

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

Report 4: Initial perspectives from residential and foster care service providers and other relevant professional groups

September 2018



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We would like to acknowledge the support and input from all the participants in this engagement exercise.

SUPPORT

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DISCLAIMER

This report presents the views of participants who took part in the consultation on financial compensation/redress and does not necessarily reflect the views of the Scottish Human Rights Commission (SHRC), the InterAction Action Plan Review Group (Review Group) or the Centre of Excellence for Looked After Children in Scotland (CELCIS).

1 INTRODUCTION

In January 2017, the Centre for Excellence for Looked After Children in Scotland (CELCIS), in partnership with the Scottish Human Rights Commission (SHRC) InterAction Action Plan Review Group¹ (Review Group), was commissioned by the Scottish Government² to take forward a consultation and engagement exercise on a potential financial compensation/redress scheme for individuals who experienced abuse in care in Scotland, as defined by the Terms of Reference of the Scottish Child Abuse Inquiry (SCAI).³

The main purpose of the consultation and engagement exercise was to gather evidence:

- For the Scottish Government to consider when making its decision on whether to establish a financial compensation/redress scheme
- To inform the Review Group in its development of key recommendations for suggested next steps

The key focus 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. In addition, a review was undertaken of available information on financial compensation/redress schemes for victims/survivors of abuse in care that have been implemented around the world. Finally, and the focus of this report, engagement work was carried out with residential and foster care providers and other relevant professional groups to gather their initial, high-level views.

This is one of a series of four reports:

- 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

In addition to the four reports, the Review Group has submitted key recommendations to the Scottish Government. Details of these can be found in Report 1 and Report 2.

¹ The Interaction Action Plan Review Group is a national stakeholder group. It includes representation from survivors, survivor support organisations, service providers, the Scottish Human Rights Commission (SHRC), the Scottish Government, CELCIS and Social Work Scotland. The Group monitors the implementation of the SHRC (2014). Action Plan on Justice for Victims of Historic Abuse of Children in Care. Retrieved from <http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>.

² See the Deputy First Minister's update to the Scottish Parliament on issues relating to the Child Abuse Inquiry in Scotland on 17 November 2016. Retrieved from <https://news.gov.scot/speeches-and-briefings/update-on-issues-relating-to-the-scottish-child-abuse-inquiry>.

³ Terms of Reference for the SCAI. Retrieved from <https://www.childabuseinquiry.scot/about-us/terms-of-reference/>.

2 METHODOLOGY

2.1 In partnership with CELCIS, the Review Group agreed the overall process of engagement and consultation on a potential financial compensation/redress scheme for victims/survivors of abuse in care. CELCIS carried out the engagement activity with residential and foster care service providers and other relevant professional groups. A total of 18 organisations participated in the early engagement and main engagement activities (Appendix 1).

Early preparation

2.2 As with the victim/survivor consultation, the engagement exercise with residential child care service providers and relevant professional organisations began with a preparation stage. This stage included the delivery of two sessions with participants. These allowed the sharing of relevant background and contextual information, and helped facilitate effective engagement at an early stage.

2.3 A representative stakeholder group of residential and foster care service providers and relevant professional organisations was identified. Invitations were extended to senior representatives across a range of organisations either previously or currently involved in the provision of residential and foster care services, and other organisations who could have a role in any potential financial compensation/redress scheme. In terms of residential and foster care service providers, this included organisations from the third sector and religious organisations as well as membership organisations, for example, the Scottish Council for Independent Schools, Educating through Care Scotland (EtCS), Coalition of Care and Support Providers in Scotland (CCPS), and local authority representation.

2.4 Sixteen organisations were invited to the early engagement sessions and at least one representative from each attended. These sessions proved invaluable; they helped identify early potential themes, highlighted areas where more information was required, and provided suggestions on how best to progress to the next stage of the structured engagement.

2.5 A summary of the views gathered in these early sessions and the process involved is outlined in the supporting briefing paper that was provided to participants (Appendix 2). The information gained from early engagement was then further developed by the Review Group into an agreed scope and question framework for the subsequent main engagement exercise (Appendix 2 and Appendix 3).

Main engagement

2.6 During the main engagement exercise, individual contact was made using email invitations, follow-up emails and phone calls to support engagement.

2.7 Participants could participate in three ways - in writing, by attending a focus group, or by taking part in a face-to-face or telephone interview. Written submissions, interviews and the focus group all followed the same set of five main questions. In order to offer a level of consistency, all methods of taking part were facilitated by the same researcher.

