

Report

Report to:	Finance and Corporate Resources Committee
Date of Meeting:	28 October 2020
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill
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1. Purpose of Report

1.1. The purpose of the report is to: -

- ◆ advise of the Scottish Parliament's Education and Skills Committee call for views on the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill
- ◆ advise of the Scottish Parliament's Finance and Constitution Committee call for views on the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill - Financial Memorandum
- ◆ provide details of the Council's response to the Bill and Financial Memorandum that have now been submitted

2. Recommendations

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) that the content of the Council's response to the calls for views on the Bill and Financial Memorandum, as set out in Appendices 1 and 2 be noted.

3. Background

- 3.1. Introduction of the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill follows a commitment from the Deputy First Minister in October 2018 to establish a financial redress scheme for survivors of historical child abuse in care in Scotland.
- 3.2. An Abuse Advanced Payment Scheme for survivors who are now terminally ill or who are aged 70 or over has been in place since April 2019. The scheme is open to anyone who falls into these 2 categories, where they were abused as child whilst in care in Scotland before December 2004. For individuals who apply to the scheme, payments will be made on a discretionary basis.
- 3.3. Since the announcement of the proposed Redress Scheme by the Scottish Government in October 2018, COSLA officers have been continuously engaged with Professional Associations to advance the Local Government position regarding the Redress Scheme. This engagement has included members of SOLACE, Social Work Scotland, Directors of Finance, Association of Directors of Education in Scotland (ADES), Association of Local Authority Risk Managers (ALARM) and officers from the Scottish Government.

- 3.4. The Scottish Government undertook a consultation into the proposed Financial Redress Scheme in September 2019. South Lanarkshire Council submitted a response to this consultation in November 2019.
- 3.5. Throughout discussions between COSLA and the Professional Associations, there has been significant concerns around several key issues which have been raised with the Scottish Government including financial impacts, insurance impacts and workforce resources.

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

- 4.1. On 13 August 2020, the Scottish Parliament published the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. The Bill was accompanied by an explanatory note; a policy memorandum; and a financial memorandum.
- 4.2. The main points noted within the Bill and its supporting documents are summarised below:-
- ◆ The scheme will be operated by a body independent of the government.
 - ◆ Abuse is defined as being sexual, physical and emotional abuse and abuse which takes the form of neglect.
 - ◆ Applications to the Scheme must be made within five years of the Act coming into force.
 - ◆ Financial contributions to the scheme will be sought from those who were responsible for the care of children where and when the abuse occurred, whether providing care directly or otherwise involved in the decision-making processes and arrangements by which the child came to be in care.
 - ◆ In respect of local authorities, a collective contribution is being sought through the Confederation of Scottish Local Authorities (COSLA). This is to represent the central role and responsibility local authorities held in the provision of care for children within Scotland throughout the period covered by the redress scheme (up to 1 December 2004).
 - ◆ The Bill requires that principles are published setting out how fair and meaningful contributions to the scheme will be assessed. There is no information provided on when these principles will be published or what they will cover. The level of contribution being sought via COSLA for local authorities is therefore unknown at this time.
 - ◆ Redress payments made under the scheme will be conditional upon the applicant signing a waiver which will relinquish their right to continue or raise relevant civil proceedings in respect of the abuse, such as actions for damages, against the Scottish Government and other organisations who have made fair and meaningful financial contributions to the scheme.
 - ◆ The Bill notes that it is not appropriate for the Scottish Government to interfere in contractual relationships between insurers and those organisations that are insured. Insurance companies have been asked by the Scottish Government to assist organisations facing a call for contribution. Given the potential exposure to litigation and costs faced by organisations who do not secure the waiver noted above, the approach to contributions aims to encourage insurers to support contributions to the scheme. Therefore, there is no onus on insurers to contribute.

