

**Fairer Scotland Duty
Assessment:
Redress for Survivors
(Historical Child Abuse in Care)
Scotland Act 2021 and relevant
secondary legislation**

October 2021

Fairer Scotland Duty Assessment: Redress for Survivors (Historical Child Abuse in Care) Scotland Act 2021 and relevant secondary legislation

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Version	Details of update	Version complete by	Completion Date
v1.0	Introduction of Bill	Marie Graham	13 August 2020
v2.0	Updates following Royal Assent including amendments made to the Bill throughout the parliamentary passage and to include and reflect the impact of the relevant secondary legislation.	Marie Graham	20 October 2021

Stage 1 - Planning

1. What is the aim of your policy/strategy/plan?

The Redress for Survivors (Historical Child Abuse in Care) Scotland Act 2021 establishes a financial redress scheme for survivors of historical child abuse in relevant care settings in Scotland, and, where eligible, their next of kin. The main purpose of the scheme is to acknowledge and provide tangible recognition of the harm suffered as a result of historical child abuse whilst residing in a relevant care setting in Scotland. The scheme will also provide non-financial redress - such as acknowledgement, apology and support, and it will sit alongside existing measures that the Scottish Government has put in place for survivors of historical child abuse.¹

The design of the redress scheme has been guided by engagement and consultation with survivors and others to ensure that it is trauma informed and takes into consideration as far as possible the needs of survivors. Survivors' views will continue to inform the delivery of the scheme in a process of continuous improvement.

The Scottish Government is committed to seeking financial contributions to the cost of the scheme from those who were responsible for the care of children where 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. The scheme provides an opportunity for those bodies and organisations to meaningfully participate in the national, collective endeavour to recognise the harms of the past. Seeking these financial contributions is consistent with a human rights approach and with the views expressed by survivors.

2. Who will it affect (particular groups/businesses/geographies etc.)?

The statutory financial redress scheme aims to provide financial redress to all survivors who suffered historical child abuse prior to 1 December 2004 whilst in a relevant care setting in Scotland. This policy will therefore have a direct impact on those survivors who meet the eligibility criteria, and on those survivors who do not. Eligible survivors will benefit by being offered a financial redress payment and non-financial redress such as access to therapeutic support. Survivors who are not eligible will not be entitled to receive financial redress or non-financial redress included as part of the financial redress scheme.

The redress scheme will improve the choices and access to justice for many survivors. Those who meet the eligibility criteria will have the opportunity to apply for financial redress and other elements of non-financial redress offered by the scheme such as acknowledgement, apology and therapeutic support.

We recognise that by being excluded from the scope of the scheme, survivors who do not meet the eligibility criteria are also affected; those survivors will not be entitled to receive financial redress delivered by the scheme or to access to the elements of

¹ This includes the establishment of the Scottish Child Abuse Inquiry in 2015. Also in 2015, the Scottish Government announced a significantly increased investment of £13.5 million over 5 years to support survivors of in care childhood abuse through a dedicated support fund. The In Care Survivor Support Fund became operational in September 2016 and was subsequently renamed Future Pathways in February 2017.

non-financial redress provided. However, we think that the eligibility criteria link rationally to the overall purpose of the scheme, and decisions to exclude any particular group, by the cut-off date or otherwise, are proportionate.

Relevant organisations may be faced with civil action on the part of survivors, the results of which could make a significant impact on the organisation through costs and damages, and upon services as a result. By making fair and meaningful financial contributions to the scheme, organisations may be able to mitigate the potential impact of action relating to historical abuse, and crystallise risk they may otherwise face. In order to make the delivery of the contribution affordable and sustainable for the scheme contributor, whilst ensuring the contribution remains fair and meaningful, section 15(2) of the Act requires the Scottish Ministers to take into account the circumstances which make a contribution affordable for an organisation, and any circumstances which may impact the ability of the organisation to continue to deliver their current services. The provision of fair and meaningful financial contributions offers relevant organisations an appropriate, proportionate and positive opportunity to address the harms of the past while protecting provision of the care services they provide.

3. What main outcomes do you expect the policy/strategy/plan to deliver?

Desired outcomes:

The overall desired outcome of this policy is to acknowledge and provide tangible recognition of the harm suffered as a result of historical child abuse whilst residing in a relevant care setting in Scotland.

