FINANCIAL REDRESS FOR HISTORICAL CHILD ABUSE IN CARE - PRE-LEGISLATIVE CONSULTATION

SUBMISSION FROM SOCIAL WORK SCOTLAND, TO SCOTTISH GOVERNMENT CONSULTATION

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Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome these proposals for a statutory redress scheme for historical child abuse in care, and our response to this consultation has been shaped by our commitment to establish a scheme which works for victims / survivors; a scheme which is built on human rights, responsive to individual's needs, sensitive to the risks and complexities, and fair to all involved.

The scheme, alongside the Historical Abuse Inquiry and other related developments, offers an important opportunity to redress Scottish society's failure to keep children safe and free from harm in the past. As the design and establishment if the scheme is likely to take place alongside implementation of the Independent Care Review's recommendations, and the incorporation of the UNCRC, we also hope it marks a decisive moment in Scotland's embrace of human rights and social justice.

PURPOSE AND PRINCIPLES OF THE REDRESS SCHEME

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". Do you agree?

Yes, in general terms we agree with the proposed purpose of financial redress. However, in the drafting of the legislation we would encourage greater alignment with the wording used in the Limitation (Childhood Abuse) (Scotland) Act 2017, to ensure it is clear that the scheme applies only to individuals who sustained harm, rather than any child who was placed in a particular setting. Furthermore, the term 'long term' should be removed; ideas of what constitutes 'long-term' are contested (one month, one year?) and no clear definition exists or is likely to be agreed. The only relevant factors are that a child was placed in a

setting by a public body (i.e. the state) and in that setting they suffered abuse. The length of time the child was in care should be immaterial.

If some version of the phrase “responsibility for the care of the child in place of the parent” is maintained in the description, it would be prudent to consider how the Redress Scheme will treat cases where institutions and bodies facilitated private arrangements within families, supporting relatives or family friends to provide care for the child in place of the parent. In these cases the state may never have assumed formal responsibilities for a child, but could still have had a significant role in determining with whom the child was placed; who may subsequently have subjected the child to abuse, or sent the child to a setting where they were subjected to abuse. While likely to affect only a few individuals, an equitable and effective Redress Scheme must be clear on how to treat these and other marginal cases.

2. Do you agree with these guiding principles?

Yes, we agree with the guiding principles proposed. But we feel that the list of principles should be extended further. Firstly, to include an explicit principle that individuals applying to the scheme are provided with specialised support from the start, designed to minimise the potential for future harm through the process (building on Principle 5), and also to ensure as strong an application as possible. This is to ensure equity of access to the Scheme, as some eligible individuals may have more experience, confidence, skills or support that others.

Secondly, while we agree the primary focus of the principles should be on the experience of the persons applying, we believe it would be helpful to have additional principles related to how public bodies and other organisations / institutions will be treated. For example, there could be a principle that the Redress Scheme will not put at risk services currently available to nurture and protect children looked after by Scottish local authorities. A clearer statement of how affected organisations can expect to be treated will not only help manage their engagement, it should improve transparency around a critical dimension of the Scheme for individual’s applying.

ELIGIBILITY

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?

No. As noted previously, the notion of what constitutes ‘long-term’ is subjective and contentious, and the phrase should be removed, in favour of simply “responsibility in place of the parent”. The factors which need to be established are whether institutions and bodies had responsibility for the child (in place of the parent) at the time abuse took place.

Similarly, we would recommend removing the term “morally responsible”. We assume this has been included to highlight that the state (through its institutions and bodies) had ethical and moral responsibilities towards the children in its care. However, in this context it appears both anachronistic and, possibly, trivialising of the extent of responsibility. We would favour instead “…and were legally responsible for their physical, social and emotional needs in place of parents” or “…and were practicably responsible for their physical, social and emotional needs in place of parents”.

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?

Broadly, yes. The list of residential settings should be the same as used in the Scottish Child Abuse Inquiry’s Terms of Reference.

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. While we understand and broadly agree with the rationale for excluding from the scheme children who were placed in fee paying boarding schools by parents who were free to choose, the current wording does not take into account the complexity of the UK’s history or individual family situations. As a result, individuals may be unfairly denied access to the Redress Scheme.

