion of the cost of the redress payments themselves paid by Government, will depend on how many organisations participate in the scheme and the average level of payments which result.”

The Cabinet Secretary could be asked whether he can provide any more details on the precise proportion of the costs of the scheme which will fall on the Scottish Government. In particular, can he indicate:

- 1. how many organisations have agreed to contribute to the scheme so far?**
- 2. what the average level of payments is likely to be?**

In addition, the Cabinet Secretary could also be asked to provide:

- an update on discussions with COSLA and other organisations in relation to contributions to the waiver scheme;**
- an indication of the timing of any contributions from local authorities to the scheme, and whether any councils have funds allocated to cover these contributions;**
- an update on when the Scottish Government is likely to have more certainty on the likely financial contributions by organisations.**

LEVELS OF REDRESS OFFERED

A number of survivors, survivor groups and their representatives view the levels of redress proposed (in particular the maximum payment of £80,000) as too low in comparison to other countries' redress schemes.

The Cabinet Secretary could be asked to comment on the level of redress proposed in the Bill.

LEVELS OF REDRESS – PRE-1964 SURVIVORS

Because of the way the law of prescription works ([see page 6 of the SPICe briefing on the Limitation \(Childhood Abuse\) \(Scotland\) Bill](#)), survivors who were abused before 26 September 1964 cannot bring a damages action in the courts in respect of that abuse. These survivors cannot therefore choose to take the civil route and the maximum redress will be £80,000.

Certain survivors have argued that the maximum redress payment of £80,000 should be increased for pre-1964 survivors to take into account the fact that pre-1964 survivors cannot bring civil court actions.

Members could ask the Cabinet Secretary for his views on increasing the maximum redress payment for pre-1964 survivors.

PAYMENT BANDS FOR INDIVIDUALLY ASSESSED PAYMENTS

A number of survivors, survivor groups and their representatives argue that that it is not clear how the Scottish Government arrived at the £20,000, £40,000 and £80,000 bands.

Others have argued that there should not be any bands as this is not trauma-informed and will create tensions in the survivor community.

The Cabinet Secretary could be asked to explain how the Scottish Government arrived at the £20,000, £40,000 and £80,000 bands.

The Cabinet Secretary could also be asked to explain what his view would be on replacing the bands with one higher payment above the £10,000 mark.

CHARITY LAW

Section 14 of the Bill provides that contributions to the redress scheme fall within the powers exercisable by charity trustees. Section 15 of the Bill gives the Scottish Ministers the power to make regulations to allow charities to use restricted funds to contribute to the scheme ([for more details see the SPICe Bill briefing](#)). Before making regulations, the Scottish Ministers must consult the Office of the Scottish Charity Regulator (OSCR).

Charities have a negative view of these provisions on the basis that they could erode the confidence of donors. [OSCR](#) has also expressed concerns.

Members could explore in more detail with the Cabinet Secretary:

- **why these provisions are necessary**
- **whether he thinks that these changes will erode the confidence of donors.**

RELEVANT CARE SETTINGS

The definition of “relevant care setting” in the Bill doesn’t cover:

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

Members may wish to explore the scope of these provisions with the Cabinet Secretary.

APPLICANTS WITH CONVICTIONS FOR SERIOUS CRIMINAL OFFENCES

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

Certain survivors and other bodies have argued that this provision is unfair as survivors who have been convicted of a serious criminal offence will still have suffered as children. In addition, they argue that the abuse may have been a factor in crimes which survivors later committed.

Members could also ask the Cabinet Secretary for an explanation of the rationale behind this provision and his views on the counter arguments mentioned above.

ABUSE COVERED BY THE BILL – CORPORAL PUNISHMENT

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

Corporal punishment isn’t covered where it was, "permitted by or under any enactment or rule of law at the time it was administered" (Section 17(2)).

As a result, corporal punishment such as "the belt" which was in principle lawful when it was used wouldn't be covered, although corporal punishment which went beyond what the law permitted at the time (e.g. something amounting to an assault) should be.

There could also be instances where behaviour which would amount to an assault now (for example as a result of the Children (Equal Protection from Assault) (Scotland) Act 2019) would have been lawful in the past on the basis that it was "reasonable chastisement" of a child.

