

# FINANCIAL REDRESS FOR SURVIVORS OF HISTORICAL CHILD ABUSE IN CARE

## Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill – Update – Bill passes Stage One of the Parliamentary Process

Information Note 8

January 2021

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The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill passed Stage 1 in the Scottish Parliament on 17<sup>th</sup> December. This means that the Bill will progress to Stage 2. You can watch the parliamentary debate here: <https://beta.parliament.scot/bills-and-laws/bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill>

In Stage 2, the Parliament's Education and Skills Committee will consider the detail of the Bill and vote on proposed changes (amendments). Any MSP can lodge an amendment and have it discussed by the Committee. There are often a large number of amendments proposed and discussed in any Bill. The Redress Bill is still on course to complete its passage by the end of this Parliamentary term in March 2021.

The Committee published its report and recommendations before the debate. It is based on the evidence they gathered during Stage 1. We have listened carefully to the Committee and to all the evidence gathered, and have provided our response to the Committee's Stage 1 report. The report, our response and all relevant documents to the Bill can be found here:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115852.aspx>

We know that there are some issues that need further careful consideration and we are now thinking about amendments that could be made to improve the Bill. We have listened to what survivors have told us about redress over the last three years, what survivors said to the Committee and we will continue to listen throughout the Parliamentary process.

This Information Note provides a brief summary of some of the key issues raised at Stage 1, what changes we are thinking about now, and what will happen next. You are advised to use the links for more detail, or contact us using the details at the end of this note, if you want to know more. The previous Information Note 7 also provides some detail on the Bill.

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### **What information is in the Committee Report?**

The Stage 1 report is a detailed examination of the Bill. It is over 100 pages long (there is an easy read summary version here [https://www.parliament.scot/S5\\_Education/General%20Documents/Redress\\_Bill\\_-\\_Easy\\_Read\\_Final.pdf](https://www.parliament.scot/S5_Education/General%20Documents/Redress_Bill_-_Easy_Read_Final.pdf) ) and draws on the evidence given to the Committee by many people including victims/ survivors, victim/survivor groups, care providers, legal experts and human rights bodies. The report makes a number of specific points and key recommendations, across different areas.

### **What conclusions did the report make?**

The Committee recommended that the Bill should be agreed at Stage 1 and move forward to Stage 2 and noted the following points in the conclusion:

- Victims/survivors have been fighting for redress for many years. This scheme will provide the first opportunity for victims/survivors of abuse that took place before 1964 to claim redress.
- The Committee recognises the Scottish Government's engagement with victim/survivor communities. It hopes that this will continue as the Bill makes its way through the Scottish Parliament.
- This redress scheme will not provide the solution that all victims/survivors are seeking. Some victims/survivors may still wish to go to court instead.
- There are some issues with the waiver and how 'fair and meaningful' contributions are calculated. These need to be addressed.
- Yet the Bill does create a straightforward, easy to access scheme. This will help victims/survivors find the redress and remedy they deserve.

## **What did the Government say in the response to the Committee?**

We provided a written response to the Committee. It details how we will give further consideration to the important matters that they raised. On some points we noted that we will further explore the issues and provide a fuller response at Stage 2. At other points we detailed the areas where we have already decided to propose changes (amendments) at Stage 2. Some key areas are noted below. This is not a complete list of all the changes the Government proposes to make to the Bill. **We are still considering all the evidence and deciding what changes to suggest to the Committee for their consideration at Stage 2.**

- **Corporal Punishment** – We had always intended that corporal punishment, where it was excessive, arbitrary or cruel or exercised for an improper motive would be viewed as abusive and be eligible for redress under the scheme. Concerns were raised about the need for us to be clearer about this. We do not want to discourage people from applying because they are not sure if the punishment they suffered is eligible. We will look at the wording to make it clearer when corporal punishment may be considered abusive.
- **Standard of Proof** – We want to make sure that applicants, organisations and insurers have faith in the robustness of the scheme. We will provide clarity on the standard of proof being applied and whether that is best in the Bill by amendment or in guidance.
- **Purpose of the Bill** – We have used a trauma informed approach to the design of the scheme with survivors' needs and expectations at the front and a commitment to set up a survivor forum to make sure survivors' voices inform the continued development. We fully support the desire for survivors to be treated with dignity, respect and compassion and are looking at how to best formally recognise that.
- **Vulnerable applicants – capacity** – We want to make sure that there is protection for vulnerable applicants in relation to receiving a financial payment, but understand the concerns raised that the Bill offers too much power to Redress Scotland in this area. We will consider how best to amend the approach taken in the Bill.
- **Next of Kin - cut-off date** - The committee noted that the current cut-off point of 17 November 2016 would severely restrict

applications. We have reflected on this and propose to change the date to 1 December 2004.

- **Next of Kin - cohabitants** - We are responding to the Committee's concern about fairness and consistency and will make a change that will require all cohabitant applicants to demonstrate a period of 6 months' cohabitation with the survivor immediately before the survivor's death.
- **Legal fees** – The Committee supported the capping of legal fees and noted that legal fees should be at the right level and safeguards should be in place for survivors. We will consider the level of legal fees to be paid and also evidence on fixed fees rather than capped maximums, as provided by the Law Society of Scotland.
- **Payments** - The Committee recognised that how individual payments are worked out is an important part of the scheme and that applicants will have different types of experiences and the differences between payment levels needs to be clear. However, they highlighted concerns about the size of the gap between each payment level and also views about the amounts. We are continuing to work with relevant experts to develop a framework to help with assessments. We had used a smaller number of distinct payment levels with the aim to help with transparency, consistency and decision making but understand concerns that the gap between payments may be too great. We will revisit the level of the increase between the different payment levels and will further consider the maximum payment level offered.
- **Fair and meaningful contributions from organisations and waiver** - The Committee was clear that there were some issues with the 'waiver' and how 'fair and meaningful' financial contributions would be secured. We are carefully considering the Committee's recommendations and will continue to reflect on whether the inclusion of waiver is the most reliable route to securing the fair financial contributions to redress payments that survivors want.

We know that there has been some incorrect and misleading information about what waiver is and what it means for survivors. We set out some further information on it below as we know the misinformation has been causing confusion and distress to some survivors.

## **What is a waiver?**

Survivors told us that they wanted organisations responsible for abuse to contribute to redress payments made to those who suffered the abuse. The Bill uses waiver as a way to secure those contributions. Other redress schemes around the world also include waivers as a way to get contributions.

The way it works is, if an applicant wants to accept a payment from the redress scheme, they will need to sign a document called a waiver in which they agree not to raise or continue any legal action against those who have made fair and meaningful financial contributions to the redress scheme.

The applicant would only agree to do this for organisations that have contributed to their redress payment, including the Scottish Government and those organisations who have made fair and meaningful financial contributions to the scheme. It means that those organisations which have already made a payment through the redress scheme cannot be asked to pay again through a court action. This is similar to the agreement survivors often make when accepting out of court settlements.

If an organisation does not make a fair and meaningful contribution to the redress scheme it will not be included in the waiver document and applicants can continue to take them to court even after accepting a redress payment from the scheme.

Applicants to the redress scheme will be strongly encouraged to seek independent legal advice before signing the waiver. Subject to appropriate limits, the legal costs for applicants will be paid for as part of the redress scheme.

## **Why are there concerns about the waiver?**

The waiver was not popular, including with victims/survivors. They felt that it restricted their rights to take legal action against organisations. Some feel that it protects organisations responsible for historical abuse from being held accountable.

Some people argued that being asked to sign a waiver before accepting a redress payment was a breach of their human rights. The Scottish Government does not accept this as the survivor always has

the choice as to whether they want to accept the redress payment or, in most cases, whether to go to court. Where a survivor does have a right to take court action, they keep that right unless and until they choose to accept a redress payment. Their rights are not affected in anyway by applying for redress. Redress schemes elsewhere around the world have included a waiver, and doing so is not in breach of survivors' rights under the European Convention of Human Rights. The redress scheme is an alternative to court for those who want it. The redress scheme offers a route to redress for some survivors that otherwise would have none.

The Committee heard how it was very important that there would be access to free independent legal advice which the Bill provides. Signing a waiver and accepting a redress payment would not prevent a survivor from talking about their experience, or their redress payment, or affect any criminal proceedings against perpetrators.

Importantly, as noted above, if an organisation does not make a fair and meaningful contribution to the redress scheme, it will not be included in the waiver document and applicants can continue to take them to court even after accepting a redress payment from the scheme.

### **Some Amendments being considered for the waiver**

The evidence highlighted areas where survivors' concerns could be addressed and we are suggesting some changes. These are:

- **Waiver, acceptance and review period** - We want to make sure that survivors do not feel rushed, that they are able to receive independent legal advice and have the time to carefully consider their choices before being asked to sign a waiver and accept a redress payment. We intend to increase the 12 week acceptance period to 6 months and the 4 week review request period to 8 weeks.
- **Waiver and Interim Payments** - We want to make sure that applicants for individually assessed payments are only asked to sign a waiver when they know the full amount of the redress payment being offered. We propose to remove the option of an interim payment but ensure that Redress Scotland will be able to prioritise applications from elderly and unwell survivors.