For example, how should the scheme treat children who were sent to fee paying boarding schools because of the parent’s employment abroad for the state, such as in the military, as colonial officers, or on diplomatic missions? In some cases the state itself will have paid the fees for these boarding schools, either directly or through supplements to parents. In these circumstances, did the parent’s ‘choose’ to send their children to boarding schools? Furthermore, in such circumstances it may be argued that sending children to such schools was for not primarily for the purposes of education, but also of care.

Related to points already made, there may also be situations were institutions and bodies (of the state) facilitated the placement of children in fee paying boarding schools, securing the financial support of relatives to keep the child out of formal state care. The Redress Scheme does need boundaries, but it must also be flexible enough to take account of the immense variety and complexity of individual circumstances. That will require skilled professionals, supporting individuals with their applications from the very start. And where people / groups are excluded from the Redress Scheme, we should be confident that those individuals have recourse to redress through other means. (Even then, we are concerned about the potential disparity which may emerge between two school peers, both victims of

abuse, but one able to access a supportive, person-focused Redress Scheme, the other only with access to the courts.)

Finally, if a version of this exclusion is adopted, it will be important to communicate that it does not apply to people who were directly placed in boarding schools by institutions and bodies who had parental responsibilities towards them.

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?

No. We are very uneasy about the exclusion of children who were abused while in hospital for the purpose of medical or surgical treatment, where parents retained 'long-term' responsibility for them. As with boarding schools, the lack of nuance here risks denying many individuals the right to redress for abuse suffered while in the care and protection of the NHS. It also insulates the NHS from appropriate accountability around how it fulfilled its responsibilities to the children in its care. We fully accept that local authorities had responsibilities towards children who were then victims of abuse, but that is equally true of hospitals and NHS Boards.

The primary consideration in determining eligibility should be whether the state had a significant role or power in determining the placement of the child, and when the child was in that placement, had responsibilities for their care and protection. A parent whose child requires medical treatment does not 'choose' to leave them in hospital; they follow the recommendations (and often decisions) or doctors. Nor does the parent remain totally responsible for the care and protection of the child over that period; the hospital (and NHS more generally) assumes responsibilities too. These dynamics are true today, but were perhaps even more of a feature in the past, where deferential attitudes towards medical professionals would have meant less challenge of their decisions, and where hospitals were less welcoming of parents and families (with strict visiting times, etc.). By any common sense account, children in hospital for medical or surgical treatment were (and are) in the care of the hospital and its staff. That should be reflected in the eligibility to the scheme.

By our understanding of this proposed eligibility criteria, if a group of children had suffered systematic abuse in a Scottish hospital (such as Jimmy Saville perpetrated in an English context) only those who had been formally 'looked after' by a local authority would be eligible to apply to the Redress Scheme. This does not seem fair on the victims (who may legitimately feel the hospital had responsibilities to keep the safe) nor on the local authorities and other organisations who will participate in the Redress Scheme.

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. The same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 should be used for the purpose of the Redress Scheme. We also support the link to the Child Protection guidance.

In determining how specific applications to the Redress Scheme are handled, we believe the interpretation of this definition should be expansive, taking into account certain actions which do not correspond obviously to sexual, physical or emotional abuse. For example, in situations where there is inappropriate administration of drugs, whether as means of control or as part a fabricated induced illness.

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

Not sure. Any date is going to exclude people, however, in the interests of making the Redress Scheme as inclusive (and final) as possible, should we not set a date somewhere closer to the present? Particularly as the scheme is not expected to be in operation until 2021. Moreover, the rationale given for the December 2004 date feels weak; we are concerned that victims / survivors of abuse may not feel the date of a public apology is a sufficient milestone. Perhaps a more suitable alternative would be the start of the public inquiry, in 2015.

If the 2004 date is chosen, clear guidance on alternative routes to redress must be made available to those who suffered abused at a later date.

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?

We are supportive of the proposals around child migrants. It is both logical and fair that these individuals are considered eligible to the Redress Scheme, if they suffered abuse within Scotland while in the care of the state. This should apply even if they have also received or applied to the UK child migrant scheme.

