

To: Education and Children's Services Policy Board

On: 16 January 2020

Report by: Director of Children's Services

Heading: Financial Redress for Historical Child Abuse in Care – Pre-

legislative Consultation

1. Summary

- 1.1 On 23 October 2018, the Deputy First Minister announced the intention of the Scottish Government to establish a financial redress scheme for victims of historical abuse whilst they were children in care. A formal consultation on the nature of a financial redress scheme was launched with a closing date of 25 November 2019.
- 1.2 Due to the timing of the consultation, it wasn't possible for a response to be prepared and considered for at the meeting of this policy board on 31 October 2019. Following discussion with the convener it was agreed an officer response would be submitted to meet the closing date of the consultation and brought to this meeting for consideration.
- 1.3 The financial redress scheme is one element of response to victims of abuse as children in public care. The objective behind the scheme is to acknowledge and respond to the harm that was done to children who were abused in care in the past. One of the principles behind the scheme is that those agencies and organisations which were responsible for the institutions and care settings in which the abuse occurred should contribute to the redress scheme.
- 1.4 The draft response, prepared by officers in Children's Services, Legal Services and Risk Services, attached at appendix 1 was submitted and members are asked to homologate the response.

2. Recommendations

- 2.1 The Education and Children's Services Policy Board is asked to:
 - [a] homologate the response to the Scottish Government consultation attached at appendix 1.

3. Background

- 3.1 In 2015, the Scottish Government established the Scottish Child Abuse Inquiry to investigate the nature and extent of the abuse of children whilst in care in Scotland, and the failures which allowed it to happen. The Scottish Government asked the InterAction Action Plan Review Group to consult on the provision of financial redress for victims of childhood abuse whilst they were in public care.
- 3.2 The InterAction Action Plan Review Group published the outcome of the consultation in September 2018. One of the recommendations was the Scottish Government should establish a financial redress scheme and pass legislation on this before the end of the current parliamentary term. The Review Group also recommended the Scottish Government establish an advance payment scheme for those who were elderly or ill.
- 3.3 The Scottish Government accepted both of these recommendations. The advance payment scheme became operational in April 2019 and is open to those who suffered abuse in care in Scotland before December 2004 and are either age 70 or over or have been diagnosed with a terminal illness. Following a review, the Scottish Government has lowered the age range for those eligible for advance payment to age 68 and over. The advance payment scheme will remain in place until the statutory redress scheme is operational.
- 3.4 On 23 October 2019 the Scottish Government announced a consultation on the proposed legislative approach to a financial redress scheme for those who were victims of abuse as children whilst they were in public care. The scheme seeks to ensure that those agencies and organisations which were responsible for the institutions and care settings in which the abuse occurred should contribute to the redress scheme.
- 3.5 The timing of the consultation meant that the response couldn't be presented to the previous meeting of this Board. As a result, the Convener agreed that a draft response should be submitted by officers and considered at this meeting. The draft response was prepared by officers from Children's Services in consultation with Legal Services and Risk Services.
- 3.6 As a provider of care services for children there is a possibility that some survivors of abuse in care will have experienced in abuse in institutions or foster care arranged and provided by Renfrewshire Council or a predecessor authority. In view of this is it likely that at some point in the future Renfrewshire Council will require to contribute to the financial redress scheme.

Implications of this report

1. Financial

It is possible that Renfrewshire will be identified as an organisation which

was is responsible for an institution or care setting where abuse might have occurred. There is a possibility that some claims could be covered by insurance however others could be below the current excess limits resulting in the need for the council to make provision to cover contributions to the financial redress scheme.

2. HR and Organisational Development

3. Community/Council Planning

Our Renfrewshire is fair

 The possibility that some adults who were abused as children in care services provided by Renfrewshire Council will receive financial redress for the harm caused by the abuse.

4. Legal

The consultation will likely result in a new legal duty on local authorities to contribute to the financial redress scheme.

5. Property/Assets

None.

6. Information Technology

None.

7. Equality and Human Rights

(a) 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.

8. Health and Safety

None.

9. Procurement

None.

10. Risk

None.

11. Privacy Impact

None.

12. Cosla Policy Position

None.

13. Climate Risk

None.

List of Background Papers

Children's Services

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Submitted to Financial Redress for Historical Child Abuse in Care - Pre-Legislative Consultation Submitted on 2019-11-25 23:34:02

Part 1.1 Purpose and Principles of the Financial Redress Scheme

Purpose

1 We are considering the following wording to describe the purpose of financial redress: "to acknowledge and respond to the harm that was done to children who were abused in care in the past in residential settings in Scotland where institutions and bodies had long-term responsibility for the care of the child in place of the parent". What are your thoughts on this? Do you agree?