2.8 A total of 13 organisations, just over half of those invited, participated in this stage (see Appendix 1); three completed a written questionnaire, five organisations (one organisation had two individuals representing it, the other four organisations were each represented by one individual) took part in a face-to-face or telephone interviews, and five took part in a focus group organised and facilitated by the Convention of Scottish Local Authorities (COSLA)⁴.

2.9 The COSLA focus group was intended to help address some concerns raised in the preparation stage about the need for increased local authority representation, in order to capture different perspectives across the 32 unitary local authorities, alongside the recognition of the mixed local distribution of responsibility for this issue. In an attempt to capture as broad a perspective as possible, COSLA extended invitations to a range of representative local authority officers for the focus group; this also allowed those participants to consult with their peers. Individuals from the Association of Local Authority Risk Managers (ALARM), Social Work Scotland (SWS), Society of Local Authority Lawyers & Administrators in Scotland (SOLAR) and Society of Local Authority Chief Executives and Senior Managers (SOLACE) attended the focus group.

2.10 It should be noted that participants had varying levels of experience with the broader consultation and engagement activity on potential financial compensation/redress scheme, as well as the history and work of the Review Group. Furthermore, participants were not necessarily in a position to fully represent the views of their organisation/professional organisation, and participants did not necessarily endorse all views shared during the engagement exercise.

2.11 Finally, in response to emerging themes through both the preparation and main engagement stage, insurers' professional associations were also approached to ensure they were aware of the engagement activity taking place. This was intended to offer the opportunity to gather early stage, high-level views from this distinct perspective. The Forum of Scottish Claims Managers, Forum of Insurance Lawyers (FOIL) and the Association of British Insurers (ABI) were contacted. Information regarding the main engagement exercise was shared with them and an invitation to comment was extended. However, these organisations did not take part in the engagement exercise and their views are not represented in this report. There was brief informal dialogue with representatives from the ABI, during which it was recognised that further engagement of some kind with

⁴ Participation in a focus group organised by CELCIS was initially chosen by two participants but, due to these limited numbers and difficulties with their mutual availability, they opted for individual face-to-face sessions (and are included in those figures provided above).

insurers may be more helpful at a later stage, following any decision by the Scottish Government.

2.12 A thematic analysis was undertaken of the information gathered from the questionnaires, interviews and focus group, synthesised into a draft summary report, and then shared with the Review Group for comment and governance.

2.13 Themes that emerged from the main structured engagement exercise and are presented in this report, following the general layout of the set questions used.

3 OPPORTUNITIES AFFORDED BY A FINANCIAL COMPENSATION/REDRESS SCHEME

3.1 All participants in the process were supportive of the general principle of a financial compensation/redress scheme being developed. All saw the establishment of a national scheme as an opportunity to meet the needs of victims/survivors in an accessible and transparent manner. This was understood to be important, as reference was made to the experiences of victims/survivors in care and post care, and the lack of openness at times in the past. Each participant felt that a potential scheme could offer practical financial benefits to victims/survivors and support the process of 'healing' - described by a few participants as 'moving on' and 'to right the wrong done'.

3.2 It was also suggested by all that a financial compensation/redress scheme would serve to offer some element or sense of justice. Alongside the financial aspect, participants suggested that a national scheme might present the opportunity for other important actions of residential child care service providers to be reflected, for example, an apology and an acknowledgement to victims/survivors that recognised their abuse experiences and the consequential impact on their lives. It was noted by many participants that for financial compensation/redress to have significant meaning, it must be part of a wider set of reparation responses at an organisational and societal level. Participants outlined some of the current and proposed organisational reparation responses to reach out to and support former residents who were abused in their establishments; these are outlined in Section 5 of this report, 'Other forms of remedy, redress and reparation'.

3.3 A national scheme was seen by all as offering the possibility of a route for victims/survivors to achieve financial redress. Almost all participants believed that a financial redress scheme should respond to victims/survivors of abuse in a way that is more comprehensive, more flexible and less formal than existing legal routes to compensation. This was perceived to perhaps offer a structure that would be less traumatic for applicants than an adversarial legal process and may be more likely to ensure that applicants would incur lower or no legal costs. One participant felt that a financial redress scheme should have a 'no fault' approach and this could enable a more effective response. Almost all participants felt that there might be an opportunity for better value to 'the public purse' and to ensure that a greater proportion of any settlement fee was given directly to the victim/survivor. It was felt this could be achieved through fewer costs to contributing agencies and fewer payments to solicitors. In further support of these views, reference was made to perceptions of the legal fees when pursuing compensation through the civil court system, namely that a proportion of any settlement is attributed to legal costs and that, for a defender, the required contribution to legal costs can often be higher than the actual compensation awarded.