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

Criminal convictions should be no barrier to accessing the Redress Scheme. Eligibility should be determined by the circumstances of an individual's childhood, not what the

individual did or went on to do. We understand that for some it will be unpalatable to award financial payments to individuals convicted of offences (particularly sexual offences against children), but ultimately that is a political, presentational problem. The scheme can only live up to the principles on which is supposed to be based if it is open to all, irrespective of the actions of individual applicants. Moreover, if any restrictions were to be introduced, they are likely to be challengeable under the Human Rights Act 1998.

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

It may help if the eligibility criteria were clear on characteristics like citizenship. Our assumption is that the Scheme would be open to anyone who suffered abuse in Scotland while in the care of public bodies, regardless of their citizenship at the time or now.

We also recommend that powers be taken by Scottish Ministers to review and adjust eligibility criteria, and for these to be formally reviewed after the first couple of years of the scheme's operation.

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?

Those who are unable to produce documentary evidence of being "in care" are ineligible for an Advanced Payment; it makes sense that the full Redress Scheme mirror this. However, individuals applying to the full scheme should have the option to give evidence on oath, submitting an affidavit for determination.

Assuming that individuals will receive support with applications from the start, it may also be possible to triangulate from other documentary evidence, including individual's personal records, to a high degree of certainty that an individual was at a particular place when abuse took place. This could be validated by a version of the 'in care confirmation letter' developed for the Advanced Payment scheme.

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?

Yes. To deliver the Scheme efficiently and effectively relevant bodies and organisations should be required to provide information which would support an application. This power would replicate that of the Scottish Child Abuse Inquiry. It would also help ensure all relevant parties share the load of facilitating the work of the Scheme.

However, the provision of information is not a cost free exercise. In fact it can be a highly onerous one, and detailed consideration will need to be given to how organisations covered by this power are supported to undertake the work requested. Resourcing (human and financial) and imagination will be necessary. It could be worthwhile, for example, to establish within the Scheme's statutory body a team of sufficient size that they can directly assist data / evidence providers (who otherwise may need to recruit and train additional staff). In all instances, adequate, realistic timescales must be given for compliance.

The key consideration for the design and management of the Redress Scheme must be that attention and resources are not diverted (more than is absolutely necessary) away from the current provision of services, and the support of children and adults (some whom may also be applicants). The redress scheme will be unsuccessful and self-defeating if it saps the strength of today's public services, through the reallocation of money, or people's time and energy. The operation of the Redress Scheme must be fully funded, including the cost requirements of local authorities and others, whose staff will be central to making the Scheme work.

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

For the Stage One payment, the evidential test should be the same as currently in place for the Advance Payment scheme. We should be confident that abuse did take place at an institution while the individual was placed there, but not need to have proof of the specific instances of the individual's abuse. Individuals should be able to submit what information they see as relevant to assist their application, including a written statement, but it should not be required. Similarly, a short written description of the abuse and its impact should not be required; the Stage One scheme, as proposed, would not be about assessing the extent of impact, so this would not be relevant. The act of describing the abuse may also, in itself, be re-traumatising. It should be choice whether they wish to disclose this, as part of a Stage 2 application.

15. Do you have any additional comments on evidence requirements for a Stage One payment?

No.

16. For Stage Two, what additional evidence of the abuse, and of its impact, should be required for the individual assessment?

- **Any existing written statement from another source which details the abuse in care?** Should be encouraged to submit, not required to.
- **Oral testimony of abuse and its impact?** No. Should be an option if people wish to, but not a requirement. See answers below.

- **Short written description of the abuse and its impact?** Yes. However, the notion of 'short' is imprecise. The requirement should be on providing sufficient detail, not length. See below.
- **Detailed written description of the abuse and its impact?** Yes. However, the statement should be able to be provided by a third party (i.e. a family member, friend, professional), or through the provision of specific support for the individual, with the production of this statement as its aim.
- **Documentary evidence of impact of the abuse: Existing medical and/or psychological records?** Yes. **New medical and/or psychological assessment?** If no prior records exist, yes.
- **Supporting evidence of the abuse/impact from a third party?** Should be encouraged to submit, but not required to have such evidence.

17. Do you have any comments on evidence requirements for a Stage Two payment?

While the evidential test for a Stage Two payment should be appropriately more demanding than Stage One, the process for assessing claims must remain victim centred, flexible and focused on enabling and empowering an individual to secure redress (rather than meeting requirements or thresholds). This is likely to mean a process heavily dependent on skilled professionals and volunteers, including social workers, councillors, therapists, archivists, etc. That must be taken into account in the design of the scheme, and the structure and costs of the structure / organisation delivering it (e.g. a new public body).

