

CELCIS,
94 Cathedral Street,
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5th September 2018

Dear Deputy First Minister

Conclusion of the consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care

The InterAction Action Plan Review Group (Review Group) would like to advise you of the conclusion of the work relating to the consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care. This letter outlines the background to the consultation and engagement and presents key recommendations drawn from our work to date and, in particular, from the information gained from the consultation with victims/survivors.

This letter accompanies the following reports, also for your consideration:

- Report 1: Executive summary of the consultation with victim/survivors of abuse in care
- Report 2: Analysis and findings of the consultation of victims/survivors of abuse in care
- Report 3: International Perspectives – a descriptive summary
- Report 4: Initial perspectives from residential and foster care service providers and other relevant professional groups

Background to the consultation and engagement

With reference to your statement to the Scottish Parliament on 17th November 2016, where you outlined the commitment to a formal process of consultation and engagement on the matter of financial redress. Thereafter, requesting that the Review Group, in partnership with the Centre for Excellence for Looked After children in Scotland (CELCIS) take this forward.

This consultation and engagement was intended to build on previous work and the existing human rights approach in Scotland, namely the Human Rights Framework for Justice and Remedies for Historic Child Abuse 2010 (the SHRC Framework) and the Action Plan on Justice for Victims of Historic Abuse of Children in Care 2013 (the Action Plan). The Review Group continues to oversee the implementation of the

Action Plan and in recent years has witnessed progress across a number of elements relevant to reparation. However, despite these developments, Scotland does not currently have in place a financial compensation mechanism that is open to all victims/survivors of abuse in care. Further information on the broader background and progress to date can be found in the accompanying reports.

The key focus of the consultation and engagement exercise was a national consultation with victims/survivors of abuse in care. From the outset, it included victim/survivor representation and used a collaborative approach to the development of the actual process of the consultation and engagement activity, as well as to questionnaire design. The consultation asked a range of questions relevant to a potential financial compensation/redress scheme under the following themes: eligibility; information required to support applications; support and guidance needs for victims/survivors in making an application; administration and decision-making; the type of compensation/redress payment; the approach to determining payment amounts; and the role of Scottish Government and other stakeholders.

Strategies were used to reach as many victims/survivors as possible and 181 responses to the consultation were received, mostly from victims/survivors, and with some responses on behalf of a victim/survivor or a deceased victim/survivor, or on behalf of a support organisation. In order to offer independent scrutiny and additional quality assurance, a thorough independent verification process was recommended by the Review Group and put in place to evaluate the processes used to deliver, analyse and write up the victim/survivor consultation.

In addition, information was gathered on financial redress schemes which have been implemented in other countries. Ten schemes were selected on the basis that they had either concluded their work or were currently operating, that they had a significant national or state role, and offered relevant evidence for the Scottish context. The schemes were based in Jersey, Republic of Ireland, Australia, Canada and Sweden. Information on the topics covered in the victim/survivor consultation questionnaire were used as a framework to synthesise information on each country scheme before summarising into a descriptive overview of all selected schemes. Whilst the schemes varied in a number of ways, the recommendations set out below were reflected in the information gathered from international financial compensation/redress schemes.

Finally, we carried out an engagement exercise with a range of residential and foster care service providers and other relevant professional groups to gain their early perspective on a potential financial compensation/redress scheme. This involved organisations from the third sector, religious bodies, local authorities and membership organisations. There was general support for the broad principle of a national financial redress scheme, and the potential for this to offer a consistent and more flexible response to justice for some victims/survivors. The opportunities that it may offer victims/survivors were highlighted, and the need to ensure that a scheme would take account of the needs of applicants. A number of key challenges from a service provider perspective were also identified, and there was a willingness to explore these through further dialogue.

Recommendations and key messages from the consultation

Drawing on the key messages of the consultation with victims/survivors and other engagement activities, the Review Group presents the following recommendations.

