

Quarriers' S

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

Overview

- 1.1 Quarriers is a national charity that provides care and support to around 5,000 people across Scotland. We provide a wide range of services including: supported living and short breaks for disabled people; residential care and short breaks for disabled children; the assessment and diagnosis of complex epilepsy (in partnership with NHS Scotland); support for people with addictions and mental health problems; support to unpaid carers; early years support for disadvantaged children and families; and youth homelessness services. We work in 19 of Scotland's 32 local authorities, employ around 1,700 members of staff, and receive support from several hundred volunteers.
- 1.2 Quarriers is committed to working with all parties in support of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. Our aspiration is to participate in the scheme, and we continue to work with the Scottish Government and wider stakeholders to create the conditions that would allow for our participation.
- 1.3 Quarriers supports a human-rights based approach to the remedy of abuse and therefore supports the rights of survivors to seek justice, apology, and redress.
- 1.4 Quarriers reiterates our apology to anyone who suffered abuse while in our care.
- 1.5 Quarriers believes that to properly address the abuse of children in care, the legislation should sit within a wider context of remedy, truth, and reconciliation. That involves a commitment across civic institutions and third sector providers to transparency, accountability, and learning. The legislation therefore needs to secure participation in the scheme from the widest possible group of civic institutions and charitable organisations. However, we are concerned that the application of the fair and meaningful test might mean that many willing organisations are unable to participate due to the impact it would have on their financial sustainability.
- 1.6 Quarriers would welcome the opportunity to give oral evidence should the committee wish us to do so.

Quarriers' principles and values

- 2.1 Quarriers is committed to working with people who were abused as children while in our care, and we believe that reconciliation comes in part by listening to survivors' testimonies, by acknowledging the pain and lasting impact caused by abuse, and by providing a meaningful apology. We are committed to doing this as part of the Scottish Child Abuse Inquiry, and we recognise it is necessary to do this within a recognised process, at a time that is right for the survivor.
- 2.2 We consider ourselves to be a caring and considerate organisation that is proactively addressing the abuse that took place in our past. We have taken significant steps to engage with survivors and the Scottish Child Abuse Inquiry,

and we have worked proactively with the Scottish Government and other stakeholders as the national redress scheme was conceived.

2.3 The principles guiding the support we currently provide across our services also underpin our participation in the Scottish Child Abuse Inquiry and Redress Scheme. These are:

- A mission to transform lives by enabling the people we support to realise their true potential.
- Supporting people to have greater independence and inclusion in their communities, and to be active citizens who are in control of their support.
- Organisation-wide values of human rights, respect, excellence, dignity, honesty, openness, and aspiration.

Policy aspiration

3.1 Quarriers agrees that to properly address the abuse of children in care, the legislation should sit within a wider context of truth and reconciliation. This involves a commitment across civic institutions and third sector organisations to transparency, accountability, and learning. The legislation therefore needs to secure participation in the scheme from the widest possible group of civic institutions and charitable organisations.

3.2 We acknowledge the aspiration of the policy memorandum in seeking maximum participation from civic society but are concerned that the financial memorandum constructs a test that may prove to be too difficult to pass, preventing willing organisations from participating. This is discussed in more detail later in our submission.

Definitions and dates

4.1 We think it is right that people excluded from civil claims due to the law of prescription will be able to access this fund under the proposed legislation.

4.2 We accept the Bill's definition of abuse as it serves to be sufficiently open and inclusive, recognising the complex and multifaceted nature of abuse.

4.3 December 2004 could be considered the recent past and not 'historical' in the ordinary sense of the word. Although some abuse perpetrated may be historic, we recognise that for many the impact continues today. The Scottish Child Abuse Inquiry dropped the term 'historical' and we suggest that the Redress Scheme also considers this.

Supporting survivors

5.1 An individualised approach is preferred to a blanket approach to non-financial redress. The key principles are:

- Access to relevant information concerning abuse and reparation mechanisms
- Equal and effective access to justice
- Adequate, effective, and prompt reparation for harm suffered
- Meaningful apology

- Therapeutic and practical support

5.2 In general terms, the bill does not give sufficient recognition to the importance of non-financial redress. A commitment to survivors goes far beyond the payment of compensation. By focusing so heavily on the former, the bill could allow for the participation of organisations with deep pockets but with no real commitment to a process of reconciliation with survivors and exclude organisations who are committed to the well-being of survivors but whose financial circumstances preclude participation.

5.3 Quarriers supports the rights of survivors to seek justice, apology, and redress – and we reiterate our apology to anyone who suffered abuse while in our care.

5.4 Quarriers first apologised in 2004, although we acknowledge that this did not go far enough for many survivors. Quarriers then participated in Time to be Heard (2010), a pilot forum designed to test one model of acknowledging and helping to heal any hurt relating to abuse in residential care. In June 2017, Quarriers made a full and unequivocal apology at the Scottish Child Abuse Inquiry to anyone who suffered abuse while in our care. This has been repeated at every opportunity offered through the Inquiry and elsewhere.

5.5 Further guidance is sought on how to mediate meaningful and appropriate individual apologies. We recognise that apology law exists but that restrictions apply to organisations who want to create the conditions for remedy, and that such actions have insurance and legal implications.