18. Do you think applicants should be able to give oral evidence to support their application?

Yes. They should be able, but not required, to give oral testimony. They should have this option even if there is sufficient documentary evidence for their claim. This option should also be utilised where it is difficult to assess a case on the basis of available information.

19. Do you have any views on whether the length of time in care should be factored into the Stage Two assessment?

Length of time in care should be a consideration, but not a determinant or indicator of any impact. Being in care for two years and suffering abuse three times is not necessarily less significant than being in care for fifteen years and suffering abuse three times. Length of time in care should be something the professionals undertaking the assessment take into consideration, drawing on evidence about how individuals deal with trauma in different contexts, with different support structures, etc.

20. Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?

Each case must be considered independently, and the focus must be on assessing the impact abuse had, whatever its form, on the individual. Establishing a hierarchy of abuse, as this question suggests, risks marginalising some victims' experiences.

The process of assessment must be rigorous and forensic, but also sensitive and person-centred. It will not work if it becomes either a tick-box exercise or an opaque, subjective judgement. Maintaining the central, delicate balance will require very skilled professionals, using tools and their judgement, backed up by case notes and managers, and case discussions within small teams (to ensure individual assessors' prejudices and assumptions are being challenged). Critically, individuals should have the right to appeal assessments.

21. What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?

This should mirror the approach currently taken by civil courts.

22. Do you think (a) the redress payment is primarily for the abuse suffered; (b) the redress payment is primarily for the impact the abuse has had; (c) both the abuse suffered and the impact it has had should be treated equally.

It is unclear whether this question relates to Stage 1 payment, Stage 2 payment, or both. Assuming it refers to the Stage 2 payment, then its primary purpose is for the impact the abuse has had. The Stage 1 payment should be about acknowledging the abuse, and the second payment about its impact.

23. How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust?

Again, the question is unclear about whether it applies all or part of the Scheme. Assuming that it refers to the Phase 2 payment, ensuring parties are treated fairly and the process is robust will depend on (a) the skills of the professionals undertaking the assessment, (b) transparency of the criteria being considered, (c) opportunities for review and appeal of assessment decisions, (d) strong structures of supervision for those undertaking assessments, (e) close work as a team to ensure consistency, and (f) constructive internal challenge.

Fairness is not something which can be baked into a system, or achieved through process or criteria. It is something experienced by individuals, and it will be determined in the relational space which the scheme's employees offer. If individuals feel listened to and treated with respect, and that assessors took everything possible into account when making

their judgement, and that decision makers give clear reasons for their judgement, applicants are more likely to feel the Scheme was fair, and accept decisions.

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?

Broadly, yes, we agree that individuals who have received a payment for another source should still be eligible to apply to the Redress Scheme. However, the amount received should be deducted from any future redress payment. And where a court has made a determination about a previous claim, the Redress Scheme must handle applications very carefully, to ensure that an award does not contradict the court's decision.

Our rationale for supporting this eligibility to the scheme is one of equity and fairness. We considered an example where two individuals experienced similar abuse, in the same institution, at a similar time. One of the individuals has successfully secured redress through the courts or another scheme, while the other chose not to. The latter individual now makes a claim through the Redress Scheme, and is provided with a more substantial award than that offered to the first individual. While we expect variance even between two very similar cases (due to variable impact of abuse), it does not seem fair that one is entitled to make the claim and the other excluded.

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.

26. Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action?

Yes. We agree that applicants should choose between the two routes to redress. However, we do have some concern about the availability of quality legal advice to people having to make this decision, and the potential for individual's to be exploited. There is already anecdotal evidence of some legal firms encouraging individuals to make civil claims (sometimes on a no win, no fee basis).

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. However, it would be advantageous if the legislation permitted an extension of the scheme, with the approval of relevant stakeholders, if demand, logistics, etc. justified it. Furthermore, if there is to be a deadline for applications (e.g. five years after the scheme opens) it will be necessary to build in some form of public information campaign to ensure eligible people know and understand the deadlines.