Yes

Please explain your answer. If no, what are your thoughts on purpose?:

Renfrewshire Council notes and agrees that the purpose of the scheme is to provide financial redress to victims of victims of abuse in residential settings. The Council is supportive of the purpose and principles of the scheme but suggests that there is a need for ensuring clarity and transparency of some of the terms used in the wording proposed by the Scottish Government. Renfrewshire Council suggest that the terms "residential settings", "long-term" and "responsibility for the care of the child in place of the parent" require clear definitions ensuring where possible that these align with those already in use.

Principles

2 We are considering the following as guiding principles:

Yes

Would you suggest any additions or amendments to the proposed principles?:

Renfrewshire Council agrees and supports the principles as detailed in the consultation document. The Council agrees that the principles must primarily be focused on the experience of the person applying to the scheme but suggest that there should be recognition of how the professionals and providers are treated under the scheme.

Part 1.2: Eligibility for the Financial Redress Scheme

Defining 'in care'

3 Do you agree with the proposed approach in relation to institutions and bodies having long term responsibility for the child in place of the parent?

Unsure

Please explain your answer.:

Renfrewshire Council has a number of concerns with the lack of detail and rationale on how the scheme will be operated. In addition, the Council is concerned that the approach suggested could have unintended consequences and unfair treatment for victims of abuse.

The rationale for excluding certain groups of children such as those in boarding schools and hospital for medical or surgical treatment isn't clear.

4 Subject to the institution or body having long term responsibility for the child, do you agree that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry's Terms of Reference?

Yes

Please explain your answer.:

5 Where parents chose to send children to a fee paying boarding school for the primary purpose of education, the institution did not have long-term responsibility in place of the parent. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree?

No

Please explain your answer.:

Renfrewshire Council recognises that some parents would make the choice to place their child in a fee paying boarding school however some parents doing so wouldn't have a choice e.g. members of the armed forces or those in colonial or diplomatic missions. The parents of these children would have expected their children to have the same level of care and protection as that provided to children in public care. Excluding this group of victim could mean that two people who experienced abuse are treated differently.

6 Where children spent time in hospital primarily for the purpose of medical or surgical treatment, parents retained the long-term responsibility for them. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree?

Please explain your answer.:

Renfrewshire Council believes that the exclusion of children who were abused in hospital would be unfair. Children in hospital should be considered to have been under the care and protection of the NHS and whilst the care on occasion might not have been long term the power imbalance means that parents weren't always present to prevent abuse.

The Council considers that excluding children abused in hospital is potentially discriminatory and fails to recognise the impact of the abuse on them.

Defining 'abuse'

7 We intend to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of the financial redress scheme. This includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect. Do you agree?

Yes

Please explain your answer.:

Defining 'historical' abuse

8 In our view 1 December 2004 represents an appropriate date to define 'historical' abuse for this financial redress scheme. Do you agree?

No

Please explain your answer.:

Renfrewshire Council is concerned that setting an appropriate date in the manner detailed in the consultation document is a challenge. The rationale for the date of 1 December 2004 isn't clear and could lead to many who otherwise be eligible for redress being excluded.

Child migrants

9 Do you have any comments you would like to make in relation to child migrants who also meet the eligibility requirements of this redress scheme?

Do you have any comments you would like to make in relation to child migrants who also meet the eligibility requirements of this redress scheme?: Renfrewshire Council is of the view that child migrants abused in Scotland should be eligible.

Those with a criminal conviction

10 Do you have any comments about the eligibility of those with a criminal conviction?

Do you have any comments about the eligibility of those with a criminal conviction?:

Renfrewshire Council recognises the challenge in the possible public reaction to people with criminal convictions being awarded financial redress. The Council, however is of the view that the scheme must be built on a human rights principle and that eligibility should be on the abuse they suffered.

11 Do you have any other comments on eligibility for the financial redress scheme?

Do you have any other comments on eligibility for the financial redress scheme?:

Part 1.3: Payment Structure, Evidence and Assessment

Evidence Requirements

12 What options might be available for someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland?

What options might be available for someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland?:

13 Do you think the redress scheme should have the power, subject to certain criteria, to require that bodies or organisations holding documentation which would support an application are required to make that available?

Not Answered

Please explain your answer.:

Renfrewshire Council isn't sure that there is a need for the redress scheme to have the power to require bodies or organisations to make documentation available in the manner suggested.

