

The Congregation of the Sisters of Nazareth

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: submission of views

Background

- 1 The Congregation of the Sisters of Nazareth operated four residential children's homes in Scotland from 1862 until the last one closed in 1985, as well as similar services in other parts of the world. Today we continue our long tradition as a Congregation to over 200 religious Sisters and caring for around 2,500 elderly people at any one time in 35 care homes globally, employing around 4,000 staff. Two of the care homes are in Scotland, in Glasgow and Bonnyrigg.
- 2 The Sisters of Nazareth have and continue to support the principles of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill and are keen to work with the Scottish Government and others to see its ambitions delivered. We want to find ways that will enable our participation in the scheme and this response is intended to help create the circumstances that will allow us to do so. We are also co-operating with and appearing before the Scottish Child Abuse Inquiry.
- 3 We restate our apology to all those who suffered abuse while in our care.

Approach

- 4 We support the principle of providing remedies for abuse including justice, apology, and redress, either through the existing court process or through the new redress scheme. We believe that the legislation either needs to create or be positioned within a framework of truth and reconciliation. That will require a commitment from government and all providers including religious organisations and charities to accountability, transparency and ensuring the mistakes of the past cannot be repeated.
- 5 To achieve this, the legislation needs the support of and participation in the Redress Scheme from the broadest possible range of government and charitable organisations. However, we are concerned that this may be impeded by the assessment of how much represents a 'fair and meaningful' contribution from providers, potentially leading to willing organisations not being able to contribute. We are concerned that the Financial Memorandum and discussions with providers may result in an assessment that is opaque or inconsistent and too difficult for providers to satisfy, leading to lower participation and therefore fewer contributions. **[Response to consultation Item 7]**
- 6 The Sisters of Nazareth are committed to working with people who were abused as children while in our care. We believe that redress takes many forms, including listening and responding to survivors' testimonies; acknowledging the pain and impact caused by their abuse; and providing a meaningful and personal apology. We have and continue to restate our unreserved apology, meet with former child residents, provide access to records, respond to and pay claims through the civil court process, offer counselling, make ex-gratia financial contributions to assist with the expenditure of those formally in our care and are co-operating fully with the Scottish Child Abuse Inquiry. We are committed to continuing with all of these actions, as part of the Redress Scheme and the Scottish Child Abuse Inquiry.

- 7 We are an organisation built upon strong core values of Love, Justice, Patience, Respect, Compassion and Hospitality. Through these values we have and continue to engage with former child residents and the Scottish Child Abuse Inquiry. We have supported the Scottish Government as the Redress Scheme has developed, through to publishing of the draft Bill.
- 8 We also support making the process as supportive as possible for those giving evidence or submitting a claim to the Redress Scheme. **[Response to consultation Item 5]**

The people who are eligible to apply to the scheme [Response to consultation Item 1]

- 9 We support and welcome the principle that people excluded from civil claims due to the law of prescription will have access to the Redress Scheme.
- 10 We question the use of the phrase 'long-term responsibility for the applicant in place of the parent': an applicant may have been with the organisation from a few days through to several years, and suffered abuse during this time, and therefore entitled to redress. However, not all situations can be described as having long term responsibility or be in place of the parent.

Supporting applicants participation [Response to consultation Items 5 and 10]

- 11 Expectations regarding non-financial redress vary considerably and therefore an individual approach is preferred. Measures to consider may include:
 - Access to relevant information concerning an individual's time in care
 - Access to justice and clear signposting and support
 - Adequate, effective and prompt reparations
 - A meaningful and personal apology
 - A range of practical and therapeutic support, including counselling
- 12 In our written submissions to the Scottish Child Abuse Inquiry and in our evidence given in June 2018, the Sisters of Nazareth unequivocally apologised to anyone who suffered abuse while in our care. This has been repeated at the Inquiry and wherever appropriate.
- 13 Further guidance is requested on how and when to provide meaningful, personal apologies. We note that Apology Law exists but restrictions can impede organisations wanting to apologise when their actions have implications for liability and insurance.

The level of payments offered to survivors [Response to consultation Item 6]

- 14 We note that the payment levels within the Redress Scheme are potentially less than paid through a successful civil claim. We equally recognise that the bar for demonstrating abuse may be lower and that claims will not be defended, hopefully making the process easier for the applicant and increasing the number of successful claims. We support a process that is clear and straightforward for the claimant.
- 15 We also note that payments via the Redress Scheme will be the only amounts available for those excluded by the law of prescription, and for those whose civil claim is not successful.

- 16 We support the right of survivor groups to maximise the level of redress that they are entitled to. We are of the view that this is best delivered by the use of appropriate and well considered definitions of abuse and the impact of abuse for each of the four proposed levels, and a process that is designed to be supportive of the claimant.
- 17 We are concerned that increasing the number of compensation levels or the amount for the four levels would impact on providers' ability to contribute to the scheme, particularly as any amounts over £10,000 are intended to be funded by the provider(s).