This redress scheme is ambitious in its outcomes for survivors and ambitious in its vision for Scotland; as a nation that thoughtfully and compassionately responds to difficult truths and profound injustices and affirms the commitment to getting it right for vulnerable children in the future.

National outcomes:

This scheme will contribute to a number of national outcomes, including that we:

- Grow up loved, safe and respected so that they realise their full potential;
- Respect, protect and fulfil human rights and live free from discrimination; and
- Live in communities that are inclusive, empowered, resilient and safe.

4. What is your timeframe for completing the Fairer Scotland assessment?

The Fairer Scotland Assessment was originally completed following the introduction of the Bill, on 13 August 2020 and was revised following the Bill receiving Royal Assent on 23 April 2021. This published review was carried out following the laying of a number of Scottish Statutory Instruments relating to the Act in September 2021.

5. Who else in the organisation will be involved in the assessment and what roles will they be playing? We'd expect involvement from policy and analytical teams as a minimum. It is rarely appropriate for one person to conduct the assessment alone.

Both the Redress, Relations and Response Division and wider Scottish Government Children and Families Directorate have been working with external organisations to gather views for the scheme including survivor groups, support groups, psychologists specialised in early trauma, and charities. These organisations have helped provide views on all aspects of the scheme including what may need to be in place to support applicants more broadly.

We have also been engaging with internal stakeholders including officials within Survivor Support, Health, Human Rights, Third Sector Unit, Justice Directorate, and Finance who have provided data, analysis and insight into existing services and any overlaps within our scheme and pre-existing policies.

Stage 2 – Evidence

6. What does the evidence suggest about existing inequalities of outcome, caused by socio-economic disadvantage, in this specific policy area?

There are limits to accurate figures on numbers of eligible applicants - both numbers of those in care during the period covered by the scheme and of those who experienced abuse in care. The historical lack of consistency in the keeping of records and recording of statistics, as well as the subsequent loss of records and data contribute to that uncertainty. Secrecy, shame and other psychological barriers often result in disclosures of abuse taking years, if at all, to happen.

How early abuse and neglect might influence later socio-economic outcomes is also complex. The range of experiences of being in care including abuse and neglect is equally complex as this is how these early experiences influence later socio-economic outcomes. There is however, no doubt that many of the applicants for redress by the very nature of their experiences will have encountered disadvantage in their adult lives. The impact of abuse can be lifelong and occur across all areas, including economic disadvantage².

Adult survivors of abuse in care are not a homogenous group, they can be of any age, reflect the influence of changes in welfare over decades and demonstrate how childhood experiences, including abuse, can impact on later outcomes in a range of individual ways. Research suggests that children often experience more than one type of abuse and may experience a number of disadvantages. Although not all, many children in recent years came into care settings due to care and protection concerns and poverty, particularly decades ago. We also know that bereavement and loss can be a key issue and that children with disabilities are particularly vulnerable to abuse.

Recent research indicates that child maltreatment can influence educational attainment, mental and physical health problems and difficulties in adult relationships – all of which are noted as key factors that might influence ‘negative financial outcomes’. There is suggestion that the relationship between influencing factors and poverty can be circular – poverty increases poor mental health and mental health increases the likelihood of poverty³. Young people in care are significantly more likely to have mental health difficulties than their non-care experienced peers⁴.

We know from the data gathered in the 2019 Care Review⁵ that care experienced adults are over one and a half times more likely to experience severe multiple disadvantage (e.g. homelessness, substance misuse, mental health, offending). We

² (2016) The relationship between poverty, child abuse and neglect: an evidence review
Paul ByWaters, Lisa Bunting, Gavin Davidson, Jennifer Hanratty, Will Mason, Claire McCartan, Nicole Steils Joseph Rowntree Foundation

³ *ibid*

⁴ (2004) Office of National Statistics The Mental Health of young people looked after by local authorities in Scotland. HMS London

⁵ <https://www.carereview.scot/wp-content/uploads/2020/02/Follow-the-money.pdf>

can also see that on average they earn three quarters of the salary of their peers. Within Scotland, children living in the top 10% of most deprived areas in Scotland are 20 times more likely to spend time in care than those in the top 10% of least deprived areas.