Financial thresholds

6.1 We recognise that the levels of payments proposed within the Redress Scheme are potentially less than those which may be awarded through civil claims. We also acknowledge that this may be the only amount available for those affected by the law of prescription and whose civil case may not be successful. We support a process that does not re-traumatise survivors, and yet we recognise that this difference in payment level reflects the removal of a contested process: a civil claim will be defended, often by insurance companies, where there are reasonable lines of defence to either liability (e.g. the basis of the claim) or alternatively quantum (the value of that claim).

6.2 We note too that survivor groups are requesting that the proposed limits be increased. We support their right to maximise rightful compensation, however we are worried this could impact on charities' ability to contribute to and participate in the scheme. We anticipate that higher levels of compensation would be paid directly by participating charities, given that the Scottish Government has indicated that it will only underwrite the first £10k of an award. This will make participation more challenging for organisations like Quarriers, particularly if the insurance companies are not part of the process.

6.3 We would further highlight the importance of assessing and then reassessing what organisations can afford to contribute. We would suggest this should be reviewed within defined periods - perhaps every 6 months or annually. Such a provision means if there is an unforeseen spike in the number, or total value, of

claims then there is a possible trigger date to reassess contributions to the scheme.

Supporting charities' participation

7.1 Quarriers currently provides services to around 5,000 people across Scotland, and while our intention is that our participation in the scheme should **not** be to the detriment of the people we support, it will have and indeed already has had an impact on the organisation's activities. We are active participants in the Scottish Child Abuse Inquiry (SCAI) and associated activities, but this incurs significant costs, legal fees in particular. As such, contributions need to be carefully sourced in a manner that does not seriously affect the financial viability of the participating organisation. We estimate that Quarriers has spent £700,000 in support of our work with the SCAI and wider efforts to address the legacy of abuse. However, the legislation does not currently allow for that cost to be considered in relation to our participation.

7.2 The period over which payment to the Scheme is to be made is a key factor in whether organisations can participate. Participating organisations will recognise a redress liability where they meet the measurement test (a present obligation arising from a past event) but the fact that the liability may be repaid over a number of years could allow more organisations to participate.

The 'fair and meaningful' test

7.3 The Scottish Parliament ought to consider whether the legislation should aim to secure the largest number of organisations participating in the scheme or secure the maximum possible financial contribution from each organisation that wants to participate. As it stands, the application of the fair and meaningful test leans towards the latter, and in consequence many willing organisations would be unable to participate as it would represent an unsustainable financial burden. This stands at odds with the policy intention.

7.4 Our experience to date is that actuarial calculations around a proposed financial contribution underpinning the fair and meaningful test are wholly out of keeping with the financial reality facing charities. Furthermore, the reputational damage that might ensue for willing organisations who wish to participate but are unable to do so because of financial constraints could be significant.

7.5 Realistically, if charities are to protect the services they deliver, contributions will need to be paid from free reserves. Following ten years of austerity, the impact of COVID-19 and legacy issues such as pension deficits (not commonly recognised as a challenge outside of the sector), many charities do not operate significant reserves or hold wider assets.

7.6 The grounds of participation therefore should be repositioned to require organisations to:

- Issue a public apology to survivors of abuse.
- Demonstrate that they are committed to working with survivors as part of a process of reconciliation and non-financial redress.

- Commit to and publish a voluntary level of funding to the Redress Scheme which is affordable, and which will not be to the detriment of people currently being supported.
- Commit to providing records and supporting survivors' request for information.

The waiver and alternatives

7.7 As it stands, Quarriers supports the Scottish Government's proposed waiver because it prevents compensation being paid twice and creates the incentives necessary to support the participation of insurers. Realistically, many charities, however willing, will not be able to find the necessary resources from reserves. As such, there is likely to be a requirement for liabilities to be capped by a waiver scheme.

7.8 On the other hand, we acknowledge that survivors are dissatisfied with the waiver because it is perceived to diminish their rights. To that end, we have engaged positively in debate about alternatives to the waiver and are committed to further discussion.

Charity governance

8.1 Charity law will be profoundly affected by this legislation. In particular, it could erode the confidence of donors to charities since the financial support they provide might be used for purposes other than that which they intend.

8.2 If the proposed changes to charity law are to be enacted, then charities would need to inform donors of the change. In these circumstances, individuals and grant-makers may wish - or indeed be legally obligated - to withdraw their donation. There may be a loss of donor trust and therefore a potential impact on the ability of charities to raise funds to support their mission. This could have implications that stretch far beyond the terms of the legislation being considered.

8.3 It is also important to note that the fiduciary duties of a charity's Board of Trustees require that they act in the best interests of the organisation. It is our view that there could be circumstances in which charities *cannot* participate in the scheme, even if they wanted to. For example, where a Board of Trustees would knowingly be taking an organisation to a position of financial distress because of a voluntary payment to the scheme, it is our view that this would be inconsistent with the fiduciary duties of Trustees. In these circumstances, a voluntary contribution is effectively debarred.

Conclusion

8.4 Quarriers supports the Scottish Government's ambition to legislate to ensure effective remedy for survivors of abuse in care. We further support the Scottish Government's recognition that redress should be supported by civic Scotland as a whole and should not simply be a responsibility of the state. This in turn supposes that the success of the legislation and policy will be determined by its ability to attract contributions from a wide range of participating organisations. However, in the end, the financial test may well be too great for willing charities to

participate and would be to the detriment of the people that we support today – it would be disappointing and contrary to the Scottish Government’s policy ambition if organisations like Quarriers were effectively priced out of participating because of the application of a contribution requirement that is at odds with the financial realities that charities face.

1st October 2020