3.4 Further views shared were that a structured national scheme may also offer greater potential for staffing and resource planning than claims that may come through the civil route. Participants provided examples of resources related to the support for victims'/survivors' applications at a local level, such as gathering information, subject access⁵ and freedom of information⁶ requests, and legal services.

3.5 It was felt that a financial redress scheme delivered on a national basis was more likely to achieve greater consistency of both processes and outcomes across geographical and service areas. One participant highlighted that individual victim's/survivor's routes to claiming compensation may vary greatly, depending on each establishment's position and response to claims, and their insurance policy and cover. Therefore, it was suggested that a national scheme might offer a more uniform approach to all victims/survivors across Scotland. Reference was made to the potential value of avoiding a 'postcode lottery' of varied responses to individuals seeking financial redress, helping address the problems (such as uncertainty about liability) that arise from the reorganisation of local authorities, and also consider the gaps resulting from some child care providers no longer operating or now providing a different form of service. It was felt that, depending on how any contributions were agreed, a national scheme may also help reduce disagreements and negotiations about liability between local authorities.

3.6 It was felt that, should the Scottish Government take forward the decision to progress with a financial compensation/redress scheme, it would be helpful to have an opportunity for local authorities to work together to consider and address any impact. It was suggested that, if the Scottish Government, residential and foster care providers, local authorities and others worked together on any such scheme, it could offer a positive signal of change, act as an 'honest broker', and may potentially have greater symbolic meaning than any one body delivering financial redress on its own. It was also recognised that contributing to a scheme may provide further acknowledgement for victims/survivors of organisations accepting the wrongs of the past and may, as a side issue, also offer some potential positive impact upon an organisation's reputation. A contrasting view was that, depending on perceptions of a scheme and how it had been implemented, there might be risk of negative connotations for organisations through involvement. One participant noted that, even with an agreed scheme, the possibility remains that applicants may still have mixed views on their experiences and outcomes through the process, and concern was expressed that this may lead to divisiveness between victims/survivors.

3.7 It was felt by most participants that Scotland has the opportunity to build a financial compensation/redress scheme that can be unique to the Scottish context and build on best practice that has developed in other jurisdictions. Regardless of how a scheme is structured, themes relating to fairness, integrity, flexibility, proportionality and transparency were viewed as important. Other

⁵ Making a Subject Access Request. The Data Protection Act 1998 gives individuals who are the subject of personal data a right of access to personal data about them held by an individual or an organisation.

⁶ Any request made to a public authority in writing is regarded as a request under the Freedom of Information (Scotland) Act (the FOI Act).

views noted that it was important for financial redress to be embedded in broader remedy and reparation measures. One participant made explicit reference to any potential financial compensation/redress scheme reflecting the principles of, and being placed in the context of, the Scottish Human Rights Commission (SHRC) 2010 Framework⁷. The exploration of a potential financial compensation/redress scheme continuing to be part of the work of the Review Group, with the SHRC having membership. This could offer an opportunity for victims/survivors, residential and foster care providers and other stakeholders to contribute in a transparent and collaborative way to any future developments.

⁷ SHRC (2010). *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland*. Retrieved from <http://www.scottishhumanrights.com/justice/historic-child-abuse/>

4 ISSUES RAISED ABOUT THE DEVELOPMENT OR OPERATION OF A FINANCIAL COMPENSATION/REDRESS SCHEME

4.1 Almost all participants raised the need for clarity about eligibility criteria and noted the potential complexity of applying this in practice. In relation to the definitions and eligibility criteria outlined in the terms of reference of the Scottish Child Abuse Inquiry, particular queries were raised in relation to how assessment and decision making would take place, particularly in the complex range of circumstances where the definition of abuse extended beyond specific incidents of direct sexual or physical abuse of children by adults with caring responsibilities. Examples of such circumstances that may present challenges included systemic and organisational abuse factors, for example, children being placed separately from siblings or far from home, and the failure to offer services and supports that had been formally agreed in care plans. In addition, some participants acknowledged that 'abuse is abuse' and emphasised that when considering the potential challenges in assessment, they had no intention of minimising the nature of abuse. However, a concern was noted about how decision making could take into account the child care standards, procedures and societal and policy norms of that time.

4.2 All participants were clear that when considering administration and legal costs, victims/survivors should retain as much as possible of any awarded payments. All felt that a redress scheme should properly uphold the rights and choices of victims/survivors and, at the same time, it should be sufficiently accessible for applicants to require as little legal support as necessary. There were indications of concern that some legal representatives may, due to their role in the process, have a preference for the civil court process rather than a financial compensation/redress scheme and may not always have the interests of victims/survivors at the centre of decisions.