It was concluded in the Scottish Prison Service “Prisoner’s Survey 2015 – Young People in Custody” that a third of young offenders had been in care at some point in their life.⁶

Future Pathways, Scotland’s national support service for survivors of abuse in care, analysed the postcodes provided by 1,214 people registered in Scotland to identify their SIMD (Scottish Index of Multiple Deprivations) ranking and found that those registered were more likely to live in areas of deprivation. Material support was noted to continue to be a significant aspect of support, perhaps suggesting the impact of income.⁷ Registered users also accessed education or training, suggesting that for adults who have experienced abuse in care material and practical support can be required to support them, working to influence their own outcomes.

Recent years have seen an increased focus on improving educational outcomes for looked after children. This underlines not only the income and employment opportunities that can follow a good education but a better understanding of the social, emotional and attachment needs of children. The independent Scottish Child Abuse Inquiry has noted the concerns from some survivors about their inadequate education and the emotional barriers to learning that they experienced while in care.

From this evidence we can see that it is likely that a number of people affected by our scheme will be also be affected by socio-economic inequalities. We have taken this into account when developing the elements of the redress scheme and the processes involved.

7. What does the evidence suggest about any possible impacts of the policy/programme/decision, as currently planned, on those inequalities of outcome?

A financial payment from the redress scheme will not fully address individual need or indeed inequality. We have had anecdotal feedback from some Advance Payment Scheme applicants that a financial payment has at times offered a material choice or opportunity that otherwise was not available. The emphasis from applicants is however always on meaningful non-financial outcomes such as receiving acknowledgement and recognition of the abuse suffered.

We are working with DWP, HMRC, DHSC, Northern Irish and Welsh social security colleagues and relevant SG colleagues to secure disregard for our redress payments in relation to benefits, tax and social care entitlement. This will mean that survivors, their next of kin and nominated beneficiaries will not have their benefits, tax or social care entitlements negatively impacted by a redress payment. If this is not in place by

⁶ <https://www.sps.gov.uk/Corporate/Publications/Publication-3908.aspx>

⁷ Future Pathways Quarterly Report: Q3 19/20 October – December 2019

the time the scheme opens applicants will have the option of placing their payments in trust so that successful applicants' entitlements are not negatively affected.

We will offer to pay for independent legal advice, which is reasonably incurred, for all applicants. Legal work reasonably undertaken in making an application for redress on behalf of all applicants will be paid up to a fixed fee. An additional sum, in excess of the fixed fee, may also be paid if Redress Scotland are satisfied that there are exceptional or unexpected circumstances which justify it. While not mandatory for applicants, independent legal advice will help to ensure that applicants are provided with as much support as possible to ease their journey through the application process. The payment of legal fees will not be means tested, ensuring all applicants have equal access to independent legal advice regardless of their socioeconomic status. The scheme will also pay for other costs and expenses reasonably incurred by a person in connection with an application to the redress scheme. Details on the types of costs and limits are set out in sections 92 and 93 of the Act and in the Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) Regulations 2021.⁸

We will offer the opportunity to access non-financial redress to eligible survivors who apply to the scheme. This includes access to therapeutic support. We will also offer support to all applicants throughout the application process, including signposting to financial advice where relevant.

The Adults With Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults (people aged 16 or over) who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate. For individuals that meet this criteria, welfare guardianship, financial guardianship and power of attorney can be in place. We have continued to engage with the Mental Welfare Commission, Office of the Public Guardian and other groups to consider what this means for applicants applying, particularly ensuring their rights and understanding through the process.

Section 51 of the Act ensures that children (18 years or under) can receive their payment whilst protecting their best interests, by allowing the panel to authorise payments in alternative ways, including, whole or part payment, in advance of turning 18 years of age.

We will continue to engage with organisations which work with vulnerable adults, with a view to providing suitable support and safeguards for vulnerable applicants (and not just those who are specifically captured by incapacity related legislation). We will deal with these issues operationally by developing guidelines for staff to ensure that any concerns over the exploitation of an applicant can be addressed in an appropriate and proportionate manner.

⁸ <https://www.legislation.gov.uk/ssi/2021/312/contents/made>

8. Is there any evidence that suggests alternative approaches to the policy/programme/decision? E.g. Evidence from around the UK? International evidence?