It is also important that we distinguish the timeframe within which applications can be submitted, and the timeframe of the scheme and associated public body. Processing applications may take some time (well beyond the closing date of applications) and, moreover, it would be a lost opportunity if the public body did not complete some research and publications before it was wrapped up. Further communications around the Scheme should make clear that the public body may be in operation for longer than the Scheme itself.

28. Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the application process?

Yes. However, in part this should be achieved by properly assessing and resourcing the archivist and data retrieval functions of data holders (such as local authorities). Ensuring that these organisations have the capacity needed to meet demand would achieve the same result, but also have many more attendant benefits (freeing up front line social workers, for example). Locally embedded capacity could also work in local projects around record retention and access more generally, and would hold out the potential for skills to be developed locally, rather than in a public body which will eventually be dissolved.

Should a national database be developed with admission and boarding-out-register data (as is currently being considered) there is an opportunity for the Scheme to access the data directly and where the person is discovered this will negate the need for further documentary evidence.

This will not fully negate the need for survivors to be assisted to access records though, and whether the necessary support is provided by the Scheme or other organisations, it should be a priority in both the legislation and implementation. And the support for survivors will need to go beyond practical documentary evidence gathering, extending to emotional and legal guidance too. The complexity – and cost – of providing such support should not be underestimated.

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?** Yes. If there are legal consequences associated with receiving a scheme redress payment, then legal advice should be available at the outset, as the process of applying will not be entirely cost free.
- **During the application process?** Yes. Do not necessarily think it would be required often, but on the basis that in some circumstances it may, it should be available.
- **At the point of accepting a redress payment and signing a waiver?** Yes.

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

If it was possible, perhaps a measure of legal advice for free (provided by legal professionals employed or contracted by the statutory body). Then if an application is taken forward, this should be supported through legal aid (if the individual is eligible), with a cap on the maximum amount charged.

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?

Some provision for close, immediate family seems appropriate as a recognition on the impact the abuse may have had on the family. If the individual has died, the payment may also act as posthumous recognition of that individual's experience.

It may the case that multiple family members may apply separately, but in our view only one payment should be available per survivor who has died. The Scheme will need to determine how a payment is then subsequently sub-divided between next-of-kin applicants.

We are supportive of the proposal to limit the next-of-kin definition to surviving spouses and children, as long as 'surviving spouses' includes civil partnerships and those who in long term relationships. Cases may become further complicated where ex-'spouses' feel justified to a claim on the basis that relationships with the abuse victim broke down in part because of the abuse the deceased individual had experienced. And there may also be difficulties with assessing the validity of children who were estranged (questions about whether the victim / survivor would have wanted them to receive funds), as well as those individuals who were not biologically or legally a victim / survivor's children, but who were treated as such (e.g. children who grew up in informal kinship arrangements, with uncles, aunts, grandparents, etc.).

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.

We do not have a firm opinion on this, but suggest that a single date be agreed to mark the various thresholds and cut-offs relevant to the Scheme. Previously we had suggested 17 December 2014, the announcement of the Scottish Child Abuse Inquiry.

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?

Next of kin applicants should have to provide the same proof as required by living applicants, as well as proof of their relationship. That should include any existing written documentary evidence of the abuse, and here necessary, written or oral testimony in support of 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?

50%

FINANCIAL CONTRIBUTIONS

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

Yes. Attributing responsibility for abuse will, in many instances, be complex and contentious. But, if we work from a position that certain parties had a responsibility to keep children safe and protected from abuse, we can build a framework within which relevant parties (i.e. those who should make a financial contribution) can be identified. This would include the government (now Scottish Government), local authorities and institutions.

Determining liability with regard to local government is likely to be very complicated, and we urge Scottish Government to work closely with COSLA and others to identify and properly stress-test different contribution models, before any legislation is introduced into Parliament. A suitable model can then be agreed in advance, supported by the relevant parties.

36. Please tell us about how you think contributions by those responsible should work. Should those responsible make?

No answer to this question.

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

No answer to this question.

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

Yes. It is critical that the Redress Scheme does not impact detrimentally on current services. That most obviously includes those services available to today's children and families, but also extends to the adult services (disability, drugs and alcohol, social care) which many victims / survivors will rely. If the Scheme was found to be negatively impacting on current services (for instance through reducing available funding), public support for the Scheme would likely wane, and it would potentially create risk within families.