4.3 Participants stressed the need for any potential scheme to be credible and to ensure that the needs of applicants would be considered through the arrangements, application process and administration. This included:

- Setting up a scheme speedily and building on what is known from other jurisdictions
- Making a scheme accessible and efficient, and ensuring that decisions are made in good time, particularly for victims/survivors who are elderly and/or ill
- Ensuring processes offer some certainty for victims/survivors that they will receive fair and proportionate payments, that the scheme reflects genuine and meaningful redress and that skilled and appropriate personnel are involved in the administration and decision making
- Ensuring that the process of application and decision making is straightforward, that it does not cause additional trauma and that it is not so onerous that it deters individuals from applying

- Ensuring that applicants do not incur unnecessary or large legal fees
- Having sufficient support for applicants before, during and after the process
- Having clear information available from the outset, in order to allow victims/survivors to choose whether or not to apply to any redress scheme, and to consider how this option fits or compares with other routes to financial compensation

4.4 A view shared by most participants was that the balance between ease of access for applicants and having a sufficient amount of evidence to agree a claim would be difficult to resolve, and was a matter to be revisited at the development stage, if a scheme was to be progressed.

4.5 Issues were raised by all participants about the perceived differences, interaction and possible cross-cutting issues between a potential financial compensation/redress scheme and implementation of The Limitation (Childhood Abuse) (Scotland) Act 2017⁸ (The Act), particularly matters related to timing. A few participants stated that at this early implementation stage of The Act, the planning and resource implications for time, staff and finances were currently unclear and unquantifiable. Despite this uncertainty, participants raised the issue of the potentially serious effect on budgets and service provision, in the near and more distant future. It was also felt that the timing did not allow victims/survivors a clear choice, as many individuals - in the absence of a redress scheme - may opt for a civil court route solely on the basis of it being the only option currently available. One participant, while noting a potential redress scheme as a positive alternative route to civil courts, raised concern of a possible 'two-tier system' for victims/survivors. The exact meaning of a 'two-tier system' in this context was not fully explored. Similarities and differences between financial redress through civil courts and via a potential financial compensation/redress scheme were discussed, but these discussions were limited due to the unknown operation detail of any potential scheme. There was a general view that the standard of proof required should be less than, or equal to, that in civil courts.

4.6 A key question raised by a number of participants was whether or not an individual could or should have the opportunity to pursue two routes - civil court and an application to a financial compensation/redress scheme - and, if they have already pursued one, should they be able to pursue the other. There was a query about whether acceptance of a payment from a financial redress scheme would discharge future civil liability for organisations, and one participant offered a clear view that if a victim/survivor had previously received a compensation payment, then they should not, in their opinion, be eligible for a further payment from a scheme. One participant noted that payments should not include a non-disclosure agreement; this was explained to be in recognition that the acknowledgement of abuse suffered can be a key part of the overall process of

⁸ The Limitation (Childhood Abuse) (Scotland) Act 2017 removes limitation periods for claims of childhood abuse, to allow cases that were previously time-barred to proceed in the Scottish civil courts thus opening access and opportunity for victims/survivors to pursue compensation through the civil courts.

healing for victims/survivors and accountability for care providers. If individuals were able to use both routes - civil justice and a financial redress/compensation scheme - it was suggested that this might have additional, detrimental effect on services due to a number of financial, legal and resource implications.

5 ROLE OF CARE PROVIDERS AND OTHER RELEVANT STAKEHOLDERS IN A SCHEME

Approach to residential child care service provider contributions

5.1 Almost all participants believed that the eventual format of contributions to any scheme would be more usefully discussed and agreed at the next stage, when a decision about a potential financial compensation/redress scheme has been made, and more detailed options for consideration are available. However, some broad discussion took place about potential approaches, issues and questions. Most understood the scheme to be, in some ways, a 'large pot' into which money is placed and to which applications are made. The majority of participants did not express a strong view at this stage in relation to the format of their contribution to or role in a potential scheme. One suggestion was for payment to be issued to applicants by the potential scheme in the first instance, and thereafter the scheme would seek contributions from residential and foster care providers. A possible administration model was proposed by one participant, the UK historic asbestos-related injury claims scheme that was significantly funded by Insurers⁹.