Supporting charities' participation [Response to consultation Item 7]

- 18 The Sisters of Nazareth today support a substantial number of vulnerable people in Scotland and elsewhere, as set out in paragraph 1. It is acknowledged by the Scottish Government and ourselves that participation in the scheme should not disadvantage those that we support now or in the future.
- 19 Participation in the Scottish Child Abuse Inquiry has cost us, either directly or through our insurance premiums, substantial sums in legal costs and payments made to survivors in Scotland for claims brought through the civil court process, many of which have been settled before reaching court. The draft legislation and the Financial Memorandum does not take these costs into account when considering the level of provider contributions.
- 20 Any contribution to the Redress Scheme is unlikely to be funded by our insurers, unlike the settlement of civil claims. Provider contributions are therefore likely to be an expense of the provider.
- 21 The period over which contributions to the Scheme are made will be a major consideration in determining an organisations participation. We note from the legislation that participating organisations are expected to front load their contributions and pay in full during the lifetime of the scheme. Allowing the largest possible proportion to be paid over the lifetime of the scheme would allow more organisations to manage their cashflows and to contribute. We consider that the risk of providers reneging on their commitment or no longer existing is very low and could be managed through legal agreements.
- 22 The fair and meaningful test appears to aim to secure the maximum contribution from each participating organisation. We consider that the contributions objective could be better achieved by instead focusing on maximising the number of organisations contributing. This would avoid forcing organisations to make a binary 'contribute / don't contribute' decision and instead encourage the maximum number and value of contributions, which is likely to lead to a higher level of total contributions received.
- 23 Figures provided to us show that the calculations leading to the proposed financial contributions from providers are weighted in favour of maximising the contribution. For example, the Government Actuary's Department estimate the number of claimants at 3,000 – 11,000 and the Financial Memorandum bases the calculations of the costs at the upper end of this estimate; and the average claim value has been applied to all providers without taking into account the circumstances of each provider or the degree of abuse suffered in each residential setting.

- 24 The average claim value of £28,000 used for the modelling requires a contribution by the providers of £18,000 and the Scottish Government of £10,000. When considered at the individual claimant level, this is at odds with the principle of the Scottish Government paying the largest share.
- 25 For charities to protect the services they currently deliver, contributions will need to be funded from insurance, where available, or reserves. Insurance seems increasingly unlikely. Coming after a decade of austerity, which has fallen hardest on local authorities who fund adult social care for many of our residents, exacerbated by the financial impact of Covid-19, reserves are already significantly depleted. There is also the need to consider redress schemes being established in other jurisdictions and ensuring that funds are available for these too.
- 26 We would therefore prefer to see the basis for participation 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 providing records and supporting survivors' request for information.
 - 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.

The waiver, insurance and alternatives

- 27 The Sisters of Nazareth supports the principle of a waiver, which will largely prevent compensation being paid twice. The waiver may help to persuade insurers to support providers participation, although it is noted that this has not yet enabled them to do so. We are concerned that if the contribution level is prohibitively high, many willing providers will only be able to make a financial contribution if they are backed by their insurer. This has not yet been confirmed and indications at the moment are that insurers will not support, even where there is a good insurance history. Therefore the full cost of contributions will fall on the providers, leading many providers to not being able to participate.
- 28 Insurers will be reluctant to commit to a voluntary scheme. If they do, it is likely to be based on comparing the cost of participation with the anticipated cost of civil claims and the cost of defending them. However well meaning, the risk is that the cost of participation is too high and therefore insurers do not contribute, making it harder for providers to.
- 29 A waiver can only exist on a case by case basis and cannot prevent a non-redress applicant continuing to bring a civil claim, thereby further increasing costs to the organisation or their insurer.
- 30 We note that survivors may argue against the waiver, and possibly in favour of an offset arrangement where any payment may be reduced by previous payments through the courts, or a court payment reduced by a redress payment. The risk of such an arrangement is that it adds a layer of complexity to a system that is intended to be simple, and would further disincentivise the support of insurers if they thought the redress payment may not be the total claim. It is also noted that

the two schemes are different; a redress payment potentially has to meet a lower bar for demonstrating abuse and redress claims will not be defended, amongst other differences.

Charity law

- 31 Participation in the redress scheme risks damaging the support of charity donors as their donations will be used for purposes other than which they were intended and not for the furtherance of their mission, the primary reason for donations. The cost of Redress Scheme contributions is therefore unlikely to be the total cost to a charity.
- 32 Charity's trustees are required to act in the best interests of their charity. This may prevent them from participating in the Redress Scheme, even if they wanted to. For example, where trustees elect to make a payment that they are not obliged to, or by risking the 'going concern' principle of their continued trading.

Conclusion

- 33 The Sisters of Nazareth support the principles of the legislation, to provide remedies for survivors of abuse in care. We also support the principle that providers as well as local and national governments have a responsibility to contribute financially and non-financially. However, the financial test and contributions should not be set such that it prevents willing providers from participating, by pricing them out because the contributions are too great and not consistent with the other financial pressures they face. A voluntary and affordable contribution that is proposed by the provider would be preferred and may yield a greater level of contribution in total by not debarring any provider from participating.