

COSLA

Response to the Education and Skill's Committee's Call for Views: Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

COSLA is the voice of Local Government in Scotland. We are a councillor-led, cross-party organisation who champions Councils' vital work to secure the resources and powers they need. We work on Councils' behalf to focus on the challenges and opportunities they face, and to engage positively with governments and others on policy, funding and legislation.

Introduction

1. COSLA 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. This response was informed through ongoing discussions with Local Government Professional Associations including SOLAR, Social Work Scotland, Directors of Finance, ALARM, and SOLACE.
2. COSLA previously [responded](#) to Scottish Government's pre-legislative consultation on financial redress for survivors of historical child abuse in care. Local Government agrees in principle with the redress scheme, acknowledging that financial redress should be made available to survivors of historical abuse in a way that is meaningful, inclusive, and accessible. COSLA's consultation response also highlighted the need to consider the significant financial (including insurance), legal, and practical challenges for Councils, to ensure that the needs of survivors are met through the scheme, and that existing Council services are not impacted.
3. There is no doubt however that this Bill as introduced by Scottish Government, and the national Redress scheme, will have significant implications for Local Authorities due to their unique roles, responsibilities and scope of their involvement across the entirety of the Scottish care system. This current submission will consider in greater detail the financial and resource implications that the scheme, as introduced by the Bill, will have for Local Government in Scotland, and the ways in which the Bill at Stage 1 could more robustly address these challenges.
4. The current financial context is severely challenging for Councils who are coping with significant financial pressures arising from COVID-19. Council finances had already been impacted by cuts to core budgets in previous Local Government Settlements. This scheme will present financial risks which Councils are already assessing and accounting for as a matter of high priority. This is being highlighted to the Committee to emphasise that, whilst Local Government fully supports the policy intention of the Bill, there must be careful consideration of the financial and resource impacts it will have. If Scotland is to provide meaningful and collective recognition of its historical wrongs, we must ensure that Local Authorities are fully prepared and resourced to support survivors of abuse throughout what will be a very challenging time.

5. Rather than responding directly to the Committee's suggested questions, this submission will highlight key areas for wider consideration, as informed by ongoing discussion with professional bodies across the Local Government family.

The Definition of Abuse

6. The Bill sets out that 'abuse' refers to sexual abuse, physical abuse, emotional abuse, and abuse which takes the form of neglect. The Explanatory Notes which accompany the Bill further expands on this definition, and states: *'As read with section 16, this would include abuse by peers within a relevant care setting. Corporal punishment that was lawful at the time it was administered does not constitute physical abuse for the purposes of the Bill.'* Local Government has raised potential issues around inclusion of peer abuse within this definition, as this was not previously consulted on and there is question as to whether any civil case has considered this within the context of the Limitation Act. COSLA urges that full and robust consideration is given to the implications of widening the definition to include peer abuse.

A Fair and Meaningful Contribution from Local Government

7. The Bill sets out that a fair and meaningful contribution will be sought from Local Government to reflect its 'legacy' of responsibility for abuse in care. Local Government has agreed in principle to participate in the scheme and has committed to making a financial contribution. The details of this contribution, including the amount, structure, and timeframe, are not specified in the Bill or its accompanying documents. Discussions are ongoing between Local and Scottish Government to examine and consider the scope and mechanism of the contribution.
8. A key area of concern to Local Government is the unknown quantum of the contribution. While it is assumed it will be a significant proportion of the costs of redress payments as set out in the Financial Memorandum (£350m), there are various unknowns which will determine the total payments which will be made and, in turn, the extent of the financial contribution from Local Government, including: number of applicants to the scheme, whether applicants choose a fixed rate payment or an individually assessed payment, as well as any other assessments that will be made to help determine a contribution amount. Importantly, scheme contributions in the round must recognise the *collective national* responsibility to survivors of historic abuse, which should be represented through contributions from providers and the spheres of Government.
9. Traditionally, when Local Authorities **receive** funding from Scottish Government, it is distributed through the Settlement and Distribution Group, which is chaired jointly by Local and Scottish Government officials. Recommendations are made by the group to distribute

funding based on relevant data and indicators, such as rurality, deprivation, pupils who receive Free School Meals, individuals in receipt of Universal Credit, etc. Taking a client-based approach, these indicators are based on need and should align with the policy intention of the funding.

10. As a matter of principle, it is likely that Local Government would favour an approach that aligns contributions to needs-based indicators, but in this instance, it is unclear how traditional 'distribution' i.e. taking a client-based approach, could account for Councils' contributions when there have been reorganisations of Local Authorities- in 1975 and then again in 1996. Determining who is now responsible to contribute towards redress, and to what extent, will be challenging. In addition to the reorganisation of Local Authorities, there is an added layer of complexity in that historically, a Local Authority may have placed a child in a neighbouring authority, so determining responsibility and fairness of contribution is challenging. Nevertheless, consultation to date with Local Government would suggest that options around 'indicator-based' contributions should be explored further to avoid a scenario where a few councils bear the financial brunt, when in reality, actual attribution would be difficult given the complexity of the Local Government landscape. An approach using needs-based indicators could also provide a level of certainty and stability for councils and assist with financial strategies to ensure the costs associated with this Bill can be met.
11. Whilst the details of the contribution are further assessed over the coming weeks and months, consideration must be given for an extended period of payment in order to spread the financial impact for Councils. Payment over ten years would be a reasonable suggestion as it profiles the contribution over a longer period, lessening the in-year financial impact, and the consequent impact on funding available for core services delivery. It would also allow time for the closure of the scheme (which is anticipated will run for 5 years) and a final reconciliation of redress payment costs. Local Authorities will require assurance for a greater level of certainty about the prospects of reconciliation and to what extent the contribution could change.