Members could ask the Cabinet Secretary to explain what his view is on arguments that the exemption for lawful corporal punishment is too wide as it may mean that punishment which is now seen as abusive is not covered by the Bill

ABUSE BY PEERS

The [Explanatory Notes](#) indicate that “abuse by peers” is covered, although the term is not defined in the Bill.

Members could ask the Cabinet Secretary to explain the need for the Bill to cover “abuse by peers” and why the decision was made not to define this term in the Bill.

FIVE YEAR DURATION OF THE SCHEME

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

Members could ask the Cabinet Secretary what his view is on the risks of applicants being excluded from getting redress by making the scheme time-limited in this way (for example survivors who are no longer living in Scotland and who may not be aware of the scheme).

HISTORICAL CUT-OFF POINT

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

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

Members could discuss with the Cabinet Secretary why this cut-off date was chosen.

NEXT OF KIN CUT-OFF DATE

For next of kin to be eligible for a payment, the survivor of abuse must have died on or after 17 November 2016 and must also meet the general eligibility criteria for the scheme.

Survivor bodies have argued that this date is unfair to the families of survivors who passed away before this date.

Members could discuss with the Cabinet Secretary what his views are on providing for an earlier cut-off date for next of kin payments.

NOMINATED BENEFICIARIES

Section 63 of the Bill allows survivors to nominate a beneficiary when they apply for redress so that someone can take over the application in the event that they pass away while the application is ongoing.

Members could ask the Cabinet Secretary to explain how this process will work in practice.

MODELLING OF COSTS OF THE SCHEME

As noted above, some of the cut-off dates for the scheme are controversial. It is not clear though what impact changing these dates would have on the costs of the scheme.

Members could ask the Cabinet Secretary whether the Scottish Government has modelled the costs of providing a redress scheme if:

- **the five year cut-off period is extended;**
- **the cut-off date for having been in care is changed; or**
- **the cut-off date for next of kin applications is earlier.**

[The Bill team's written response to the Committee](#) includes estimates of the number of survivors who may access the scheme.

Members may wish to ask the Cabinet Secretary whether modelling has been done on the impact on costs should these estimates prove to be inaccurate.

REDRESS PANELS – SURVIVOR MEMBERS

Appointments to Redress Scotland will be made where applicants have the, "skills, knowledge and expertise which the Scottish Ministers consider relevant to the carrying out of the body's functions" (Paragraph 1 of Schedule 1 of the Bill). The intention is to, "appoint persons with relevant expertise in the fields of emotional and psychological trauma, law, social work and health" (Paragraph 52 of the Policy Memorandum).

The Scottish Government intends to set up a Survivor Forum so that survivors can contribute to the delivery of the redress scheme. However, survivors won't be panel members and the Policy Memorandum states that:

“The Survivor Forum will not, however, have any part in the independent decision-making process nor any sight of, or involvement in, individual redress applications.”
(para. 26)

Certain survivor groups have argued that the panels would benefit from having survivors as members.

The Cabinet Secretary could be asked to comment on the composition of the panels and the argument that panel members should also include survivors.

EVIDENCE AND PROCEDURES

The approach taken by the Bill is to have a simplified application process for fixed rated payments and to provide further guidance on the type of evidence needed to apply for an individually assessed payment.

The Bill doesn't, however, provide detailed information on:

1. the evidence of abuse which panels should look to when considering applications for an individually assessed redress payment; or
2. how panels should determine which level of payment is justified.

Instead section 38(4) of the Bill indicates that panels should have regard to:

“the nature, severity, frequency, and duration of abuse together with all other relevant facts and circumstances.”

In a [written response to the Committee](#), the Bill team indicated that an assessment framework is being drafted to cover individually assessed payments:

“As noted during the evidence session, we will submit a draft assessment framework to the Committee as soon as possible and before the close of Stage one evidence.

We have been developing the framework with the advice and assistance of a number of clinical psychologists with experience and expertise in the field of trauma and in particular historical child abuse.