In respect of how the impact on current services is monitored, individual organisations will have mechanisms for this, but there is also potentially a role for Audit Scotland and OSCR, keeping under review the financial statements of the organisations involved to ensure that changes in the availability of funding for certain services are flagged, and the reasons behind them interrogated.

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

Harder to identify than financial impact on current services, but possibly no less important, are the risks of vicarious trauma and burn out among the professionals supporting applications. We already have examples, driven by the demands of the Historical Abuse Inquiry and Advance Payment scheme, of resources having to be diverted, teams stretched, and individuals requiring time-off (due to over-work or discomfort with the material). Many people assume that identifying and processing records (i.e. for a Subject Access Request) is a purely administrative and bureaucratic exercise, but in reality it is one which exposes individual workers to stories of abuse and neglect. That exposure has an impact, and with the expected increase in requests for documentation which will follow the opening of the Redress Scheme, it will need to be properly taken into account.

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?

No answer to this question.

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

No answer to this question.

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

No answer to this question.

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

No answer to this question.

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?

For the redress scheme to be more than just an acknowledgment of abuse, and for us to take this opportunity to address the harm done by the abuse and subsequent response (or lack thereof), it is critical that financial redress is just part of wider package of support.

In our opinion there should not be a distinction between the redress scheme and wider reparations. The Redress Scheme should cover all aspects, with financial awards representing one component. The financial contributions from relevant organisations and bodies would therefore be for the entire Scheme.

Within the package of wider reparations should fall the support provided (either directly by the Scheme or by relevant bodies and organisations) to applicants, such as help finding documentation, psychological support, etc.

DECISION MAKING PANEL FOR REDRESS

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

It is unclear again if the question is referring to a decision making panel for Phase 1, Phase 2 or both. If for Phase 1, then a three person panel seems excessive. An individual, suitably supervised and peer reviewed, should be sufficient. This would be in line with the current Advance Payment scheme. If the question relates to Phase 2 or both, we agree that the panel may consist of only three members. This is a fairly standard size for tribunals, and seems proportionate.

However, we think it should be clear that this panel will not be working alone, and that they will need to be supported by a range of professionals (employed directly or indirectly by the public body) whose purpose it is to support individuals with applications, assess the seriousness of impact (and validity of experiences, in some cases), etc. These

professionals will play a key role in ensuring the information submitted to the Panel is as complete as possible, but they should also have role helping the Panel come to decisions (where necessary).

All processes, discussions and decisions of the Panel and supporting professionals should be recorded, transparent, accessible and challengeable.

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

Yes, agree with the proposed knowledge and skills. No, there are no other skills or professional backgrounds which need to be represented in decision making panel. But as noted in our answer to Q.45, the panel – and individual applicants – should be supported by other professionals, who can be called on to help plug gaps in knowledge and expertise. The skills necessary for this scheme to work well should not – and cannot – be contained within a small, three person panel.

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

Yes. This would represent an important aspect of governance and continuous improvement, including rapid responses to challenges as they emerge. Survivor experience should also be reflected in the schemes overall governance (i.e. the Board).

Selection should be on the basis of open invitation and competition (on transparent criteria). Organisations should be encouraged to support members to apply. Representation should be broad enough to ensure all perspectives are being heard.

PUBLIC BODY

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

Not sure. The consultation document presents this as the only option, but for such an important decision it would be helpful if other options available were presented and evaluated (i.e. costs, benefits, risks, issues, etc.). For example, Social Work Scotland members have queried why the Redress Scheme cannot be located within the Scottish Courts and Tribunals Service, on the basis that it already has relevant expertise, and has judicial oversight and appeals processes built in. Others also raised concern that a new

public body would not be seen as sufficiently independent of Scottish Government or local authorities, on whose resources the public body is likely to rely.

49. Do you have any views as to where the public body should be located and what it should be called? What factors should be taken into account when deciding where the public body should be?

We do not have views on what a new public body should be called, and the right choice of location(s) will be significantly determined by the public bodies' functions. For example, if the public body is going to provide a structure for the provision of support services for victims, the body should perhaps have multiple locations across Scotland. Its headquarters could be in a significant town, easily accessible by public transport. Access for survivors and participating institutions, bodies and professionals should be the primary consideration.