Liability and financial contribution

5.2 All participants were concerned about the impact of financial contributions to a compensation/redress scheme on budgets, and the consequences for current and future services. Almost all participants from third sector organisations noted that their incomes are generated mainly through local authorities purchasing their services, and that any additional costs could not therefore be passed on to their funders. Local authority representatives raised issues about the difficulty of quantifying applicant numbers, uncertainty regarding the position insurers will take, and uncertainty of the extent of liability. Most participants felt these issues will cause uncertainty and difficulties in setting accurate budgets and emphasised that, should a scheme proceed, these issues would need to be considered further and greater clarity gained. The issue of additional resource costs such as securing information from records and supporting victims/survivors through the redress process were also raised. The majority of participants noted other financial pressures of concern, for example, the current period of austerity and resultant budget pressures, and the financial implications of the Scottish Government's Living Wage plans¹⁰. In this context, a few participants felt that a requirement to contribute to a scheme could lead to a financial crisis for some organisations or even a threat to their existence.

5.3 There was uncertainty among all participants about the level to which insurers would cover any payments required and an issue about the current level of excess/deductibles that organisations would need to cover. It was suggested

⁹ Further information on the UK historic asbestos-related injury claims scheme is available at <https://www.mesoscheme.org.uk/>.

¹⁰ The Scottish Government encourages employers to join the Living Wages scheme, a voluntary rate, which is higher than the statutory national living wage.

that there might be particular legacy insurance cover issues due to changes in insurance providers over time; specifically in one context, where the cover arrangements currently in place are a response to one large insurance provider ceasing trading in the 1990s. Participants also noted their perceptions that insurers currently only cover cases that have been taken through a legal avenue. The issue of the possibility of increased insurance premiums for residential and foster care providers in the future, and that even when insurance cover is in place the amount of excess would, in itself, have a significant impact on finances and services was also raised.

5.4 Most participants believed that the Scottish Government should contribute financially to a scheme and some expressed that the Government should underwrite any scheme. In part, this view aligned with the complexities and concerns about liability and insurance, but was also in recognition of the Government's responsibility in redress and reparation for victims/survivors. The majority of participants from third sector organisations felt that it was inevitable and right that the Scottish Government should ensure that these organisations should not carry the financial burden for other organisations that no longer exist, or no longer provide residential or children's services. There was also acknowledgment of the complexities of establishing the distinct roles, responsibilities and relationships of the 'state', the placing authority and the residential or foster care provider in any liability or arrangement for payment.

5.5 There were mixed views among third sector organisations currently operating on whether they should, or could, pay funds into a financial compensation/redress scheme. A few felt that contribution would be necessary due to the need to reflect support for a potential scheme and the need for reparation to have a financial aspect. Others felt that there is no practical means for a third sector organisation to contribute to a scheme (due to the financial implications and limitations outlined above) unless this was covered by their insurer. A few believed that it would not be right in principle or would be contrary to their remit, due to their responsibilities to current and future service users, and their overall legal obligations to their charitable status.

5.6 There was broad agreement that, should finance be required, either directly or through insurers, an organisation's liability should be proportionate to the extent of the abuse for which the organisation would be held accountable. Many of the participants perceived a challenge in establishing the nature and extent of abuse among organisations in advance of a scheme, particularly for those organisations not considered in the Scottish Child Abuse Inquiry. This led to questions about how the detail of contributions from organisations would be calculated, and what factors would be drawn on in those calculations. One suggestion was that there should be a direct relationship between a claimant's application and the organisation where abuse took place. This requirement may help ensure that issues of insurable liability, if applicable, are addressed, and may in some circumstances acknowledge applicants sense of justice. Abuse in foster care placements raised particular issues, due to potential difficulties in

establishing the levels of responsibility and accountability of the different parties involved in a child's care.

5.7 Other uncertainties were raised in relation to the operational and administrative set up of a scheme that would require further exploration: for example, would financial contribution to a scheme end an organisation's liability?; would a scheme extend beyond the timescales of the Scottish Child Abuse Inquiry, for instance, to claims after December 2014?; and, would payments be staged or one-off? One participant stated that if payments are required directly from care providers then a staged process might be preferable.

5.8 As noted earlier, it was understood by all that in terms of costs, a redress scheme was perceived to be financially more beneficial than civil court proceedings for all relevant stakeholders, including victims/survivors, and at the same time may ensure that there was no reduction in the actual payments received by victims/survivors.

5.9 There was a strong view that the Scottish Government should discuss early plans for a potential financial compensation/redress scheme with solicitors who may be involved in future legal action on behalf of victims/survivors. This was perceived as being potentially helpful in clarifying processes and roles for legal professionals, and to enable those professionals to advise clients.