Creating an assessment framework is a difficult but necessary part of the redress scheme as it is essential that there is a transparent mechanism to differentiate between the individually assessed payment levels”

Members could explore with the Cabinet Secretary:

- **why the assessment framework (or at least the main principles) is not included in the Bill**
- **what progress has been made in drafting the assessment framework**
- **how the assessment framework will take into account survivors’ differing levels of resilience.**

NON-FINANCIAL REDRESS

The scope of non-financial redress isn't defined in detail in the Bill. Instead, the Scottish Ministers will have a general power to fund emotional, psychological or practical support (sections 85 and 86). [The Policy Memorandum](#) emphasises that a priority area for support will be for therapeutic support and counselling (paragraphs 316-318)

Section 91 of the Bill also requires contributors to prepare an annual redress report for the Scottish Ministers including information on non-financial redress.

Members could ask the Cabinet Secretary if he could expand on the likely non-financial redress which will stem from the Bill, and when he expects this to be finalised.

Members could also ask whether any updated assessments have been made as to the likely costs of non-financial redress which will stem from the Bill.

APOLOGIES

The details of the public apology process are yet to be determined. [The Policy Memorandum](#) states at para 326 that public and personal apologies are important and that:

“it is intended to build on the good practice adopted in the advance payment scheme and to develop the delivery of this element of non-financial redress as part of the broader scheme.”

Members could ask the Cabinet Secretary to indicate what the Scottish Government’s current thinking is on the scope of the apology process and who should make the apologies.

Angus Evans and Andrew Feeney-Seale
SPICe Research
30 October 2020

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

Education and Skills Committee

25th Meeting, 2020 (Session 5), Wednesday 4th November 2020

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

Submissions pack

Submissions

The following links are to the submissions from panel 1 of this week's witnesses.

Organisation Submissions

- [Church of Scotland Social Care Council \("CrossReach"\)](#)
- [COSLA](#)
- [OSCR](#)
- [Quarriers](#)

Finance and Constitution Committee

The Finance and Constitution have received submissions for their Call for Views on the Redress Bill Financial Memorandum. The submissions are attached in full.

- [Aberdeen City Council](#)
- [Angus Council](#)
- [Anonymous](#)
- [Police Scotland](#)
- [South Lanarkshire](#)
- [Stirling Council](#)

Submission from Aberdeen City Council

Redress for Survivors (Historical Child Abuse) (Scotland) Bill

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes, we did take part in the consultation and Aberdeen City Council were one of two local authorities who provided information to the Scottish Government to calculate the costs associated with records access.

At the time of the consultation there was no detail around the financial contribution expected from each Local Authority. The proposed Bill sets out that a “fair and meaningful contribution will be sought”. The details of this contribution, including the amount, structure, and timeframe, are not specified in the Bill or its accompanying documents. On this basis no comments were given on the financial assumptions as it was not clear what was proposed at that time.

A key area of concern is the unknown quantum and timing of the contribution.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

No, we do not however while the basic assumptions do seem to be reasonable, and in line with some of the previous data supplied, it is noted that small variances in the number of claimants and the average claim settlement could give rise to either a large increase in total costs or alternatively a large reduction in total costs. The variables will be dependent on the impact of the abuse, the lived experience, the criteria of assessment and how many people take the decision to pursue civil litigation. On this basis the financial impact on Local Authorities is unknown and may be significant beyond the final contribution to the redress scheme.

In addition, if potential claimants are not satisfied with the proposed financial redress amounts proposed they could follow a civil litigation path which would increase the Scotland wide cost of Historic Child Abuse redress.

Assurance needs to be given that, any shortfall in contributions from other organisations or from total costs being substantially higher, will not be passed onto Local Authorities. The Scottish Government must give a commitment that they will not require organisations to contribute further monies over and above agreed sums.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes, although the response was primarily focused on the records and resource perspective as at the material time little detail was available specific to the financial aspect. There is still a continuing concern that there is insufficient detail within the current bill around levels of contribution and other financial aspects as referred to in section two above and section four below.

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

We are aware that there are ongoing conversations with COSLA and that there is a collective response being provided from the Local Government Family Group.

