

East Ayrshire Council

2 October 2020

Dear Sirs,

Redress for Survivors (Historical Abuse in Care) (Scotland) Bill – Call for Views

I write to advise you that East Ayrshire Council (hereinafter referred to as “the Council”) welcomes the opportunity to respond to the Education and Skills Committee’s call for views as part of its Stage 1 scrutiny of the Redress for Survivors (Historical Child Abuse in Care) Bill.

The Council previously responded to the Scottish Government’s pre-legislative consultation on financial redress for survivors of historical child abuse in care. The Council 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.

However, this Bill will have significant implications for the Council and other Local Authorities due to their unique roles and responsibilities across the entirety of the Scottish care system and the wide scope of their involvement.

The Council would not intend to respond to all the questions posed in the Call for views. Instead, it would propose to respond to those particular matters that it considers it can usefully respond to. Further, I would confirm that in addition to the response provided by the Council, we would also align ourselves to, and agree with, the content of the response submitted by COSLA.

A Fair and Meaningful Contribution from Local Government

Whilst 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, the details of this contribution, including the amount, structure, and timeframe, are not specified in the Bill or its accompanying documents.

A key area of concern for the Council is the unknown quantum of the proposed contribution. Whilst the Financial Memorandum assumes that the cost of redress payments will be £350m, this will be conditional upon several factors including the number of applicants to the Redress 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. Given these unknowns, there is a potential variance of +/- 30% in calculating the total payments to the Scheme that, in turn, contribute to the extent of the financial contribution by the Council.

Traditionally, when the Council receives funding from Scottish Government, it is mainly 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. The scale of the potential contribution for the council could be significant and this will undoubtedly be compounded by the risk levels set within the historic insurance cover arrangements put in place by previous councils and burghs authorities which may not now provide any material financial support to meet the contributions. A further issue that could lead to increased and unnecessary costs is the local arrangements being put in place within local government to deal with current claims. These are

being dealt with by each council and it is clear that a more structured and joint approach will reduce costs, improve consistency and increase timescales.

As a matter of principle, the Council would favour an approach that aligns contributions to needs-based indicators, but in this instance, it is unclear how this could account for the Council's contribution when local government re-organisation took place in 1975 and then again in 1996. Determining who is now responsible to contribute towards redress, and to what extent, will be challenging given the geographical extent of predecessor authorities having the Social Work function. However, options around 'indicator-based' contributions should be explored further to avoid a scenario where a few councils bear the financial brunt given the location of 'relevant care settings'. 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.

Whilst the details of the contribution are further assessed, 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.

Insurance Cover

We, like other Councils have paid into insurance cover to protect ourselves and reduce the financial risk arising from a variety of issues, including civil liability. Insurance cover is fundamental to minimising exposure and ensuring that the Council finances and operations are protected to the maximum extent possible. The design of the redress scheme means that it is unlikely that the Council will be able to 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 the Council 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.

Further, 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 providers who have made a fair and meaningful contribution to the scheme.

Whilst the intention of the waiver is to offer survivors an alternative to litigation, and to minimise contributors' exposure to litigation, the reality for Local Authorities, like the Council, is that financial liabilities will now lie across both the collective contribution 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 will result in the Council potentially paying for historic matters via two separate and distinct processes, adding to the already significant financial pressures faced by the Council.

The Council would therefore suggest that further consideration be given to the fair and meaningful contribution from Local Government in order that they can continue to support, and deliver for their local communities.

I trust that the foregoing adequately explains matters meantime.

Yours sincerely,

Fiona Lees

Chief Executive