Other forms of remedy, redress and reparation

5.10 As noted above, there was a strong view amongst all participants that, while financial compensation/redress is important for many victims/survivors, redress should not solely be about financial compensation. Additional reparations relating to apology, support and acknowledgement were discussed, and reference was made to the broader existing plans and progress on the Action Plan on Justice for Victims of Historic Abuse of Children in Care¹¹. It was noted that each of the different components should be aligned as necessary, as developments progress in Scotland.

5.11 Most residential and foster care service provider participants shared aspects of their work to date that related to non-financial reparations, and a few shared their plans or aspirations for practice developments in this area. Third sector organisations in particular, described a range of efforts towards remedies and redress that are already in place, such as:

- Enabling supportive access to records
- Financial support for counselling sessions
- Signposting people to a range of relevant supports
- Tracing and unifying families
- Offering after-care support

¹¹ SHRC (2013). *Action Plan on Justice for Victims of Historic Abuse of Children in Care*. Retrieved from <http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>.

- Individual sessions to promote reconciliation
- Individual apology
- Ensuring that previous residents are aware of the scrutiny by current registration and inspection regimes

5.12 Developments in practice were also noted and included the potential for memorial/reflection spaces at residential establishments, offering volunteering opportunities for victims/survivors and giving some level of priority for employment of victims/survivors.

5.13 One organisation noted that having undertaken a formal, independent consultation with victims/survivors from their establishment, with the aim of understanding how better to offer support; this resulted in a series of recommendations that are currently being considered.

6 NEXT STEPS

6.1 All participants in the main engagement exercise welcomed any further opportunities for discussions on their role in relation to the development of a potential financial compensation/redress scheme. If a scheme is established, it was felt by a few participants that, at some point, the previous InterAction approach¹² of engaging residential and foster care service providers, victims/survivors, and victim/survivor representatives in a similar collaborative manner would be appropriate. All participants were happy to help facilitate the process of further dialogue as appropriate. Many of the representatives agreed to remain the contact point for their professional organisations.

6.2 Participants noted that the context of this engagement exercise was a 'broad brush' exploration of early views and were clear that, should there be a decision to establish a scheme, further discussion would be essential to ensure each organisation's respective local and hierarchical governance structures were fully involved. Participants noted this would offer more detailed discussion, greater exploration and consideration of issues, and ensure that decisions were binding. Participants also thought that this next step would require further information on the evidence gathered from the survivor consultation, an outline of key evidence from other schemes, and a clearer outline of any specific proposals for more detailed consideration.

¹² An InterAction is a coming together of everyone affected by an issue to share views and find practical steps that promote human rights. Refer to <https://www.shrcinteraction.org/WhatisanInterAction.aspx>.

7 CONCLUSION

7.1 The Scottish Human Rights Commission notes that, in line with international good practice, care providers/institutions should contribute to reparations packages to the extent to which they are accountable¹³. This report demonstrates the willingness from a number of relevant organisations and professional groups to engage in early dialogue, offer initial high-level views and make some suggestions for next steps. It outlines several positive opportunities and highlights important challenges from a residential and foster care service provider and other relevant stakeholder perspectives. This provides a helpful starting point and an important insight for the Scottish Government, should they decide to proceed with a financial compensation/redress scheme for victims/survivors of abuse in care.

7.2 Finally, whilst this early engagement activity was intended to gather a distinct organisational perspective on their potential role and contributions, it is important to note that most participants raised similar themes to many of those noted by victims/survivors. Examples of this include references to the broader opportunities offered by a national financial redress scheme, the meaning and purpose of financial redress and of placing this in context with other remedies and reparation, the importance of a victim/survivor focus, and the value of having sound principles and processes in place.

¹³ SHRC (2010) *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland*, Page 38. retrieved from http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhframeworkjustice_remedies.doc

APPENDIX 1: List of organisations represented through engagement exercise

The following lists the eighteen participating organisations that were represented across the early engagement (16 organisations) and main engagement activities (13 organisations).

Quarriers
Barnardo's
Scottish Council for Independent Schools (SCIS)
The Fostering Network
Action for Children
Rossie Young People's Trust
CrossReach
Gordonstoun
Children 1 st
Conference of Religious in Scotland
Catholic Bishops Conference of Scotland
Aberlour
Educating through Care Scotland (EtCS)
Convention of Scottish Local Authorities (COSLA)
Association of Local Authority Risk Managers (ALARM)
Social Work Scotland (SWS)
Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)
Society of Local Authority Chief Executives and Senior Managers (SOLACE)

APPENDIX 2: Briefing paper

Introduction

This briefing paper is intended to support a structured dialogue to gather views from residential child care service providers and other relevant stakeholders on a potential financial redress scheme for victims/survivors of abuse in care.

