

## **Aberdeen City Council**

### **Call for views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

Aberdeen City Council (ACC) participated in the Financial Redress for Historical Child Abuse in Care - Pre-Legislative Consultation in November 2019. ACC welcomes the opportunity to respond to the Committee's call for views as part of its Stage 1 scrutiny of the Redress for Survivors (Historical Child Abuse in Care) Bill. In terms of the specific questions posed:

#### **1. The people who are eligible to apply to the scheme.**

ACC agrees in principle with the criteria for those eligible to apply to the scheme but notes that the Scottish Ministers will have the power by way of regulations (subject to the Scottish Parliament's approval by affirmative procedure) to adjust the definition of "relevant care setting" by adding to or varying the descriptions of types of residential institution listed in section 18(3), or by modifying the detailed descriptions of each type of residential institution provided for in section 19.

The power to modify the definition of "relevant care setting" is said to be based on experience gained through the advance payment scheme that has shown that additional types of care setting may come to light once the scheme is operational, and that it is possible that adjustments may be required in the future (paragraph 85 of the Policy Memorandum).

In principle there is no objection. However, it is not clear what level of scrutiny will be applied to adjustment of the definition of "relevant care setting" in particular, if this may include further consultation, due to the process being by way of affirmative procedure.

Examples or case studies where additional types of care setting have been discovered, would be helpful to provide context for the necessity of the power to adjust "relevant care setting."

#### **2. The Bill's definition of abuse.**

In its response to the Pre-Legislative Consultation, ACC agreed with the Scottish Government's intent to base the definition of "abuse" on that as set out in the Limitation (Childhood Abuse) (Scotland) Act 2017 ("the 2017 Act"). The broad definition provides a flexible and a proportionate approach, focussing on the experience of the survivor, rather than making a judgement that any form of abuse is, in and of itself, more severe than another. Recognition that abuse takes a variety of forms, and that all have damaging, long-term impacts must be respected.

However, further consultation and consideration should be given to the extension of "abuse" to include "peer to peer abuse," with reference to the Explanatory Notes. May this include, as an example, "a one-off fight between peers"?

Notwithstanding, there are examples and experience where peer to peer abuse should be within the eligibility criteria of the redress scheme. To withhold eligibility

for those who have this lived experience, may be considered a disservice. The criticality of this scheme is to ensure that each case is assessed on its own merits.

### **3. The dates used in the Bill to define 'historical abuse'.**

The date of historical abuse, which took place before 1 December 2004, is appropriate. The redress scheme is also open to those where the abuse took place before 26 September 1964. This is significant in terms of equality given that the operation of the law means that those survivors are unable to raise a civil action to pursue damages in respect of that abuse. For those survivors, the redress scheme is demonstrably more inclusive than existing remedies. This distinction reflects that the purpose of the redress scheme is to account for historical abuse.

### **4. The Bill's definition of 'in care' and the places in which that care took place.**

There is no definition of "in care" within bill. Therefore, ACC understand this question relates to the definition of "relevant care setting" as defined in sections 18 to 20.

In principle there are no issues with the two categories of care setting in Scotland; nor "relevant care setting" meaning, firstly, a residential institution in which the day to day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there, and secondly a place, other than a residential institution, in which a child resided while being boarded-out or fostered. Nor with the definition of "Residential institution" to mean a children's home, a penal institution, a residential care facility, school-related accommodation, and secure accommodation.

Reference is made to ACC's views on the power to modify the definition of "relevant care setting" as per question 1.

### **5. The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.**

The scheme's intention is to give survivors more, not less, choice as to how to pursue financial reparation. Independent legal advice is critical as redress does not replace existing avenues of financial reparation. An identified risk for survivors is where, perhaps the legal fees are not fully understood and civil litigation is pursued; the expectations is to receive higher settlement. An unknown is whether there will be a substantial increase in legal fees once the scheme is live.

For the waiver to operate effectively, it must clearly and specifically outline the period, people and organisations, and instances of abuse for which the survivor is accepting the redress payment. It is crucial that survivors have independent legal advice at this stage in order to make a fully informed decision.

Inclusive to the process, at point of entry, survivors must be offered counselling and support services. The impact of the redress process including accessing records, living the redress process and re-living life experiences cannot be

understated. A significant risk to survivors is being re-traumatised through this journey.

**6. The level of payments offered to survivors.**

ACC have no observations to make on the level of payment offered to survivors.

**7. What you believe to be a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.**

A response in relation to the financial aspects and implications of the bill will be provided in the call to views by the Finance and Constitution Committee, due on 9 October.

**8. The process for dealing with applications to the scheme from people who have serious convictions.**

ACC agrees with the process for dealing with application to the scheme from people who have serious convictions, on the basis that a public interest / human rights based approach will be adopted.

**9) The process for family members to make an application on behalf of a survivor who has since died.**

ACC are supportive of the process for family members to make an application on behalf of a survivor.

**10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.**

It is noted that the bill says very little about apology. Apology is referred to once in section 91 regarding reporting requirements. Public apology is without doubt a key aspect of non – financial redress and Scottish Ministers should continue to publicly acknowledge survivors experiences. Survivors should be consulted on how non-financial redress looks and feels for them.