On an individual Local Authority level, there is a potential financial implication dependent upon the overall quantum of the COSLA contribution and how that is distributed on an individual Local Authority basis.

To allow fair and meaningful contribution it is proposed the Scottish Government fund the scheme and fair and meaningful contribution is assessed based on demographic of claims and liabilities of the former regional councils where possible. Where areas have higher numbers of successful claims, clarity on equal or variance of contribution to be confirmed. It is proposed that consideration be given to other models such as the CNORIS (NHS) scheme, whereby costs are apportioned according to the losses by region. There is an annual actuarial review to assess the contributions made by each NHS board. We do however recognise that this creates a level of uncertainty for financial contributions from each Local Authority.

Bearing in mind the financial position that COVID has left authorities, an agreement on phased payment of contribution to avoid a further reduction in public services.

How will it be assessed as / when any further contribution might be required if there is extension of the scheme. The Scottish Government has proposed to meet the costs of admin and running scheme and also legal advice which is a positive.

Assurance needs to be given that any shortfall in contributions from other organisations or from total costs being substantially higher will not be passed onto local authorities. The Scottish Government must give a commitment that they will not require *organisations to contribute further monies over and above agreed sums.

Any contribution and legal agreement made must also satisfy any previous claims or liabilities pre the 1996 Local Authority reorganisation as a condition of settlement.

Civil litigation risks cannot be understated, whilst the redress scheme support redress to 80k, there may be cases where the survivor has been advised by an independent legal advisor their claim may result in a higher settlement. There may be a substantial increase in legal fees once the scheme is live. These cases will not be managed by the Redress Team or the Scottish Government. The legal fees as proposed in the bill are to be capped, alongside the independent legal advice received by survivors. It is critical to ensure survivors are protected from unscrupulous legal firms who would be keen to increase their income at the expense of survivors. ACC supports any legislative action by Scottish Government to curb this.

Compliance and consistency to be reported quarterly unless there are significant spikes in applicants and reporting periods to be reviewed.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Aberdeen City Council has a concern around the potential total cost of the redress scheme. Although at this time these costs do seem reasonable although we would note that the scheme may be in place for 5 years, it is possible that there may be a surge in records queries and applications both at the beginning and end of the 5 year period with those at or near the closing date requiring an extension to the scheme in terms of assessing and processing the claim. It is noteworthy that other redress schemes have extended their lifecycle with many running for equivalent period recurrently.

Ultimately only an actuarial review will confirm whether the estimated costs and savings are indeed accurate.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

We agree that Local Authorities should meet a proportion of those costs, but we do have grave concerns as to how much is deemed to be meaningful and how and when those contributions are made and calculated, both at a group and individual council level. Local authorities are already facing increasing numbers of civil litigation actions in respect of HCA where the average costs per case are likely to be significantly higher than the redress scheme levels and are also placing significant cost pressure's on councils in relation to historic child abuse.

Due cognisance also needs to be taken of the ongoing COVID pandemic related actions which have already had an impact on both council finances and the local and national economy, which will be felt for some years. In addition, we also face future and potential additional financial constraints in relation to EU exit.

Councils do need to make a meaningful contribution whilst at the same time being in a position to continue to provide core services and support their local vulnerable population and businesses going forward.

We would also wish to refer to the timing of any payments. A figure of £350m is currently being suggested as the total cost to be met. Whilst acknowledging this is not all to be met by local councils, a 3.1% share of this high-level figure would be £11m which is significantly greater than this council could afford in any short timescale and adding this to the savings councils are already expecting to have to make to deal with the past and ongoing costs of COVID, an economic downturn and continuing reductions in Local Authority funding cannot be met without drastic cuts to public services whilst continuing to protect the vulnerable and less well-off members of the population

Scottish Local Authorities are currently in discussion with the Scottish Government through Cosla, with regards to contributing to the cost of the Redress Scheme.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

We would note that in terms of timescales, the challenge is to encourage people to submit claims prior to the end of the 5 year period. We would not expect applications to be submitted in equal proportions during the time period and would expect a marked increase near the end of the application period. The Scottish Government communication strategy will have a positive impact on timing of claims.