Individuals have a right to access the information held by public bodies and this could be the best approach to them securing the required information. This approach would ensure that social work support could be offered to those accessing their records., recognising that for many this could be a further traumatic experience.

14 For Stage One, what evidence do you think should be required about the abuse suffered?

14 - A signed declaration by the applicant that they suffered abuse, but no other supporting evidence: Yes
14 - A short written description of the abuse and its impact:
14 - Any existing written statement from another source which details the abuse in care:
15 Do you have any additional comments on evidence requirements for a Stage One payment?
Do you have any additional comments on evidence requirements for a Stage One payment?: Renfrewshire Council suggests that the evidence should be consistent with the Advanced Payment Scheme requirements.
16 For Stage Two, what additional evidence of the abuse, and of its impact, should be required for the individual assessment?
16 - Any existing written statement from another source which details the abuse:
16 - Oral testimony of abuse and its impact:
16 - Short written description of the abuse and its impact:
16 - Detailed written description of abuse suffered and its impact:
16 - Documentary evidence of impact of the abuse - Existing medical and/or psychological records: Yes
16 - Documentary evidence of impact of the abuse - New medical and/or psychological assessment:
16 - Supporting evidence of the abuse/impact from a third party:
17 Do you have any comments on evidence requirements for a Stage Two payment?
Do you have any comments on evidence requirements for a Stage Two payment?: Renfrewshire Council suggests that there needs to be a balance between seeking evidence which gives public confidence in the integrity of the scheme whilst ensuring that the applicant isn't subjected to further trauma through having to gather the evidence.
Provision for oral testimony
18 Do you think applicants should be able to give oral evidence to support their application?
Yes
If yes, under what circumstances might it be available?: Renfrewshire Council believes that the individual applicant should have a right to make oral evidence if they wish to do so.
Stage Two Assessment
19 Do you have any views on whether the length of time in care should be factored into the Stage Two assessment?
No No
If so how?: Renfrewshire Council accepts that for some victims the length of time in care and ongoing exposure to abuse could be relevant it is important to note that a single incident of abuse could have life-long impact on an individual.
20 Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?
Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?: Renfrewshire Council believes that the focus of the assessment should be on the impact of the abuse on the individual rather than on a category of abuse.
21 What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?
What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?:
22 Do you think:

22 - both the abuse suffered and the impact it has had should be treated equally:

22 - the redress payment is primarily for the impact the abuse has had:

22 - the redress payment is primarily for the abuse suffered:

Yes

Please explain your answer.: 23 How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust? How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust?: Consideration of other payments 24 Do you agree that anyone who has received a payment from another source for the abuse they suffered in care in Scotland should still be eligible to apply to the redress scheme? Yes Please explain your answer.: 25 Do you agree that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment from this scheme? Yes Please explain your answer.: Choosing between accepting a redress payment and seeking a payment from another source 26 Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action? Yes Please explain your answer.: Renfrewshire Council believes that victims of abuse should be the person who makes the decision on how best to pursue the resolution for them. Part 1.4: Making an Application Time period for making an application 27 We are proposing that the redress scheme will be open for applications for a period of five years. Do you agree this is a reasonable timescale? Yes Please explain your answer.: Renfrewshire Council believes that, on the basis the scheme will be promoted on a regular basis during the period it is open then a five year period is appropriate. Practical help making an application 28 Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the

application process?

Yes

Please explain your answer.:

Legal advice

29 In your view, which parts of the redress process might require independent legal advice? Please tick all that apply.

In making the decision to apply, During the application process, At the point of accepting a redress payment and signing a waiver?

30 How do you think the costs of independent legal advice could best be managed?

How do you think the costs of independent legal advice could best be managed?:

Renfrewshire Council believes that a similar structure to the current legal aid costs should be set in place.

Part 1.5: Next-of-Kin

31 What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?

What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?:

- 32 We are considering three options for the cut-off date for next-of-kin applications (meaning that a survivor would have had to have died after that date in order for a next-of-kin application to be made). Our proposal is to use 17 November 2016.
- 32 17 December 2014 the announcement of the Scottish Child Abuse Inquiry:
- 32 17 November 2016 the announcement of the earlier consultation and engagement work on the potential provision of financial redress:
- 32 23 October 2018 the announcement that there would be a statutory financial redress scheme in Scotland:

What are your views on which date would be the most appropriate?:

33 We propose that to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met all the eligibility criteria. What forms of evidence of abuse should next-of-kin be able to submit to support their application?

