

Anonymous Organisation 1

We write in response to the Call for Views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, which we understand was published on 24 August 2020.

We became aware of the Call for Views the day before the original deadline date of 2 October 2020. While we appreciate the grant of an extension to submit our views by midday on 9 October 2020, it would have been helpful (as an organisation having previous engagement with the Scottish Government on this subject) to have received notice of the Call for Views when it was first published.

We have identified the following specific issues; however, it is possible we might have been able to identify and raise additional issues if we had been alerted to the Call for Views in August, or if more time had been made available to us. In any case we hope our limited comments at this stage are of some assistance to the Committee.

Fair and meaningful contributions

We anticipate there would be a number of charities and other organisations interested in participating in a scheme of financial redress and support in respect of survivors of historical child abuse in relevant care settings in Scotland.

However, we are concerned that a charity interested in participating may not be able to afford to do so if the fair and meaningful contribution they are requested to pay would (a) very significantly hamper the delivery of their usual activities for the public benefit, or (b) result in breach of a declared reserves policy. We would therefore strongly encourage the Committee to consider and include affordability as a key factor in the method of calculation of a fair and meaningful contribution.

We also think it is important to be clear that a shortfall in contributions required to make redress payments may arise in circumstances where there are a number of charities and other organisations willing (but unable, on grounds of affordability) to participate in the scheme.

In summary we think it is important to ensure the fair and meaningful contribution is calculated in such a way to facilitate, and not exclude, participation by those charities and other organisations who are interested in participating.

Restricted funds

We note the possibility of restricted funds being 'unlocked' and used for the purposes of making contributions to the redress scheme. We would encourage the Committee to consider (a) the wishes of the donors of those restricted funds, (b) the importance of seeking the consent of any donors who are alive and contactable, (c) the potential difficulty in contacting donors, and (d) the potential effects on the ability of charities to raise funds in support of their activities in future if donors do not have confidence those funds will be used for the purposes given. We consider it important that the Scottish Ministers should at least be required to have regard to these factors before making subsequent regulations under the primary legislation, if it is passed.

Waiver

We note the proposal that an applicant who accepts an offer of a redress payment should be required to sign and return a waiver abandoning any relevant civil proceedings and waiving any right to bring relevant civil proceedings.

This raises a practical question: How will an organisation know if a person raising civil proceedings against the organisation has signed a waiver and is, in fact, barred from raising those proceedings?

We also raise a question of what assurance organisations would have that a waiver would stand indefinitely and not be overturned in any change of law or approach that could take place in the future.