At this time, the final cost is unquantifiable, it is therefore important for close monitoring of both the number of applicants and the average settlement value to be carried out on a continuous basis.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

No, current demand is already making it challenging for councils to meet statutory duties under Data Protection legislation. There is a rise in the number of data requests linked to right to access – subject access request and civil litigation with demand outweighing resource. The number of records queries will significantly rise during the period of the redress scheme with the need to increase resource. The expectation that funding is provided by the Scottish Government to ensure requests for information can be managed timeously and within statutory timeframes.

In addition, the one indirect implication of the bill is that once the redress scheme is complete and in operation it will stimulate an enhanced number of direct civil litigation actions against councils where individuals may feel, for whatever reasons, that the best approach would be to bypass the redress scheme. This may be encouraged by the legal profession as there will be less restrictions on potential fees.

Where claimant solicitors bypass the scheme, their costs will not be capped in line with the scheme so there is a further risk to a Local Authority budget in the event that the claim is successful.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Yes, although it is not possible to quantify the response. Where the waiver is not watertight and provides an option for a claimant to withdraw from the Scheme and pursue a civil claim against a Local Authority, there is the risk of additional litigation. These costs would be higher than those planned under the scheme.

The Bill does not include all those in care and there are exceptions. This may increase the number of vicarious liability claims that the Local Authority may see in the future.

Evidentiary requirements and amendments to the Bill are yet to be confirmed, these will have significant cost and resource implications for Local Authorities.

Submission from Angus Council**Redress for Survivors (Historical Child Abuse) (Scotland) Bill**

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

We did provide a response to the consultation but I am not aware of any comments from us on the financial assumptions made.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Not applicable.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The potential administrative costs to Councils have been estimated in the FM but these are likely to be minor in comparison to any potential financial contribution towards redress costs sought by Government from local authorities through COSLA. The GAD costs estimates have a wide potential range. In the absence of an agreed local government share it is not possible to assess the financial implications for Angus Council. These could however be very significant based on the total overall costs estimated made by GAD. As many of these claims relates to a period where a previous local authority structure was in place, it is not clear to us that Angus Council or any other Council should incur the liabilities that now arise.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Administrative costs for Councils are based on a couple of exemplars and look reasonable but as stated above these are likely to be minor in comparison to the cost of financial contributions sought from Councils

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

We are absolutely not content that the financial costs can be met because there is no clarity as yet on what they might be. The costs of administration if not funded will be yet another burden on Council budgets already hit hard by real terms reductions in funding and now COVID. The big concern remains the cost of any local government

contribution. Depending on the scale of that and how quickly it needs to be paid the impact on Council budgets and services could be very severe. It needs to be understood that local government finances are not in a resilient position to absorb the impact of further financial pressures at this moment in time.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

No comment

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

No Comments

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

No comments

OTHER COMMENTS

1. Need for support to people affected by abuse

Adults who have suffered significant childhood trauma are more likely to require some support in adulthood from services to help them recover such as mental health support, substance services, Justice services, parenting support etc. As such, a number of adult survivors will already be in contact with statutory or third sector services locally. The bill notes "*The approach adopted is intended to provide a trauma-informed system which is sensitive to survivors in a way that is often challenging to achieve with the use of points or tariffs. It also avoids creating an assessment system in which the decisions are purely based on discretion. For the purposes of creating a simple, transparent assessment process, drawing on research and following engagement with relevant professionals, an assessment framework will be published based on general examples and descriptions of abuse*". The application of this framework is likely to rely heavily on local support to people affected by abuse and the resource implications of this require more attention. The bill information notes that psychological and practical support will be available to those making an application for redress but more cognisance needs to be taken of the support needs of some individuals and the link to already established supportive and therapeutic relationships.

Payment levels - adults must have access to appropriate and flexible advice and guidance on how to claim and the right type of claim to make. There is a concern that those most traumatised and disadvantaged people will either fail to access the scheme or will take the path of least resistance and make the minimum application. The system itself and those partner agencies working with people must be involved and supported to ensure the best advice, guidance and practical support is on offer to our most vulnerable adults. Redress Scotland and Scottish Government will apply the scheme but there needs to be greater clarity on local support and the resource implications of this to ensure that information and access to the scheme is equitable across Scotland and in our more excluded communities not in direct contact with central belt/larger city based organisations.