We propose that to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met all the eligibility criteria. What forms of evidence of abuse should next-of-kin be able to submit to support their application?:

34 What are your views on the proportion of the next-of-kin payment in relation to the level at which the redress Stage One payment will be set in due course?

Not Answered

Please explain your answer.:

Part 1.6: Financial Contributions

Contributions to the redress scheme

35 We think those bearing responsibility for the abuse should be expected to provide financial contributions to the costs of redress. Do you agree?

Not Answered

Please explain your answer.:

Renfrewshire Council agrees in principle that responsible bodies should be expected to contribute to the costs of redress. There could however be challenges in identifying the responsible organisation given the complexity of local government and the various reorganisation over the years.

- 36 Please tell us about how you think contributions by those responsible should work. Should those responsible make:
- 36 an upfront contribution to the scheme:
- 36 a contribution based on the number of applicants who come forward from their institution or service:
- 36 another approach to making a financial contribution to the redress scheme costs?:

Yes

Please explain your answer. :

Renfrewshire Council believes that contributions should be made on an case by case basis when the individual accepts the payment offered. The Council believes that the Scottish Government in the first instance make the payment and then the relevant organisation make the required contribution as a repayment to the Scottish Government.

Any other comments?:

37 Are there any barriers to providing contributions, and if so how might these be overcome?

Are there any barriers to providing contributions, and if so how might these be overcome?:

The main barrier to making contributions will be in establishing who the responsible organisation might be. This will be complicated in a public sector context where the assigning of responsibility on a geographical basis isn't necessarily appropriate. For local authorities there is a complication of establishing the responsible authority given that many services were provided on a regional basis and managed as regional resources. In addition the boundaries of local authorities have been subject to change through a range of local government reorganisations.

For many placements of children in residential establishments the decision to do so was endorsed by a children's hearing and the parent(s) retained full parental rights and responsibilities and continued to visit their child in placement.

On a practical level there is a need to consider the ability of the relevant organisation to make payments to the scheme. Many local authorities, including Renfrewshire are facing significant financial pressures and the addition of a requirement to contribute to the scheme will add to these.

38 Should the impact of making financial contributions on current services be taken into account and if so how?

Please explain your answer.:

Many local authorities, including Renfrewshire are facing significant financial pressures. Social work services are facing challenges due to the demands for support to the most vulnerable children and families. it is important that the contribution to the scheme shouldn't have a detrimental impact on the protection of children who require it at the present time.

There is an argument that the impact of current services from payments required by present local authorities due to the actions of predecessor councils is a potential detriment to those currently requiring support. The possibility of the Scottish Government making the payments for those authorities which no longer exist could be a possible solution on behalf of the Scottish people.

39 What other impacts might there be and how could those be addressed?

What other impacts might there be and how could those be addressed?:

The impact on local authorities includes the potential release of staffing to trace and provide evidence for survivors to support their applications. In addition local authorities will require to put in place staff to track and manage the financial impact of contributions.

40 How should circumstances where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets, be treated?

How should circumstances where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets, be treated?:

Renfrewshire Council recognises that there have been two distinct reorganisations of local government (1975 and 1996). Determining who is responsible for local authorities which no longer exist will be challenging. The Scottish Government should consider the possibility that it make the contribution on behalf of those authorities noting that it is acting on behalf of the Scottish people in this arrangement.

41 What is a fair and meaningful financial contribution from those bearing responsibility for the abuse?

What is a fair and meaningful financial contribution from those bearing responsibility for the abuse?:

If the relevant organisation is identified as being responsible for the abuse there is an argument that if it continues to exist then it should be responsible for 100% of the redress payment. Consideration does however, have to be given to the potential negative impact of this arrangement on present services.

42 What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?

What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?:

43 Should there be consequences for those responsible who do not make a fair and meaningful financial contribution?

Yes

If yes, what might these be?:

Contributions to wider reparations

44 In addition to their financial contributions to the redress scheme, what other contributions should those responsible for abuse make to wider reparations?

In addition to their financial contributions to the redress scheme, what other contributions should those responsible for abuse make to wider reparations?:

Local authorities will continue to offer support to survivors if they are assessed as requiring this.

Part 2.1: Decision-Making Panel for Redress

45 Do you agree that the decision making panel should consist of three members?

Not Answered

Please explain your answer.:

Neither agree nor disagree.

46 Do you agree that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact?

Yes

Are there other specific professional backgrounds or skills you feel are essential for the decision making panel?:

It would be considered advantageous to the operation of the scheme if there was a range of professional skills and knowledge available including legal and social work.