Insurance Cover

12. Councils have paid into insurance cover to protect themselves and reduce the financial risk arising from a variety of issues, including civil liability. Insurance cover is fundamental to minimising exposure and ensuring that Council finances and operations are protected to the maximum extent possible. Councils have a statutory duty of Best Value, which is about ensuring that there is good governance and effective management of resources, with a focus on improvement and ensuring the best outcomes possible for the public¹. Effective management of resources in this context means ensuring that where possible, liabilities are covered and funded by existing and historic insurance policies.

¹ https://www.audit-scotland.gov.uk/uploads/docs/um/bv_audit_councils.pdf

13. The design of the redress scheme means that it is unlikely that Councils can draw on historic insurance cover to help fund the Local Government contribution. Less stringent evidentiary requirements and the lack of determination of liability means that Councils would likely fail to access historic cover for this specific purpose, despite having purchased cover in good faith, to provide a level of protection from these and other related risks.

Scheme Waiver and Civil Claims

14. The scheme will require that claimants who wish to accept a redress payment waive their right to continue or raise civil action in respect of the abuse against responsible providers who have made a fair and meaningful contribution to the scheme.

15. Whilst the intention of the waiver is to offer survivors an alternative to litigation (with support mechanisms put in place), and to minimise contributors' exposure to litigation, the reality for Local Authorities is that financial liabilities will now lie across both the collective Local Government contribution (which was discussed in greater detail at paragraphs 6 - 10) **as well as** civil litigation proceedings that are either ongoing or arising as a result of a decision by a survivor not to pursue or accept a redress payment. This results in Councils paying for historic wrongs via two separate and distinct mechanisms, adding to the already significant financial pressures faced by Local Government.

16. For the waiver to operate effectively, it must clearly and specifically outline the time period, people and organisations, and instances of abuse for which the survivor is accepting the redress payment. Crucially, Local Authorities must be actively involved and consulted in the development of the waiver as it will have significant implications for Local Authority insurers as well as future legal proceedings.

17. COSLA recommends that the scheme allows Local Authorities to seek cover from insurers for the Local Government contribution in order to mitigate the dual pressures which arise from both civil claims, and redress payments, the latter for which insurers are not likely to be responsible. Insurers could be asked to contribute on behalf of, or in addition to, the insured owing to the fact that the scheme, and its waiver, would provide protection to insurers as well as the insured.

Evidentiary Standards and Accountability of Redress Scotland

18. The redress scheme will provide an alternative to civil litigation for survivors of abuse and requires softer, more flexible documentary evidence to support claims than civil action would require. COSLA appreciates that this would enable survivors to have greater access to reparation and recognises the challenges involved in accessing historic documentation.

19. It should be noted that the provision of relevant information is not a cost-free exercise. As such detailed consideration will need to be given to how organisations covered by this duty are supported to undertake the work. Resourcing will be necessary, and it will be a key consideration that Local Authorities are properly resourced to respond to the increase in Subject Access Requests that will arise from the introduction of the redress scheme. COSLA welcomes the work undertaken to represent these costs within the Financial Memorandum and would urge the Scottish Government to fully fund this. Council services are stretched as it is and so any increase in service provision, in line with a new national policy commitment, must be fully funded.
20. The Bill also states that Redress Scotland should have the power to determine whether evidentiary standards are met or whether it is satisfied of this aspect of eligibility without the production of documentary evidence amongst claims. This raises an important question around accountability and responsibility for public funds, especially with regards to Council spend. As major contributors to the scheme, Local Authorities must have a role in ensuring that Council funds are spent in a way that meets criteria of audit, scrutiny, and accountability. This means that Local Government should be jointly involved in the scrutiny of the decisions and administration of Redress Scotland as it is anticipated that a substantial proportion of scheme payments will arise from the Local Government contribution.

Conclusion

21. It is important that, in summarising COSLA's response to the Bill, it is first emphasised that Local Government agrees without reservation that survivors of historical abuse must be recognised and compensated in a timely, fair, and appropriate manner. This is an important step in addressing the wrongs of our past.
22. Nevertheless, COSLA has highlighted important gaps within the Bill and its accompanying documents: the widened definition of abuse; the fair and meaningful contribution from Local Government; the operation of the scheme waiver; and the standards of evidence used by Redress Scotland must be carefully considered and challenged so that Councils can be resourced to not only contribute to the scheme and respond to increased service demand, but also so that Councils can continue their vital work educating, supporting, and delivering for their local communities. Accountability of Redress Scotland must also be considered at this stage.

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