The structured dialogue is underpinned by a set of questions. Invitations have been extended to service providers to take part either through individual telephone or face-to-face interview, by providing a written response to the questions set, or by attending a small focus group.

A summary of the information gathered over this engagement activity will be included in the options paper to be presented to the Scottish Government, to assist them in their decision as to whether or not to have a financial redress scheme for victims/survivors of abuse in care. Also included in the options paper will be the information gathered from our review of similar financial redress schemes that have been implemented across the world and from the recent consultation with victims/survivors.

Background to the consultation and engagement

The Scottish Human Rights Commission (SHRC) published a Framework for Justice and Remedies for Historic Abuse of Children in Care in 2010. In 2012, the SHRC commissioned CELCIS, the Centre for Excellence for Looked after Children in Scotland to lead an InterAction dialogue with victims/survivors of in care abuse, former providers of care, the Scottish Government and other key parties. From this, an Action Plan on Justice for Victims of Historic Abuse of Children in Care¹⁴ was developed, setting out recommendations under two strands:

- Acknowledgement (apology, national record and commemoration)
- Accountability (reparation, inquiry and access to justice)

The Action Plan identified a number of recommendations for the Scottish Government and others to take forward. Since then, there has been progress across many of the key areas of the Action Plan, including the launch of the Scottish Child Abuse Inquiry.

However, this consultation is the first to gather views on options for a potential financial redress scheme for victims/survivors of abuse in care. This follows an announcement by the Deputy First Minister and Cabinet Secretary for Education and Skills, Mr. John Swinney, on 17 November 2016, where he committed to a formal process of consultation and engagement with victims/survivors and other

¹⁴ SHRC (2013). *Action Plan on Justice for Victims of Historic Abuse of Children in Care*. Retrieved from <http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

relevant parties to fully explore the issues on the provision of 'financial redress'¹⁵ and to gather a wide range of views.

The process

This consultation has been developed and delivered through a partnership of the InterAction Action Plan Review Group and CELCIS¹⁶. In brief, the process has three distinct phases: preparation and pilot, consultation and engagement, and a final analysis and options phase. The consultation and engagement stage has three strands: victim/survivor consultation, service provider and other stakeholder engagement and evidence gathering.

Progress update

Victim/survivor consultation

The first phase of the victim/survivor consultation preparation and early engagement proved invaluable. This phase helped the development of both process and content of the victim/survivor consultation as we have moved forward.

The work with victims/survivors resulted in the agreed process and set of questions for victims/survivors about a potential redress scheme for victims/survivors of abuse in care. The questions covered the following areas:

- Eligibility
- Information required to support applications
- Administration and decision making
- Types of payment
- Approach to determining payment levels
- The role of Scottish Government and others
- Whether or not there should be a financial redress scheme for victims/survivors of abuse in care

The consultation with victims/survivors closed on the 17th November and we are currently analysing the responses.

Evidence and research

Work continues to gain further depth of understanding of the evidence on lessons learned from redress schemes developed in other countries. This information will also be included in the options paper for the Scottish Government.

¹⁵ Scottish Government (2016). *John Swinney: Update to Parliament on issues relating to the Child Abuse Inquiry in Scotland*. Retrieved from <https://news.gov.scot/speeches-and-briefings/update-on-issues-relating-to-the-scottish-child-abuse-inquiry>

¹⁶ The InterAction Action Plan Review Group is a national group and includes representation from victims/survivors, victim /survivor support organisations, care providers, the Scottish Human Rights Commission SHRC, Scottish Government, Social Work Scotland and CELCIS. The Group helps review the implementation of the InterAction Action Plan.

Our early work has highlighted the number of international schemes and the challenges when beginning to explore the purpose, approach to payments and the administrative structure of each¹⁷. No two schemes are the same, each being set within a unique context. Likewise, countries which have implemented redress schemes, or are considering doing so, have taken different approaches to how the scheme is funded and the role of service providers. Despite the variation, it is important and in line with international best practice to consider how service providers can contribute. This is highlighted by the Scottish Human Rights Commission noting that care providers/institutions should contribute to reparation packages in a manner proportionate to the extent to which they are accountable¹⁸.