50. How can survivors be involved in the recruitment process for these posts? How should survivors be selected to take part in this process?

Through the recruitment process there should be scope for survivors to interview and be part of the assessment process for panel members. Their feedback would provide an additional perspective which will ensure the people on the panel have good interpersonal skills, are empathic and personable. It may also help to run a national campaign inviting survivors to apply to be panel advisors.

There are strong parallels here with recruitment of panel members and senior staff at Children's Hearings Scotland. Engagement and learning from CHS' experience would be advantageous.

WIDER REPERATIONS

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 would be the advantages? Would there be any disadvantages, and if so, how might these be addressed?

While we acknowledge the advantages of bringing together the administration of the wider reparation package (in respect of improved coordination, governance, efficiency, joint-working, single-point-of-entry, etc.), we have concerns about breaking the link for people with established local support services. As a result of the centralisation of support 'under one roof ', funding for local services may be put at risk. These are services which have established relationships within local areas and with local areas, and which, if properly resourced and supported, may outlive the public body running the Redress Scheme.

Furthermore, many aspects of supporting individuals and facilitating applications are currently provided by local authority social work. The relationships local professionals have

developed will be difficult to replicate quickly in a national body. Ultimately, individuals live in local communities, and will benefit from being linked into a web of support which is itself local and accessible.

For these reasons, while we do see the advantages of bringing administration together, the case for doing so must be very convincingly made, its potential benefits clearly outweighing its risks of disrupting the existing mix of local and national provision.

52. Do you agree that it would be beneficial if the administration of these elements were located in the same physical building? What would be the advantages? Would there be any disadvantages, and if so, how might these be addressed?

No answer to this question.

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

Broadly, yes. Access to the wider reparations should be on the basis that the individual experienced abuse while in the care of the state, between certain specified dates. However, we would favour a more nuanced approach to determining access to support than the criteria set for eligibility to financial redress.

Support should begin from initial inquiry, and be available (if desired) in the preparing of applications for financial redress. By virtue of this though, it would not be possible to determine whether someone is eligible for wider reparations on the basis of whether they are eligible for financial redress, as this may not have been decided yet. It may be the case that an individual applications for financial redress is turned down, but that they receive a measure of support through the process, and access to other services.

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

Yes. A form of triage and prioritisation will be important, to ensure those in most need, and those with life limiting conditions are responded to early. Each person applying for wider reparations should have their needs and context assessed appropriately.

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?

Yes. However, the services should be made available in Scotland, and people’s actual access to it will be determined by their proximity to relevant offers (groups, etc.) or access to appropriate technology.

It would not be feasible to extend all aspects of the wider reparations to people living in other countries. They should equal right to access, but not have services taken to them.

ACKNOWLEDGEMENT AND APOLOGY

56. To allow us more flexibility in considering how acknowledgment is delivered in the future, we intend to include provision in the redress legislation 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?

In our view the powers should be taken. The decision whether to use them should be considered further, but it is important that Scottish Government and its stakeholders have the ability to make changes in the future, if so decided.

57. Do you have any views on how acknowledgment should be provided in the future?

No.

58. Do you think a personal apology should be given alongside a redress payment? If so, who should give the apology?

No answer to this question.

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?

Yes. There is a need for a dedicated support service with a single point of entry and access to multi-agency services. Care experienced people who are no longer receiving services, and who are or wish to access their records, are a high-risk group who must be considered within the scope of these services. Moreover, for some survivors they will already have a key person who is offering support, and any development of dedicated service will need to take account of and incorporate these existing relationships.

We think it is odd that these questions of support have been located outwith the sections of the consultation concerned with wider reparations. In our view it is a mistake to separate these things out. The provision of high-quality, person-centered support (including but not limited to assistance in making applications for financial redress) represents reparation. Making amends for failures in the past by ensuring that today eligible individuals have access to all the support they need. Indeed, the Redress Scheme should be constructed with a view to the Self-Directed Support (Scotland) Act 2013, providing people with control

over how they wish to direct and receive support. (In contrast to a national public body commissioning services which victims / survivors then have to ‘fit’ into.)

60. Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?

Please see answers to earlier questions.

For further information, please do not hesitate to contact:
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