

Former Boys and Girls Abused in Quarriers Homes

January 2021, This additional written submission pages 1-3 relates to the Committee Stage 1 report on Redress for Survivors (Historical Child Abuse in Care) (Scotland) (SP Bill 79) as introduced in the Scottish Parliament on the 13th August 2020.

1. Victim-Survivor involvement in the Panel Recruitment processes and the Redress Scheme

We welcome the proposed Survivor Forum as this will help achieve these overarching principles. (previous submission)

FBGA recommend that this VICTIM-SURVIVOR FORUM is embedded in secondary legislation and should be formally recognized in the BILL. Victims-Survivors should not merely be considered to be playing a consultancy bystander role.

We would like to ensure going forward that there is real genuine involvement and this is not limited to Interaction Review group members only. That victim-survivors from the wider survivor community are recruited in meaningful roles with regards the recruitment panel process and for the Survivors FORUM in a fully open and transparent process by Scottish Government officials.

2. Eligibility

We respectfully do not agree with any of Helen Holland of INCAS comments as it relates to her previous evidence to the committee on 28th October 2020 in response to a question from Beatrice Wishart MSP on care settings not covered by the Scheme.

We note and support the committees comments “That in the past it was common practice for parents to place their children in voluntary care , and many children found themselves in residential establishments for religious reasons, due to a disability or as a result of a scholarship”.

We support the committee’s approach, point 64 in the summary, that there should be some scope for Redress Scotland to be able to consider some cases on an exceptional basis. We would like the Redress Scheme to consider ALL victim-survivors testimonies especially where there was a clear State or organizational failure in duty of care, regulation, oversight and inspection in residential establishments/institutions.

We also note what the Cabinet Secretary John Swinney said at the Scottish Child Abuse Inquiry (SCAI) recently during the Scottish Government hearings that the Inquiry was set up in part due the revelations about Fort Augustus in 2013.

Yet the Scottish Government continues to deny this class of victims-survivors, and others, Redress in the Bill.

3. Definition of Abuse and Assessment's based on an individual's unique experience

We recognize that the Scottish Government has submitted only a draft assessment paper, which is somewhat unhelpful to victims-survivors at this stage.

The FBGA have commissioned a clinical "Experts", by experience assessment paper. This paper was submitted to the committee on 18th January 2021. With regards the SG draft assessment paper, our clinical professionals experts, by lived experience, have identified significant serious gaps in the SG draft assessment paper. Individualized assessments should link into payment levels (refer to the clinical paper commission by FBGA submitted to the committee).

4. Evidential thresholds; the Standard and Burden of Proof

FBGA believe that the standard of proof must be grounded in law and be on the face of the BILL in primary legislation. Standard of Proof being used has to be publically available and must retain the confidence of the victims-survivors and the general public.

FBGA note that whilst the Redress scheme is designed to have lower evidential requirements than Civil Litigation, these Redress evidential levels are required to be robust and credible, to prevent fraud and support genuine applications.

We note, Point 88 in the committee summary, quote " the Cabinet Secretary's John Swinney's suggestion that the Burden of Proof required for the redress scheme will be " significantly lower" than the standard of proof in a civil case".

In the Interaction Review Group "Balance of Possibility" and the "Balance of Plausibility" were explored.

5. Waiver and legal challenges

Any Waiver introduced, would allow the Scottish Government and others, to escape accountability, in cases relating to them. We agree with the committee's recommendation that this Waiver is removed.

Such a waiver enables people to go directly to European and or International Human Rights Bodies - and so actually creates a risk for the state in particular - because it means people will not have to exhaust domestic remedies before going to the ECHR or an international treaty body, (because they will be able to show they had no recourse domestically in the Scottish Civil Courts due to the imposition of Redress Scotland waiver), just as in the case Elizabeth Coppin V Ireland.

In addition, the Redress Scotland Waiver's domestic or EHRC legality has in fact not been tested, to-date, in law. Therefore, it is only a short matter of time, before victims-survivors in Scotland do go to the ECHR and international bodies, and the waiver is found unenforceable anyway.