There are redress schemes with similar scope and eligibility requirements in other parts of the world, which we have analysed to inform our own scheme provision⁹. Some examples are set out below:

Scheme	Support offered
Tasmania, Australia	Applicants had access to counselling services from initial contact, but this was discontinued if the claim was disallowed (50 per cent uptake) Assistance was available via a helpline for accessing records and completing the application Applicants were given advice on options for legal action, plus funding for one legal consultation; legal costs of up to \$300 were covered (round 3 and 4) Medical and other expenses incurred in relation to the claim were covered Hearings: face-to-face interviews held in informal settings, with choice of male or female interviewer
Queensland, Australia	Applicants had access to counselling services Practical assistance was available from government-funded support services for submitting an application Applicants were able to apply to The Forde Foundation for a range of support and benefits Applicants were required to seek legal advice (funded by the scheme); legal costs up to \$500 were available – applicants were provided with a list of personal injury lawyers who would act for a set fee of \$500 Hearings: intended as non-adversarial process
Grandview, Canada	Applicants had access to therapy or counselling; there was a helpline, plus additional support such as tattoo or scar removal or reduction for all former residents Legal expenses of applicants pursuing individual claims were covered (but capped) Hearing: hearings were held in various locations, and were intended to be informal and non-confrontational
Jersey	Reasonable legal fees, medical expenses and other application-related costs were covered
Ireland	Applicant had access to counselling and support (via Towards Healing) Applicant could seek assistance from the Board in making an application

⁹ Report 3 : International Perspectives – a Descriptive Summary : Consultation and Engagement on a Potential Financial Compensation/Redress Scheme for Victims/Survivors of Abuse in Care - Strathprints

	<p>Reasonable legal and other costs and expenses incurred when applying for the scheme were covered by the scheme</p> <p>Hearings: could be held in various locations</p>
Lambeth Council, UK	<p>Applicants can ask a solicitor to make an application on their behalf but legal representation is not mandatory</p> <p>An applicant must choose their own legal representation</p> <p>The scheme will pay some of the legal costs, with the amount paid depending on the type of application made.</p> <p>The Council provides confidential advice and assistance to support applicants who wish to obtain advice relating to housing options, appropriate welfare benefits, accessing further educational qualifications and suitable employment.</p> <p>Signpost solicitors and provide support services for the applicant</p>
Northern Ireland, UK	<p>The redress scheme recommends that applicants should contact a solicitor for independent legal advice with regards to eligibility and assistance in making an application</p> <p>It provides a link to the Law Society website in respect of finding a solicitor</p> <p>Legal expenses covered but capped.</p> <p>Hearings: The process is non-adversarial. The oral hearing will be as informal as the panel considers appropriate.</p> <p>Survivors can seek support and advice from the office of the Interim Advocate or Statutory Commissioner for Survivors of Institutional Childhood Abuse (when appointed).</p> <p>The Commissioner for Survivors of Institutional Childhood Abuse will promote the interests of survivors.</p> <p>The Commissioner will encourage the provision and coordination of the provision of relevant services to survivors:</p> <ul style="list-style-type: none"> • To improve a person's physical or mental health • To help a person to overcome an addiction • To provide a person with counselling • To improve a person's literacy or numeracy • To provide a person with other education or training • To enable a person to access opportunities for work. <p>The Commissioner will provide or secure the provision of advice and information to survivors on the relevant services available to them and the facilities that are available for the provision of those services and how to obtain and access them</p>

9. What key evidence gaps are there? Is it possible to collect new evidence quickly in areas where we don't currently have any? For example, through consultation meetings, focus groups or surveys?

We have worked with the Government Actuary's Department to refine our data and improve our understanding of how many survivors there may be, and how many may apply to the scheme.

We are continuing to engage with survivor support organisations including Future Pathways, consultant psychologists specialising in early trauma and the National Confidential Forum to better understand emotional and psychological support should be offered to survivors. We are also engaging with academics and the Scottish Legal Aid Board to ensure we offer a meaningful opportunity for applicants to obtain legal and financial advice.

In total, 280 responses to the pre-legislative consultation were received. 18% were from organisations including the Scottish Human Rights Commission, local authorities, and care providers past and present. We have continued to engage with such organisations throughout the process to ensure that we are as inclusive and accessible as possible. The majority of our consultation responses came from those who identify as survivors (over 200 responses). The responses to the public consultation and the independent analytical report of this have been published and continue to inform policy decisions on the design of the redress scheme.