- ◆ The payment levels for survivors are:-
 - ◆ Fixed rate redress payment £10,000
(Applicants require to meet the eligibility for the scheme, but do not require to provide a detailed account of their abuse. Those who receive a fixed rate redress payment will, for the duration of the scheme, be able to subsequently apply for an individually assessed redress payment (from which the fixed rate redress payment will be deducted)).
- ◆ Individually assessed payment levels:-
 - ◆ Level 1 £20,000
 - ◆ Level 2 £40,000
 - ◆ Level 3 £80,000

(Applicants require to meet the eligibility for the scheme, and assessment will involve a more detailed examination of the facts and circumstances of the survivor's experience, taking into account the severity, frequency, nature and duration of the abuse and all other relevant matters and it will require more by way of supporting information from the applicant than the fixed rate redress payment)
- ◆ A Next of Kin payment available at the fixed rate redress payment of £10,000.
- ◆ Any previous payments made will be deducted from the redress payment. This includes court awarded damages and insurance claims settlements.
- ◆ There is a detailed review procedure for all decisions by the redress panel.
- ◆ Scottish Ministers may compel anyone other than an applicant to provide specified information to them. They may also compel them to give evidence in the form of a written statement. Specified information includes information about previous payments. Failure to comply will be a criminal offence.
- ◆ Scottish Ministers will meet legal fees of applicants within certain limits. However, this excludes advice on whether to pursue litigation as an alternative to the redress payment.
- ◆ The Bill creates opportunities for survivors to access non-financial redress such as counselling services, acknowledgement and apology.
- ◆ The current central projection of applicants to the scheme is estimated at around 10,000-12,000.
- ◆ It is likely, based on the experiences from other Schemes that most applicants (estimated at around 80%) will choose to apply for the individually assessed payment, rather than the fixed rate payment.
- ◆ The current central projection for total cost of redress payments (excluding administration and associated costs) is around £300million to £350 million, based on an average payment in the region of £30,000 per applicant (based on 11,000 applicants)

5. Call for views

- 5.1. The Scottish Parliament's Education and Skills Committee issued a call for views on the Bill on 24 August 2020 and the Finance and Constitution Committee issued a call for views on the associated Financial Memorandum on 4 September 2020. The response dates for these call for views are 2 October 2020 and 9 October 2020, respectively.
- 5.2. Details of the Council's response to the call for views for the Bill is contained in Appendix One and the Council's response to the call for views for the Financial Memorandum is detailed in Appendix 2.

5.3. The Council fully supports the premise of financial compensation, access to acknowledgement, apology and therapeutic support to those who have suffered historic abuse.

5.4. The key issues raised within the Council's response to the call for views for the Bill and Financial Memorandum are summarised below:-

- ◆ In respect of a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse, the Council is concerned that no detail on the basis of contributions is in the bill at present.
- ◆ The Council and other bodies need to be made aware of those costs and the basis of apportionment, and these need to be reflected in the financial memorandum.
- ◆ It is assumed that Local Government contributions will be a significant proportion of the total cost of redress payments estimated at £350 million.
- ◆ The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements compared to a civil liability claim and lack of liability determination. Ultimately, it is unlikely cover can be accessed for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks.
- ◆ Contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured.
- ◆ The Council's view is that no funds are available to meet these contributions and that further discussions are required through COSLA on how these significant burdens can be managed.
- ◆ The allocation basis for contributions requires to be fair and proportionate and there should be some form of relationship to claims stemming from predecessor authority areas.
- ◆ South Lanarkshire Council is satisfied with the process for applying for redress, but concerned about the additional work placed on its resources in respect of Subject Access Requests and the additional cost involved

6. Employee Implications

6.1. Due to the requirement on applicants to the Redress Scheme to provide supporting documentation for their application, there may be a rise in the number of Subject Access Requests and record enquiries received by the Council. This is likely to require additional employee time in both Social Work Resources and Education Resources to respond to requests.

7. Financial Implications

7.1. The financial implications of the redress scheme on the Council are unknown at present. More information should become known once the Scottish Government publish their principles on the how fair and meaningful contributions to the scheme are to be assessed.

7.2. It now appears likely that the Council will be required to contribute to the redress scheme for losses which might otherwise have been insured, therefore placing an additional financial burden on the Council. At present, any contributions from insurers appear to be entirely discretionary for future claims made to the redress scheme.

8. Climate Change, Sustainability and Environmental Implications

8.1. There are no implications in terms of climate change, sustainability or the environment in terms of the information contained in this report.

9. Other Implications

9.1. None.

10. Equality Impact Assessment and Consultation Arrangements

10.1 No equality impact assessment is required in terms of the recommendations contained within this report

10.2 Consultation has been undertaken with Education Resources and Social Work Resources in terms of the contents of this report.

Paul Manning

Executive Director (Finance and Corporate Resources)

6 October 2020

Link (s) to Council Values /Ambitions/Objectives

♦ Accountable, Effective, Efficient and Transparent

Previous References

♦ None

List of Background Papers

- ♦ Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill
- ♦ Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill - Financial Memorandum

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact: -

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Appendix 1

South Lanarkshire Council's Response to the Scottish Parliament's Education and Skills Committee Call for Views on the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill

Call for views questions	South Lanarkshire Council's Response
<p>1) The people who are eligible to apply to the scheme. Who will be eligible? What is a "relevant care setting"? The redress scheme is for survivors who were abused in care in a relevant care setting before 1 December 2004 and were under 18 years. The redress scheme covers two categories of care setting in Scotland. The first concerns children who were "in care" because their families were unable to look after them on a day to day basis and, which led to the children being placed in an institutional care setting (for example, residence in a children's home provided by a public authority or voluntary organisation) or other public care setting (for example, residence with foster carers).</p> <p>The second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school, or where arrangements were made by a local authority to send children to board in schools not managed by that authority and the authority met the costs of that).</p>	<p>South Lanarkshire Council agrees with this definition, but is concerned that children placed in schools by parents and admitted to hospitals for long-term medical reasons, who were abused, are not part of the scheme.</p>
<p>2) The Bill's definition of abuse. What is meant by "abuse"? In the context of the redress scheme, "abuse" means sexual, physical and emotional abuse or abuse which takes the form of neglect.</p>	<p>South Lanarkshire Council agrees with this definition.</p>
<p>3) The dates used in the Bill to define 'historical abuse'. Why is there a cut-off date of 1 December 2004? This is the date that then First Minister Jack McConnell made a public apology in the Parliament and when Scotland began to face up to the harm done to children in care in the past.</p>	<p>South Lanarkshire Council agrees with this date.</p>
<p>4) The Bill's definition of 'in care' and the places in which that care took place. Who will be eligible? What is a "relevant care setting"? The redress scheme is for survivors who were abused in care in a relevant care setting before 1 December 2004 and were under 18 years. The redress scheme covers two categories of care setting in Scotland. The first concerns children who were "in care" because their families were unable to look after them on a day to day basis and, which led to the children being placed in an institutional care setting (for example, residence in a children's home provided by a public authority or voluntary organisation) or other public care setting (for example, residence with foster carers).</p>	<p>South Lanarkshire Council is concerned this definition does not consider those abused historically in school setting and hospital settings if they were placed there by their parents.</p>

<p>The second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school, or where arrangements were made by a local authority to send children to board in schools not managed by that authority and the authority met the costs of that).</p>	
<p>5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme. Key features of the redress scheme:</p> <ul style="list-style-type: none"> • Independent decision-making - a new organisation, Redress Scotland, will be created to independently assess and make decisions on applications for redress. • Administration and processing - a new team in the Scottish Government will carry out the administration of the redress scheme, for example, processing applications and redress payments. It will not be involved in decision-making. • Eligibility - the redress scheme is for survivors of historical child abuse, meaning abuse which took place before 1 December 2004, in relevant care settings in Scotland. • Time period - the redress scheme will be open to accept applications for a period of five years, although this period may be extended. • Payment structure – the scheme will offer survivors the choice of whether to apply for a fixed rate redress payment or an individually assessed redress payment. • Payment levels - the fixed rate redress payment will be £10,000. Individually assessed redress payments will be set at three levels: level 1 will be £20,000, level 2 will be £40,000 and level 3 will be £80,000. • Assessment - the level of each individually assessed redress payment will be determined following consideration of the nature, severity, frequency and duration of abuse along with other relevant matters. An assessment framework will be published as guidance to provide transparency and consistency in decision-making. • Evidence – the design of the scheme including supporting guidance and the Redress Scotland appointments process will be robust and credible to ensure that survivors, care providers and others can have confidence in its processes and outcomes. • Waiver - redress payments will be conditional upon the applicant signing a waiver, giving up their right to continue or raise civil actions in respect of the abuse, against the Scottish Government and those organisations that have made fair and meaningful financial contributions to the scheme. 	<p>South Lanarkshire Council is satisfied with the process for applying for redress, but concerned about the additional work placed on its resources in respect of Subject Access Requests and the additional cost involved.</p>
<p>6) The level of payments offered to survivors. How much money might I receive? Survivors will be able to choose at the point of application whether to apply for a fixed rate redress payment or an individually assessed redress payment.</p>	<p>South Lanarkshire Council do not have any specific comment to make on the redress payment levels and are of the view that survivor groups should be consulted the proposed payment levels.</p>

<ul style="list-style-type: none"> • The fixed rate redress payment is £10,000. <p>There are 3 levels of individually assessed redress payments, each level consists of a set payment:</p> <ul style="list-style-type: none"> • level 1 - £20,000; • level 2 - £40,000; • level 3 - £80,000. <p>If an application for an individually assessed redress payment does not meet the threshold required for a level 1, 2 or 3 payment, applicants will, provided they meet the general eligibility criteria of the scheme, be entitled to a fixed rate redress payment of £10,000.</p> <p>In order to determine the appropriate level of individually assessed redress payment, an assessment framework will be published as guidance to provide transparency and consistency in decision-making. These decisions will be made by Redress Scotland, a new body which is not part of Scottish Government.</p>	
<p>7) What you believe to be a ‘fair and meaningful’ contribution to the scheme from organisations responsible for abuse.</p> <p>Who will pay for the redress scheme? Will religious organisations and others be making a contribution to its cost? The redress scheme will be funded by the Scottish Government. However, fair and meaningful financial contributions to the redress scheme will be sought from organisations involved in the care of children during the period covered by the scheme. We understand the importance of these organisations being part of the collective effort to face up to the harms of the past.</p>	<p>South Lanarkshire Council is concerned that no detail on the basis of contributions is in the bill at present.</p> <p>It is assumed that Local Government contributions will be a significant proportion of the total cost of redress payments estimated at £350m.</p> <p>Council budgets are under pressure and they are facing significant increasing demands. This has been heightened at present due to the Council's response to the Covid-19 pandemic.</p> <p>The Council's view is that no funds are available to meet these contributions and that further discussions are required through COSLA on how these significant burdens can be managed.</p>

	<p>If councils have to find money to contribute towards a redress scheme, this will put further pressure on budgets and as a result, the funding available for other services will have to reduce.</p> <p>There may be a requirement for councils to record significant sums of liability in this current year. Councils do not have funding to accommodate this.</p> <p>The allocation basis requires to be fair and proportionate. South Lanarkshire Council's view is that there should be a link between the claims stemming from predecessor authority areas and the financial contributions sought.</p> <p>We believe the Council is also at risk of further claims being intimated through litigation as a result of the scheme and advise that the Council has received a low number of claims to date.</p> <p>The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination. Ultimately we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks.</p> <p>Contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured.</p>
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<p>8) The process for dealing with applications to the scheme from people who have serious convictions. Can I still apply if I have a criminal conviction? Yes. Survivors of abuse or next-of kin applicants with criminal convictions are not excluded from applying for financial redress. However, Redress Scotland will consider whether, giving a redress payment to people who have been convicted of serious criminal offences, particularly involving serious levels of abusive conduct, would be in the public interest. Serious offences are murder, rape and a sexual or other violent offence, which has resulted in a sentence of imprisonment of five years or more.</p>	<p>South Lanarkshire supports this.</p>
<p>9) The process for family members to make an application on behalf of a survivor who has since died. Will next-of-kin of deceased survivors be able to apply? Some next-of-kin of survivors who died on or after 17 November 2016 will be eligible to apply for a next-of kin payment, which is the same amount as the fixed rate redress payment. For the redress scheme, next-of-kin means spouses, civil partners or co-habitants of the deceased person. Where the deceased person had no spouse, civil partner or co-habitant, children of the deceased will be eligible to apply. Where there are multiple children of the deceased, the fixed rate redress payment will be divided equally between them.</p>	<p>South Lanarkshire supports this.</p>
<p>10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors. Non-financial redress – the redress scheme will offer access to acknowledgement, apology and therapeutic support in addition to redress payments.</p>	<p>South Lanarkshire Council fully supports this and believes that survivor groups are best placed to advise the Scottish Government on how these supports should be provided and implemented.</p>