- **Recommendation - A financial compensation/redress scheme for victims/survivors of abuse in care should be established.**
Almost all (99 per cent) of victims/survivors who answered this question considered that a financial compensation/redress scheme should be established. The SHRC Framework highlighted that the state has a duty to ensure effective remedies for violations of human rights and this includes the need for a financial compensation mechanism that is open to all victims/survivors of abuse in care. This is not currently being provided in Scotland.
- **Recommendation – Approval of a financial compensation/redress scheme for victims/survivors of abuse in care should take place as soon as possible following detailed scheme design.**
The Review Group urges the Scottish Government to approve a financial compensation/redress scheme for victims/survivors of abuse in care as soon as possible, following detailed scheme design, and for legislation to be passed by the end of this parliamentary term, March 2021.
- **Recommendation - The preferred approach to financial compensation/redress is a combination payment.**
The majority of victims/survivors who answered this question felt that the preferred approach is a combination payment which involves a flat-rate standard payment along with an individual experience payment which takes account of a range of factors such as: the nature of abuse; the severity of abuse; the period of abuse; and the life-long consequences of the abuse. The operational design and detail will need further consideration.
- **Recommendation - Next-of-kin of deceased victims/survivors of historic abuse should be eligible to apply to a scheme.**
The majority of victims/survivors who answered this question indicate support that the next-of-kin of deceased victims/survivors should be eligible for compensation/redress. However, there were a number of cautions about the eligibility of next-of-kin, in terms of the definition of next-of-kin, personal relationships with the deceased victims/survivors while they were living, and practical operational issues. These matters require further consideration.

- **Recommendation – There should be arrangements for interim payments which would allow priority groups of victims/survivors to access payments prior to full payment.**

It was considered by the majority of victims/survivors who answered this question that it is important for priority groups of victims/survivors to access interim payments. There was a range of views regarding the criteria for these payments, in general, age and health factors were highlighted as priorities. Such interim payments should be considered in the context of further discussions about 'advanced payments' (see below).

- **Recommendation - A range of written and verbal information, where available, should be used to assess individual applications.**

Victims/survivors who answered this question considered that, where available, a range of written and verbal information should be used to assess applications, and this included: information about placement details; nature and severity of abuse experienced; information on impact of the abuse; testimony from a third party; police records of alleged or convicted perpetrators of abuse; previous or ongoing civil/criminal action; and, material prepared for another purpose. Challenges in the availability and securing of information, the impact on individuals through the process and the importance of choice were also noted.

- **Recommendation – A range of support and guidance should be put in place for applicants to assist them through the process of the scheme.**

Most victims/survivors who answered this question outlined a number of potential different types of supports to meet a range of individual and different needs at each stage through the application and payment process. These included: practical support, emotional support, financial advice, legal advice and advocacy.

- **Recommendation - Victims/survivors should be represented in the administration and governance of a full financial compensation/redress scheme.**

The value and insight offered by victim/survivor representation was highlighted by the consultation participants. Similar to the types of support, victims/survivors suggested a broad range of ways by which victim/survivors could be represented, either through the development and administration of the scheme or the individual application process. These views accord with a human rights based approach where participation is a recognised key component. Representation and participation should be significant and meaningful, involving appropriate information available in accessible formats, and the provision of necessary support and guidance.

- **Recommendation - A range of knowledge and understanding should be represented in any panel or board which will have a decision making role in the scheme.**

Victims/survivors who answered this question noted a number of suggested professional backgrounds and specified services, and highlighted the value of lived experience. Key areas of knowledge and understanding included: advocacy, finance, health, human rights law, social care, and trauma.

Recommendation - All those responsible should contribute to a financial compensation/redress scheme.

Victims/survivors who answered this question consider that all those responsible should contribute, including: Scottish Government, residential and foster care providers, local authorities which placed children in care and those which provided care placements, and religious bodies responsible for care services. The SHRC Framework also makes clear that institutions should contribute to reparation packages in a manner proportionate to the extent to which they are accountable.

- **Recommendation - Scheme design should take account of a number of key principles to ensure the integrity and effectiveness of a scheme.**

Victims/survivors who answered this question noted that the scheme will need to address important principles of choice, fairness, respect, integrity and individual experience, needs and wishes. The integrity of the scheme is crucial and it must be robust and credible; the evidence required, and the scrutiny of it, must create a balance which will deter fraudulent claims, without putting off applicants or refusing genuine applications because of lack of evidence.

- **Recommendation - It is essential that any potential negative consequences are considered during scheme design.**

The risk of any negative consequences for individual victims/survivors was highlighted by consultation participants. It is important to consider how these could be prevented and where this not possible, mitigated. This would include considering how any payment may impact on personal vulnerabilities as well as benefits, pension, or any previous payments such as criminal injuries compensation payments.

- **Recommendation – The Scottish Government should discuss next steps with the Review Group and other victims/survivors, particularly the process to take forward detailed scheme design and implementation.**

The consultation with victims/survivors identified a number of issues where there was a high level of consensus, as well as areas where views were more mixed. There were a number of matters which will require further work to ensure any implemented scheme is appropriate to Scotland and Scotland's victims/survivors of historic abuse in care. These should be taken forward in discussion with the Review Group and other victims/survivors.

Advance payment scheme

Alongside the consultation and consideration of 'interim payments', specific discussions took place concerning the status of pre-1964 victims/survivors. The Limitation (Childhood Abuse) (Scotland) Act 2017 removed limitation periods for civil claims relating to childhood abuse, to allow cases that were previously time-barred to proceed in the Scottish civil courts. However, due to the difference between the concepts of limitation and prescription, the Act does not allow victims/survivors who experienced abuse prior to 26 September 1964 to pursue their cases. This has created a situation whereby some victims/survivors cannot access a key remedy, that is, compensation which is available to other victims/survivors.

The then (2014), Education Secretary, Angela Constance met with survivor groups and legal representatives and stated her commitment to providing an 'equitable solution' for pre-1964 victims/survivors. It is settled that the law on prescription cannot be changed, meaning pre-1964 victims/survivors will never be able to access justice through the civil courts. There therefore appears to be no potential for a truly 'equitable' solution. That said, a financial compensation/redress scheme would provide an alternative compensatory mechanism to the civil courts for these individuals. It is important that a redress compensation mechanism is open to all victims/survivors as there are many reasons a victim/survivor may not be able to access civil justice, and this applies equally to victims/survivors who experienced abuse after 1964.

Many pre-1964 victims/survivors are elderly and ill and it is recognised that the timescales for implementation of any scheme will take time and will require legislation to be passed in the Scottish Parliament. It is in this context that the Review Group consider an 'advance payment' scheme, separate to the statutory redress scheme, is necessary. An advance scheme would operate without the need for legislation and would provide recognition and acknowledgment for many victims/survivors who are approaching the end of their life through either ill-health or age. This is a crucial additional element that would respond to elderly and ill victims/survivors, many of whom experienced abuse prior to 1964. It is important to note that many victims/survivors who would benefit from access to the 'advance payment' scheme did not experience abuse prior to 1964 but nevertheless are ill and require access to compensation on a much shorter timescale.

- **Recommendation – An 'advanced payment scheme' for the elderly and ill should be progressed as soon as possible and before the main financial compensation/redress scheme is established in statute.**
The Review Group is currently considering further details, including eligibility matters relating to this proposal and will forward any relevant information as soon as possible.

In summary, we recommend that the Scottish Government commits to establish a financial compensation/redress scheme, and agrees to introduce an advanced payment scheme (for ill and elderly survivors) as soon as possible. Discussions should take place with the Review Group as to how the next steps on detailed scheme design are conducted, including how others will be involved in that process.

Furthermore, that the other recommendations and key messages outlined in this letter are taken into account as part of the detailed scheme design, including how those responsible can contribute. Legislation for a statutory financial compensation/redress scheme should be passed before the end of this parliamentary term in March 2021.

We respectfully commend these recommendations to you and the Scottish Government. The Review Group appreciates your consideration of these matters and remain available for any further discussion that is required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Kendrick', written in a cursive style.

Professor Andrew Kendrick Chair of the InterAction Action Plan Review Group