47 We propose that a Survivor Panel be established to advise and inform the redress scheme governance and administration, ensuring survivor experience of the application process is considered as part of a culture of continuous improvement. Do you agree?

Please explain your answer.:

Renfrewshire Council agrees that the voice of survivors should be central to the operation of the scheme. The voice of the survivor must therefore be represented both on an individual basis but also as a group to ensure confidence in the operation and transparency of the scheme.

How do you think survivors should be recruited and selected for this panel?:

Part 2.2: Public Body

48 Do you agree that the financial redress scheme administration should be located in a new public body?

Not Answered

Please explain your answer.:

Neither agree nor disagree. Renfrewshire Council agrees that the administration of the scheme should be independent however questions if this requires establishing a new public body with the resultant costs associated with this. The administration of the scheme by an established independent body such as the Scottish Tribunal Service should be explored.

49 Do you have any views as to where the public body should be located and what it should be called?

Do you have any views as to where the public body should be located and what it should be called?:

This question assumes agreement to a new public body being created. Renfrewshire Council remains unconvinced on the need for a new public body. As such we don't have a strong view on the name or location of such a body.

What factors should be taken into account when deciding where the public body should be?:

50 How can survivors be involved in the recruitment process for these posts?

How can survivors be involved in the recruitment process for these posts?:

This is an area which requires input from survivor groups and it isn't appropriate for Renfrewshire Council to determine how those groups should be involved in the recruitment of the positions mentioned. Renfrewshire Council remains of the view that it isn't convinced that a new public body is required to administer the scheme.

How should survivors be selected to take part in this process?:

Part 2.3: Wider Reparations

51 What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress?

What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress?:

Many of the services and supports are already available via existing health and local authority provision. it is however recognised that some survivors will welcome an independent provision separate from the organisation they view as being responsible for their abuse.

What would be the advantages?:

Would there be any disadvantages, and if so, how might these be addressed?:

52 Do you agree that it would be beneficial if the administration of these elements were located in the same physical building?

Do you agree that it would be beneficial if the administration of these elements were located in the same physical building?: Neither agree nor disagree.

What would be the advantages?:

Would there be any disadvantages, and if so, how might these be addressed?:

53 Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme?

Not Answered

Please explain your answer.:

The wishes of the individual applicant should be the major factor in determining if they wish wider reparation and support.

54 Should there be priority access to wider reparation for certain groups, for example elderly and ill?

Yes

Please explain your answer.:

Renfrewshire Council recognise that some victims will be elderly or have life limiting illnesses and as such should have priority for access to wider reparation and consistent with the advanced payment scheme.

55 If a person is eligible for redress, should they have the same or comparable access to other elements of reparation whether they live in Scotland or elsewhere?
Not Answered
Please explain your answer.: t could be difficult to ensure that those who don't live in Scotland have access as the supports would not be under the control of any Scottish public service or authority.
Acknowledgement and Apology
To allow us more flexibility in considering how acknowledgment is delivered in the future, we intend to include provision in the redress egislation to repeal the sections of the Victims and Witnesses (Scotland) Act 2014 which established the National Confidential Forum.
Do you have any views on this?: No specific view on this. it is important that the voice of survivors is considered by the Scottish Government on this proposal.
57 Do you have any views on how acknowledgment should be provided in the future?
Do you have any views on how acknowledgment should be provided in the future?:
58 Do you think a personal apology should be given alongside a redress payment?
Not Answered
Please explain your answer.:
f so, who should give the apology?:
Support
59 Do you think there is a need for a dedicated support service for in care survivors once the financial redress scheme is in place?
Not Answered
Please explain your answer.:
0 Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?
Oo you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?:
About you
What is your name?
Name: John Trainer
What is your email address?
Email: ohn.trainer@renfrewshire.gov.uk
Are you responding as an individual or an organisation?
Organisation
f responding as an individual do you identify as a survivor of abuse in care?
Not Answered
What is your organisation?
Organisation: Renfrewshire Council
f responding on behalf of an organisation, please indicate which category best describes your organisation. Please tick all that apply.

Local Authority, Current Care Provider, Previous Care Provider

If other, please specify.:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response including my name

We may wish to contact you again in the future, but we require your permission. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

If you would like to join our mailing list for any further updates on the financial redress scheme, you will need to sign and return a form (privacy notice). Please tick a box below if you would like to join our emailing list.

Yes, add me to the email list for further updates.:

No

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: