

To: Education and Children's Services Policy Board

On: 20 January 2022

Report by: Director of Children's Services

Heading: Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021

1. Summary

- 1.1. The Scottish Child Abuse Inquiry (SCAI) was established in 2015 to investigate the nature and extent of historical abuse of children while in care in Scotland. Findings published so far by the SCAI indicate widespread, serious systemic and societal failings over several decades in relation to children in the care of organisations investigated in its case studies to date.
- 1.2. The Scottish Government has established a redress scheme – Redress Scotland - to provide recognition of the harm caused to survivors of abuse in relevant care settings in Scotland before 2004.
- 1.3. The Scottish Parliament passed the [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021](#) on 11th March 2021 and it received the Royal Assent on 23 April 2021.
- 1.4. The Act establishes a new non-governmental public, Redress Scotland. Redress Scotland will assess applications from survivors, make decisions and review appeals for the financial redress award(s) for the next five years. The scheme will provide financial and non-financial redress for survivors.
- 1.5. The redress scheme offers an alternative to court action which is a faster, more survivor-focussed route to redress for survivors of historical abuse. It also gives survivors access to acknowledgement, an apology and support.
- 1.6. Qualified One-way Cost Shifting (QOCS) was introduced into Scotland in June 2021. QOCS will impact on all civil litigation claims going forward. For historical abuse claimants who chose civil litigation over the redress scheme, it is possible that QOCS will make it more likely that some claims will be settled.
- 1.7. However, as QOCS removes one incentive for historical abuse claimants to choose the redress scheme over civil litigation, it might result in more claims

being pursued via the court as claimants will have protection around legal costs.

2 Recommendations

2.1 The Education and Children Services Policy Board is asked to note:

(a) the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 received Royal Assent on 23 April 2021;

(b) the establishment of a new non-governmental public body, Redress Scotland has been established to assess and make decision on applications from victims of historical abuse in care: and

(c) the right that victims can make applications to pursue claims via Court and this could result in higher litigation costs arising from Qualified One-way Cost Shifting in respect of historical abuse claim.

3 Background

3.1 The Scottish Child Abuse Inquiry (SCAI) was established in 2015, to investigate the nature and extent of historical abuse of children whilst in care in Scotland. Findings published so far by the SCAI indicate widespread, serious systemic and societal failings over several decades in relation to children in the care of organisations investigated in its case studies to date.

3.2 These investigations have found that children were subject to physical, sexual, and emotional abuse and neglect. Care establishments were often places of fear, hostility, and confusion where feelings of isolation and vulnerability could be commonplace. Children who spoke up were often not believed. Many did not speak up because they were unable to, or they thought the abuse that they experienced was 'normal'. For some, the abuse was part of a 'regime of punishment and control that was at the core of the institution in which they lived'. For others, the conduct of individual perpetrators of abuse went undetected or unchecked. But for all who were abused, they were failed by the very systems in place to protect them.

3.3 At the time of writing, the inquiry has heard 238 days of evidence. It has produced seven case studies into a range of care settings and institutions including services run by charities and churches. Its current phase of work concerns a number of boarding schools.

3.4 Once concluded, the Inquiry will report to Scottish Ministers as soon as reasonably practicable, with recommendations to improve the law, policies and practices in Scotland.

3.5 The establishment of a redress scheme demonstrates the Scottish Government's recognition that many children in care in Scotland in the past were abused by those responsible for their care. Survivors of historical abuse

in care have campaigned for redress and the scheme is an important part of dealing with the wrongs of the past.

- 3.6 The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 received Royal Assent in April and the redress scheme will be open for applications before the end of 2021.
- 3.7 The Act established a new non-governmental public body, Redress Scotland to assess and make decisions in relation to claims of historical abuse in care. Redress Scotland can provide financial and non-financial redress. The chairperson, panel members and Chief Executive of Redress Scotland are in post. A temporary team of staff is also in place to support the set-up of Redress Scotland with recruitment now underway for more permanent staff.
- 3.8 Case workers from the Scottish Government will support and communicate with applicants. The Government will also provide other business and administrative support, but it is not involved in making decisions on applications.
- 3.9 Survivors of historical abuse can apply for a fixed rate redress payment of £10,000, or an individually assessed redress payment which will involve a more detailed examination of their experience. The individually assessed redress payment levels are set at £20,000, £40,000, £60,000, £80,000 or £100,000.
- 3.10 Survivors that receive financial redress will also be offered access to some non-financial elements of redress such as acknowledgement, apology and therapeutic support.
- 3.11 In some circumstances, next of kin of deceased survivors will be able to apply for a redress payment of £10,000.
- 3.12 Financial contributions are being sought by the Scottish Government from those involved in the care of the children at the time they were abused and COSLA has indicated that local authorities will contribute £100 million to the scheme.
- 3.13 Survivors who were abused before 1964, or for other reasons cannot, or do not want to, raise an action in civil court, will now have an opportunity to receive financial redress through the alternative route of Redress Scotland.
- 3.14 Survivors who currently have the right to raise a civil action in respect of their abuse, will continue to have that option. The Act provides a choice for them on whether or not they want to accept a payment through the redress scheme or pursue litigation. If they choose to accept the payment, they will be required to sign a waiver. Redress payments will be conditional upon the applicant signing a waiver relinquishing their right to continue or raise civil actions in respect of the abuse, against the Scottish Government or those organisations on the contributor list. The waiver only will apply to the organisations that have made fair and meaningful financial contributions to the redress scheme, the amounts of which will be published. Organisations who do not contribute will not be included in the waiver. In the absence of the waiver where an organisation does not participate in the scheme, survivors will be able to receive their redress payment and still retain the option to raise legal action against the organisation.

- 3.15 Independent legal advice, subject to appropriate limits, will be funded by the Scottish Government to ensure survivors can make fully informed decisions that are right for them.
- 3.16 It is likely that Qualified One-way Cost (QOCS) will lead to more settled claims, since, if the defender makes a formal offer to settle via the Court, and that offer is not accepted, and the pursuer then fails to achieve an award higher than the sum offered, the pursuer will lose the QOCS protection. In other words, they go from a position of having no liability, to one where they are liable for all for the expenses (pursuer's and defender's) from the date of the offer. That will weigh heavily on their advisers.
- 3.17 The principal incentive for claimants will be to raise claims that are otherwise weak, in the hope that an offer will be made, in order to reduce the defender's losses. It is likely that a higher percentage will end up with proceedings (as there is a much lower risk to them even where the decision goes in favour of the Council).

Implications of this report

1. **Financial**
Potential for increased litigation costs arising from QOCS should claimants choose not to pursue redress through the government scheme.
2. **HR and Organisational Development**
None.
3. **Community/Council Planning**
 - Our Renfrewshire is thriving -
 - Our Renfrewshire is well - *Redress scheme supports mental wellbeing of Renfrewshire citizens who are survivors of the harm caused by abuse in care.*
 - Our Renfrewshire is fair - *Renfrewshire survivors have access to formal acknowledgement, apology and redress for the harm caused by historical abuse in care.*
4. **Legal**
The Act provides for a new non-governmental public body which will decide on historical claims. The Act establishes QOCS which could impact on the local authority.
5. **Property/Assets**
None.
6. **Information Technology**
None.

7. Equality and Human Rights

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. Health and Safety

None.

9. Procurement

None.

10. Risk

None.

11. Privacy Impact

None.

12. Cosla Policy Position

Cosla has supported the establishment of the Redress Scheme and local government has indicated it will contribute £100million to the scheme.

13. Climate Risk

None.

List of Background Papers

(a) none

Children's Services

KN/MMMc/LG

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Author: John Trainer, Head of Child Care and Criminal Justice

john.trainer@renfrewshire.gov.uk

0141 618 6860