South Lanarkshire Council's Response to the Scottish Parliament's Finance and Constitution Committee Call for Views on the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Bill – Financial Memorandum

Call for views questions	South Lanarkshire Council's Response
Consultation	
1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?	South Lanarkshire Council did take part in the consultation exercise and provided a response to this in November 2019. All aspects of the consultation were responded to, including comments in respect of financial contributions.
2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?	The Council's comments in respect of financial contributions are not reflected in the FM
3. Did you have sufficient time to contribute to the consultation exercise?	Yes
Costs	
4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.	<p>The Bill does have financial implications for South Lanarkshire Council. We do not believe that these implications have been accurately reflected within the FM. The main areas which are likely to impact upon South Lanarkshire Council relate to a fair and meaningful contribution towards to cost of redress payments and administration of the scheme and resource implications in respect of dealing with Subject Access Requests (SARS). Comments on both aspects are summarised below.</p> <p><u>Fair and Meaningful Contribution</u></p> <p>No detail on the basis of contributions is contained within the Financial Memorandum. The Council and other bodies need to be made aware of those costs and the basis of apportionment, and these need to be reflected in the financial memorandum.</p> <p>The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination, in comparison to a civil liability claim. Ultimately we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks.</p> <p>Contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured.</p>

	<p><u>Resource Implications</u></p> <p>The estimated costs/time within the Financial Memorandum for Aberdeen and North Lanarkshire Council does not seem unreasonable. However, did not seem to consider the time spent by different Council departments e.g. Education which may hold information to support a persons application or the time taken to produce an inventory which would be required to be produced for the redress scheme. Some SARs will be complex and likely to require advice from Legal Services.</p> <p>Any additional requests would create time pressures on existing staff. They would require to be given the time to complete the task which would impact on their normal workload.</p>
5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?	No, per comments in Q4
6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?	<p>It is assumed that Local Government contributions will be a significant proportion of the total cost of redress payments for the entire scheme estimated at £350m. South Lanarkshire Council have no allocated funds to meet the cost of these contributions.</p> <p>Council budgets are under pressure and they are facing significant increasing demands. This has been heightened at present due to the Council's response to the Covid-19 pandemic.</p> <p>The Council's view is that no funds are available to meet these contributions and that further discussions are required through COSLA on how these significant burdens can be managed.</p> <p>The design of the scheme means it is unlikely that we can rely upon historic insurance cover to help fund our contributions due to the less stringent evidence requirements and lack of liability determination, in comparison to a civil liability claim. Ultimately we are likely to fail to access cover for this purpose despite having bought the insurance policies in good faith to cover abuse and other risks. As a result of this, contributions to the Redress Scheme will place an additional funding pressure on the Council for losses that may otherwise have been insured. South Lanarkshire Council's views is that local authorities should be compensated by the Scottish Government in these circumstances.</p> <p>In the event that contributions do require to be made, the allocation basis requires to be fair and proportionate. We believe the Council is also at risk of further claims being intimated through litigation as a result of the scheme and note that the Council has received a low number of claims to date.</p>

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?	Yes, this seems reasonable, however as stated above, there is no comment on the basis of contributions from local government and others
Wider Issues	
8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?	The main areas of expenditure have been documented.
9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?	Yes, but this is not known at present