Provision of Evidence

There are many types of information that would potentially be considered in support of an individually assessed payment in addition to the survivor's account within the application form and several examples are given in the Bill including medical and social care records of the applicant, criminal convictions of perpetrators, information relating to the care setting, relevant inspection reports etc. Access to this information for each applicant has a significant system and resource implication for Angus Council who will be required to provide a range of different information from different sources for each applicant pertaining to both their childhood and adulthood. Systems to access information are already under considerable strain with increased demand already noted from the progress of the Scottish Child Abuse Inquiry. Whilst it is difficult to assess demand, there are likely to be several thousand applications across Scotland.

Cost of the Scheme

The redress scheme will be funded by the Scottish Government. However, fair and meaningful financial contributions to the redress scheme will be sought from organisations involved in the care of children during the period covered by the scheme and this has obvious implications for the local authority as the body placing children, overseeing their care and in some part, for the direct delivery of care. Our own work in Angus as part of the Scottish Child Abuse Inquiry has confirmed some abuse and harm to children in foster care as assessed from written records. COSLA are heavily involved in the work on the scheme and have identified this as a risk for local authorities.

Non-financial redress

An agreed approach to making a genuine apology to help the victim in their recovery is important and requires some guidance and planning. The delivery

of an apology is a very personal issue and there needs to be consideration of how this can best be achieved.

Insurance

We have concern over the definition of “waiver” in the scheme as it is not clear who decides if the council has “made fair and meaningful financial contributions to the scheme”. We understand that the waiver would not legally be able to prevent individuals from submitting a claim against for example, Angus Council, even if they have had financial redress through the scheme. It appears to be the case that such an individual would still have the right to pursue a civil claim and this right is not removed by the signing of a waiver.

Anonymous Submission

Redress for Survivors (Historical Child Abuse) (Scotland) Bill

We write in response to the Financial Memorandum Questionnaire published alongside the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. We understand these documents were published on 13 August 2020.

We became aware of the Financial Memorandum Questionnaire on 2 October 2020. Given the deadline for submission of views is 9 October 2020, we've had limited time to review and consider the documents and relevant issues. It would have been helpful (as an organisation having previous engagement with the Scottish Government on this subject) to have received notice of the Financial Memorandum and related Questionnaire when they were first published.

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

Fair and meaningful contributions

We expect there will be a number of charities and other organisations interested in participating in a scheme of financial redress and support in respect of survivors of historical child abuse in relevant care settings in Scotland. However, we do have a concern that a charity interested in participating may not be able to afford to do so if the fair and meaningful contribution they are requested to pay would (a) very significantly hamper the delivery of their usual activities for the public benefit, or (b) result in breach of a declared reserves policy. We would therefore strongly encourage the Committee to consider and include affordability as a key factor in the method of calculation of a fair and meaningful contribution.

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

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

Restricted funds

We note the possibility of restricted funds being 'unlocked' and used for the purposes of making contributions to the redress scheme. We would encourage the Committee to consider (a) the wishes of the donors of those restricted funds, (b) the importance of seeking the consent of any donors who are alive and contactable, (c) the potential difficulty in contacting donors, and (d) the potential effects on the ability of charities to raise funds in support of their activities in future if donors do not have confidence those funds will be used for the purposes given. We consider it important that the

Scottish Ministers should at least be required to have regard to these factors before making subsequent regulations under the primary legislation, if it is passed.

Waiver

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

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

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

Submission from Police Scotland

Redress for Survivors (Historical Child Abuse) (Scotland) Bill

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Police Scotland submitted its response to Scottish Government's public consultation on the overall Redress Scheme. Police Scotland was also consulted by the Bill Team regarding the potential financial impact of the scheme and a written response was subsequently provided to assist in compilation of the Financial Memorandum.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Police Scotland is content that its comments have been accurately reflected in the Financial Memorandum.