The Scottish Government may continue to argue that a waiver was used in other jurisdictions where we understand it has not been challenged legally. Having had advice from those involved in the Irish Waiver case, in a jurisdiction where the imposition of a Waiver has been challenged in an Irish victim-survivor case it was found and deemed to be unlawful in International law.

Unfortunately, however FBGA do envisage and anticipate that a Scottish victim-survivor (s) legal case will be taken up in the future if such a Wavier is introduced into the Redress Scotland Bill.

The Scottish Human Rights Commission Action Plan and Framework is clear that there should be a wide range and choice of remedies for all victims-survivors harmed and wronged. While fully recognizing that this is a group of individuals with unique individualized experiences, no avenue to Remedies should be closed off to them. Best practice is based not on the introduction of a Waiver, in any shape or form.

Mr John Swinney, the Cabinet Secretary quote “believes that that the Waiver would mean insurers would support organisations to make contributions if they are assured there is no chance of future litigation”. Unfortunately there is no concrete factual evidence provided to this committee to-date to support that assertion.

The evidence the committee heard from Iain Gray, MSP showed that insurers would not stand behind organisations in making contributions. Others such as Mr Greene MSP and Ross Greer MSP had similar negative comments on this Wavier issue and referred to this in committee and in the Scottish Parliament debate.

We agree fully with the MSPs comments based on our conversations with a provider who has given evidence to this committee. The insurers to-date have showed no willingness to make any limited financial contributions nor at the huge levels the Scottish Government officials are seeking.

6. Role of Insurers

We agree with the MSPs, such as Mr Iain Gray, as we have no factual evidence to support the Scottish Government’s position that insurers will contribute any financial sum whatsoever, including the significant substantial sums to the Redress Scotland Scheme as contributions on behalf of institutions being suggested by the Scottish Government and its officials.

The interests of the institutions are conflated with the local authorities’ interests. We are reliably informed by the evidence presented to the committee that insurers have not shown a willingness to be part of the Redress Scotland Scheme whatsoever to-date, including with regards any financial commitment including at the levels envisage. Which as the providers have pointed out in there evidence to the committee are clearly unaffordable and will have a detrimental impact on the sustainability of their vulnerable children and adults services and organisations.

7. Voluntary Contributions effecting Reconciliation and Sustainability of Care Providers

FBGA support the institutions and the committee's approach and recommendation which is that principles are amended to be fair, meaningful, affordable and sustainable and appear on the face of the Bill.

We expect the formula for contributions is made publically available, as are the contributions amounts and organisations listed, victim-survivors have full unfettered access to the all the data and information relating to contributions to the Redress Scheme.

We believe the inclusion of the Wavier is not the best way to seek reconciliation or voluntary contributions from a wide range of stakeholders, or to effect reconciliation for victims-survivors.

8. Next of Kin payment and eligibility

We will support the Scottish Governments date change to 1st December 2004 as advised to the committee. However we would ask the committee to also consider "Within Living Memory".

9. Payment levels and structure linked to a unique individualized assessment

We still do not understand how the Scottish Government arrived at the formulae used to calculate the payments proposed in the Bill, and we expect these formulae to be publicly available.

We want the panel members have the independent and impartial, explicit lawful, discretion to determine all cases regardless of circumstances. We believe this should be on the face of the Bill

10. Accepting a Redress Payment or applicants to choose between accepting a Redress payment and a Civil Court Action. Access to Justice

The Scottish Human Rights Commission we understand does not believe "applicants to choose between accepting a Redress payment and a Civil Court Action" is best practice. SHRC consultation response 2019.

The Scheme should allow victims-survivors access to a range of avenues open to them without having to choose one or another.

The Scottish Civil Court process has the ability to take into account any previous financial award from the redress scheme just as it does with criminal injuries awards when awarding damages in any future civil action.

International studies have shown that where victims-survivors have full rights, remedies and access to justice and choice in a fair and reasonable Redress Scheme, they are unlikely to continue to pursue other legal avenues including Civil cases for a variety