- **Waiver, cancelling or revoking** - We have listened carefully to the concerns expressed that an applicant may choose redress precisely because the scheme has received provider contributions; for some this will be a preferable way to hold providers to account and receive financial payments from them. For those survivors, it would be unjust if, in good faith, they signed the waiver but the organisations defaulted and failed to pay. We are therefore exploring ways to further strengthen the waiver, such as, for example, enabling it to be withdrawn in cases of default.

### **Why did the government propose a waiver?**

The main reason the waiver is in the Bill is to encourage organisations to contribute. This was because survivors told us, overwhelmingly, in previous consultations that they wanted organisations to contribute along with the Government. International Human Rights guidance also says that all those responsible should contribute to redress and reparations.

It is not possible to force organisations to contribute whilst still providing the redress scheme survivors want, a scheme which is an alternative to court in its processes and outcomes, which is non-adversarial and focussed on their needs.

Other countries with redress schemes with contributions have waivers. For example, Australia's national scheme has around 450 organisations signed up with a waiver in place. In the evidence to the Committee, some, although not all organisations, supported the waiver because it ensures they will not have to pay for the same abuse twice – redress and court. We are committed to keep thinking about how best we might be able to get the contributions that survivors want.

### **What is the government contributing?**

The Scottish Government will pay all the costs of setting up and delivering the redress scheme, the costs associated with providing support to survivors during the application process, legal costs for survivors to apply and costs associated with delivering non-financial redress, such as therapeutic support.

The Scottish Government will make a contribution to every single financial redress payment. It will pay in full the cost of redress

payments to survivors if the organisation that provided their care does not make a fair and meaningful contribution to the scheme. If this is the case the survivor will retain the right to take civil action against the organisation.

### **What are organisations being asked to contribute?**

We accept that there are challenges for organisations committing to the scheme especially when it is difficult to be clear about the final cost to them. We are committed to working with organisations to consider what works for them, the scheme and for survivors. Survivors will always be our first priority.

An organisation will make a fair and meaningful contribution by paying the remainder of the amount of redress payments made in applications where it is named by the survivor as where abuse took place, above the government contribution. The contributions from organisations will directly relate to payments made to survivors in the lifetime of the scheme and not the setting up or administration of the scheme.

### **When can I apply?**

The redress scheme requires legislation to be passed in the Scottish Parliament. The intention is to complete the legislative process by the end of this Parliamentary term in March 2021, subject to Parliamentary approval. The Scottish Government is working to establish the necessary infrastructure, including recruitment and training of staff, to allow the scheme to open as soon as possible after that.

### **What happens next?**

The Bill now passes to Stage 2 where the Committee will consider and vote on proposed amendments or changes to the Bill. Any MSP, even if they are not members of the lead Committee, can lodge amendments, however only members of the lead committee can vote on them. If you want to share further views, you can contact your MSP who has the power to lodge an amendment during the parliamentary consideration of the Bill.

### **What happens at Stage 3 and Royal Assent?**

There is a further opportunity for proposed amendments to be considered and voted on, although this now takes place before the whole Parliament rather than within the lead Committee. Again, any MSP can seek to have their proposed amendment considered but this

time, they too will get to vote on amendments. Once amendments have been dealt with, there will be a debate on the Bill followed by a vote of the whole of the Scottish Parliament. If Parliament votes to pass the Bill, it proceeds to Royal Assent and becomes law.

**For more information about financial redress:**

<https://www.gov.scot/publications/financial-redress-for-survivors-of-child-abuse-in-care-information-note/>

You can contact us by phoning 0808 169 9740 and leaving us a message. Please leave your name and number and we will phone you back as soon as we can. As the team is working from home, the answerphone is permanently on.

You can also email us:

Email enquiries about the redress scheme: [redress@gov.scot](mailto:redress@gov.scot)

Email enquiries about Advance Payments:

[AdvancePaymentTeam@gov.scot](mailto:AdvancePaymentTeam@gov.scot)

Currently we are not able to offer meetings in person.

**Contacts** If you wish to report your abuse, contact Police Scotland on 101 or Crimestoppers on 0800 555111.

If you wish to tell the Scottish Child Abuse Inquiry about your abuse, contact them on 0800 092 9300 or email

[talktous@childabuseinquiry.scot](mailto:talktous@childabuseinquiry.scot)

If you need support, contact Future Pathways on 0808 164 2005 or email [registration@future-pathways.co.uk](mailto:registration@future-pathways.co.uk)

If you find you are distressed you can contact **Breathing Space** free of charge on 0800 83 85 87 or the **Samaritans** free of charge on 116 123.