3. Did you have sufficient time to contribute to the consultation exercise?

Police Scotland was afforded sufficient time to contribute during the consultation process.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

As stated, Police Scotland was consulted during the consultation process and estimated costs were provided in respect of the key areas identified. At the time of this submission, Police Scotland highlighted that the only other area which could have a financial impact on the organisation would be a potential increase in new reports of abuse, either where applicants decide to make new reports of abuse to Police Scotland, either directly through the scheme or indirectly through other means. It was noted that this would potentially create an increase in demand for investigative resources with associated implications. Costings were not provided for this aspect at the time.

However, Police Scotland has since undertaken an assessment of the potential volume of new reports of abuse which could be received from applicants, either directly through the scheme or indirectly through other means. Based on the ratio of risk notifications and new reports of non-recent child abuse arising out of other similar investigatory and formal processes and by using the number of risk notifications Police Scotland estimates may be received from the Redress Scheme, it is assessed that this could lead to in the region of 900 new reports being made over 5 years.

Police Scotland assesses that, on average, the investigation of one suspect for non-recent child abuse costs approximately £6,000 in terms of officer/staff time. Assuming that each new report relates to one suspect, this would equate to an annual cost in the region of £1,080,000 and a 5-year cost in the region of £5,400,000.

Whilst it is anticipated that the number of new reports will be lower than this due to the fact that there will be cross-over between applicants to the Redress Scheme and survivors who have already reported abuse to Police, it should also be highlighted that new reports of abuse experienced in care settings frequently relate to more than one suspect.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Notwithstanding the answer to Q4, Police Scotland is content with the estimated costs and savings set out in the Financial Memorandum.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

The assessed cost implications outlined for Police Scotland in the Financial Memorandum are significant, especially at a time of financial constraint, which only serves to increase the likely impact on Police Scotland.

In light of the fact that this is new legislation being introduced by the Scottish Government, Police Scotland intends seeking additional funding to cover the likely extra costs of new investigations occurring as a consequence of applicants engaging with the Redress Scheme.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Yes, it is felt that the Financial Memorandum does accurately reflect the margins of uncertainty associated with the Bill's estimated costs. Whilst it is difficult to accurately assess the number of applications to the scheme, Police Scotland is of the opinion that the projections outlined in the Financial Memorandum appear to be well reasoned. The assessment of costs provided by Police Scotland has been made using the 'central projection' of 11,000 applications, however as outlined in the section relating to Police Scotland, where the number of applications is higher or lower, then this will clearly either respectively increase or decrease the relevant costs.

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

Police Scotland believes that the Financial Memorandum covers all the relevant areas where costs will be, or could be, incurred as part of the Redress Scheme.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

With regard to subordinate legislation, it is understood that the majority of this will relate to detailed regulations and guidance as to how the scheme will work in practice, e.g. legal fee rates, previous payment considerations, etc. It is assessed that such matters are unlikely to have any additional financial impact on Police Scotland over and above the implications already outlined.

Submission from South Lanarkshire Council

Redress for Survivors (Historical Child Abuse) (Scotland) Bill

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

South Lanarkshire Council did take part in the consultation exercise and provided a response to this in November 2019. All aspects of the consultation were responded to, including comments in respect of financial contributions.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

The Council's comments in respect of financial contributions are not reflected in the FM

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The Bill does have financial implications for South Lanarkshire Council. We do not believe that these implications have been accurately reflected within the FM. The main areas which are likely to impact upon South Lanarkshire Council relate to a fair and meaningful contribution towards to cost of redress payments and administration of the scheme and resource implications in respect of dealing with Subject Access Requests (SARS). Comments on both aspects are summarised below.

Fair and Meaningful Contribution

No detail on the basis of contributions is contained within the Financial Memorandum. The Council and other bodies need to be made aware of those costs and the basis of apportionment, and these need to be reflected in the financial memorandum.

The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination, in comparison to a civil liability claim. Ultimately we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks.

Contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured.

Resource Implications

The estimated costs/time within the Financial Memorandum for Aberdeen and

North Lanarkshire Council does not seem unreasonable. However, did not seem to consider the time spent by different Council departments e.g. Education which may hold information to support a persons application or the time taken to produce an inventory which would be required to be produced for the redress scheme. Some SARs will be complex and likely to require advice from Legal Services.