A formal consultation on the secondary legislation was not carried out and instead stakeholder views were obtained through a targeted engagement exercise with survivor organisations, representatives of the legal profession, care providers and others. A formal consultation was not considered appropriate given: previous consultations on the scheme, the significant scrutiny and evidence submitted on the waiver during parliamentary passage, the technical nature of the Regulations, and the timescales for delivery. We will continue to draw on what survivors have said and utilise ongoing engagement with survivors and survivor representatives in the delivery of the scheme.

10. How could you involve communities of interest (including those with lived experience of poverty and disadvantage) in the process? The voices of people and communities are likely to be important in identifying any potential improvements to the programme/policy/decision.

We have been working with external organisations to gather views on our scheme including survivor groups, support groups, psychologists with relevant expertise in early trauma, potential scheme contributors, and the third sector. We have also been engaging with internal stakeholders including officials within Survivor Support and Health.

Within our 2019 consultation, 82% of responses were from individuals, of whom around nine out of ten identified as a survivor of abuse in care. They highlighted a range of views and ideas about the scheme, non-financial elements and factors to consider through design and delivery. We have strived to engage and reach traditionally hard to reach groups, employing a strategy to reach out to the existing networks and communities who may have relationships with these groups and be able to support survivors to share their views in the consultation.

Our policy team has engaged with Homeless Action Scotland who also submitted a response to the consultation. This highlighted the potential barriers homeless people may face when applying to the scheme and receiving a payment. To address this we have engaged with a number of organisations around Scotland at a network hosted by Cyrenians and have committed to working with them as we design the implementation of the scheme to ensure we take account of the additional barriers faced by the homeless population.

Given the possible disadvantages and impact of abuse in care outlined in the evidence section, we recognise that there may be a number of barriers for applicants. We also know that particular relevant care settings, for example long stay hospitals, demand a considered focus on awareness raising and accessibility. We have initiated engagement with relevant organisations such as Deaf Scotland and People First Scotland.

The Scottish Government are members of the Review Group, (a group chaired by the Scottish Human Rights Commission) which brings together stakeholders with an interest in redress including survivors of abuse, representatives of provider organisations, Scottish Government, CELCIS and the Scottish Human Rights Commission.

It is a statutory requirement under section 102 of the Act that the Scottish Ministers must establish and maintain a Survivor Forum where survivors can continue to feed back their thoughts on the operation of the scheme and survivors' experiences in practice. This will help us monitor, assess and improve the survivor experience of the scheme, ensuring it is fit for purpose.

Stage 3 – Assessment and Improvement

11. What options could strengthen this programme/policy/decision in terms of its impacts on inequalities of outcome?

Our policy will provide tangible recognition for survivors. We have taken into account everything previously outlined in this document including non-financial redress, access to funded, independent legal advice and assistance with gathering evidence to meet the evidence requirements of the scheme. We intend to develop a robust awareness raising campaign that will be as accessible as possible. Potential barriers to applying will be closely monitored throughout implementation and the opening of the scheme.

12. What are the pros and cons of these options?

We are aware of the potential difficulties that survivors may face throughout this process. We intend to continue to learn from other schemes and relevant research on the subject of trauma, as well as utilising the experience of experts and survivors, and evaluating the current support services available. This will help ensure we design and deliver. From the outset we will build formal links with a Survivor Forum to help us monitor and review the delivery of the scheme.

13. How could the programme/policy/decision be adjusted to address inequalities associated with particular groups? Particular communities of interest or communities of place who are more at risk of inequalities of outcome?

As indicated above, there are potentially a number of different 'groups', each with distinct issues of equality of access and engagement with the scheme. We will strive to maintain effective working relationships with relevant networks and ensure robust monitoring and evaluation arrangements are in place.

Stage 4 - Decision

14. What changes, if any, will be made to the proposal as a result of the assessment? Why are these changes being made and what are the expected outcomes?

Due to our consistent engagement with survivors and relevant organisations throughout this process we do not propose any changes to the scheme at this time. Once the scheme goes live we will continue to review the processes, incorporating the feedback provided by the Survivor Forum, and where necessary, we will make improvements. Feedback from the Forum will be limited to the exercise of functions conferred on the Scottish Ministers and Redress Scotland, and does not extend to feedback on individual determinations made by the panel. Nor does it extend to wider feedback on making changes to the Act.

15. If no changes are proposed, please explain why.

We are unable to identify and assess any additions to the policy in term of its impacts on inequalities of outcome. This will be a live document. It will continue to be updated as we monitor and assess the impacts of the policy as it develops and the scheme goes live.



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