Any additional requests would create time pressures on existing staff. They would require to be given the time to complete the task which would impact on their normal workload.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No, per comments in Q4

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

It is assumed that Local Government contributions will be a significant proportion of the total cost of redress payments for the entire scheme estimated at £350m. South Lanarkshire Council have no allocated funds to meet the cost of these contributions.

Council budgets are under pressure and they are facing significant increasing demands. This has been heightened at present due to the Council's response to the Covid-19 pandemic.

The Council's view is that no funds are available to meet these contributions and that further discussions are required through COSLA on how these significant burdens can be managed.

The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination, in comparison to a civil liability claim. Ultimately, we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks. As a result of this, contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured.

In the event that contributions do require to be made, the allocation basis requires to be fair and proportionate. We believe the Council is also at risk of further claims being intimated through litigation as a result of the scheme and note that the Council has received a low number of claims to date.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Yes, this seems reasonable, however as stated above, there is no comment on the basis of contributions from local government and others.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

The main areas of expenditure have been documented.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Yes, but this is not known at present

Submission from Stirling Council

Redress for Survivors (Historical Child Abuse) (Scotland) Bill

- 1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?**

Yes, in November 2019 we responded to the Scottish Government Consultation on the Bill and more recently in the August 2020 Call for Views from the Scottish Parliament. We have also contributed to discussion on these matters via the national Historic Abuse Practice Network that comes together around the work of the Scottish Child Abuse Inquiry (SCAI).

- 2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?**

Given the complexity of the information contained within the Financial Memorandum, it is difficult for a single local authority to comment on information that has been aggregated to such a high level. That is best done at a national level via COSLA.

- 3. Did you have sufficient time to contribute to the consultation exercise?**
N/A

Costs

- 4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.**

On the whole, yes the Financial Memorandum appears to cover all relevant aspects of costs for the Local Authority from Records Management demands through Subject Access Requests to Non-Financial Redress matters of support for survivors or their next of kin.

- 5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**

The estimated costings take account of understandings using a modelling framework that includes estimates above and below assessed expectations based on the best information available from source. Costs are considered fairly comprehensively across the multiple service areas and providers who may be involved. Qualifying commentary further notes that where cost liability is direct, as through the Fixed Rate applications and attendant Waivers, that such liability could be greater if the attendant Civil Litigation limitations were not set.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

The important matter of what is considered a “fair and meaningful” contribution from Local Authorities is yet to be determined and as such this limits ability at this time to accurately determine if the LA can meet the financial costs that may result. In a situation where councils are under massive financial pressure, a situation exacerbated by the COVID-19 pandemic, it is impossible at this stage to say if this council can meet the costs of contributing to the scheme. The discussions on “fair and meaningful” need to be concluded before councils can answer that question, but there is great uncertainty about affordability.

Stirling Council carries an additional burden as the host Authority for records that previously sat with what was Central Region and it would be important that account is taken of this relative to the likely demand noted within the FM regarding Subject Access Requests and associated supports that may be required around these.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

The Financial Memorandum seeks to do the best it can on the back of the research undertaken and information made available. There is active consideration within the FM of applicable margins of uncertainty and consideration of a range representing possible costs below, as well as potential costs above, estimations. Consideration of costs extends over the five years available in which to make application and with some extends activity for a further year relative to non-financial supports required.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

Yes. Covers anticipated costs of Claims, Implementation and Delivery of the Redress Scheme, Legal Fees, Contracted Out Services such as Psychological Assessments, Communications and Engagement Strategy, Survivors Forum, Counselling & Therapeutic Support, Financial Contributions from Providers, Costs on & Resource Implications for Local Authorities, Insurance Provisions, Care Providers, Survivor Support Services, Police Scotland, COPFS, SCTS, NHS and NRS.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Secondary legislation will explore ceiling limits for legal fees dependent on the type of application made. Outwith this we cannot, at this time, identify other

future costs associated with the Bill. The primary areas of financial and resource impact are already covered in the Financial Memorandum.