Service providers

We held two early engagement focus groups in April and July 2017 with service providers and other stakeholders. The purpose of these sessions was to raise awareness of the engagement and consultation process, gather initial views and consider how best to move forward further dialogue. Participants included representatives from SWS, COSLA, SOLAR, third sector organisations, and religious groups. A number of initial potential themes emerged as follows:

Principles and Approach

- The importance of the existing human rights approach and principles already adopted in Scotland and the need for this to be taken forward in the development of any potential financial redress scheme was cited
- In principle, there was support for the development of a financial redress scheme and the value of this from an ethical perspective was cited
- Themes relating to fairness, having a trauma informed approach and ensuring effective administration were noted as important elements in any potential redress scheme

The Limitation (Childhood Abuse) (Scotland) Act 2017

- A number of issues and queries were raised regarding the recent implementation of The Limitation (Childhood Abuse) (Scotland) Act 2017. Themes included: uncertainty regarding the relationship between this and any potential redress scheme; concerns regarding the different timescales of the Act coming into force and the development of a potential financial redress scheme; the unknown impact and implications for service providers; the importance of impartial legal advice; and choice being available to victims/survivors.

¹⁷ See Report 3 International Perspectives – a descriptive summary for further details.

¹⁸SHRC (2010) A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland, Page 38. retrieved from

http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedies.doc .

Costs, resources and funding

- Concerns regarding costs, including legal fees, and being able to forecast and plan for these
- Potential impact on current service provision and resources as a result of civil damages or any potential redress scheme costs
- Concerns relating to how liability may be established, Local Authority boundary issues and the changing landscape of the existence and nature of care provision for many providers
- Questions regarding how it would be possible to establish a fair and proportionate funding model
- Insurance cover complexities, particularly legacy matters, such as some companies being no longer in existence, were noted. Uncertainty was expressed across claims both through the civil courts and any potential redress scheme

Current stage and next steps

We want to gather service provider views in a structured way to contribute to the development of a summary in the final options paper. This current engagement exercise will help:

- Understand the key opportunities, issues and concerns from a service provider's perspective
- Gather views on potential roles and contributions to any future financial redress scheme
- Consider how best Government might engage with service providers in any future dialogue, should there be a decision to proceed with the redress scheme

APPENDIX 3: Outline and questions for structured dialogue

Introduction

This paper outlines a set of questions intended to support a structured dialogue with residential child care service providers and other relevant stakeholders on a potential financial redress scheme for victims/survivors of abuse in care. Stakeholders are being invited to take part, either through individual telephone or face to face interview, by providing a written response to the questions set, or by attending a small focus group.

A summary of the information gathered over this engagement activity will be included in the final options paper to be presented to the Scottish Government. The options paper is intended to assist their decision making as to whether or not to have a financial redress scheme for victims/survivors of abuse in care. Also included in the options paper will be the information from our recent consultation with victims/survivors, and from our review of similar financial redress schemes that have been implemented across the world.

At this stage, this activity is not intended to secure detailed specification or commitments. Instead, we are seeking initial, high-level views from a residential child care service provider and other stakeholder perspective on the following themes:

- Understand the key opportunities and concerns from a service provider perspective
- Gather views on potential roles and contributions to any future financial redress scheme
- Consider how best Government might engage with service providers in any future dialogue should there be a decision to proceed with a financial redress scheme

Thank you for agreeing to take part and contribute to this process. We have a number of questions to help gather views from a service provider perspective on a potential financial compensation/redress scheme which may be set up for victims/survivors of historic abuse in care.

Individual responses will not be linked to any specific individual or organisation. However, we would like to submit, along with the summary overview of responses, a list of the organisations that took part. Please let us know if you have any questions or issues with that. If you want to skip any questions, that's fine, just move on to the next one. If you want to discuss the questions at any point, please just get in touch, even if your initial indications were that you would submit a response in writing.

The attached briefing paper provides further information on the background and broader context to the consultation with victims/survivors. As outlined in that

paper, the consultation with victims/survivors has already taken place and the findings are being analysed. This focused on core elements of a potential scheme for Scotland:

- Eligibility
- Information required to support applications
- Administration and decision making
- Types of payment

- Approach to determining payment levels
- The role of Scottish Government and others

If you have any comments on any of the core elements mentioned above, please note these in the additional comments section below.

Questions for residential child care service providers and other stakeholders

1. From a service provider perspective, what do you think are the key opportunities and concerns presented by a potential financial redress scheme for victims/survivors:
 1. Opportunities?
 2. Concerns?
 3. Additional comments?
2. If contributions from service providers were to be considered in a potential redress scheme they could take a range of different forms. What are your overall thoughts about service providers making some form of contribution to a potential scheme?
 - a) If financial contributions from service providers were to be considered, what are your thoughts on how this could be done in a fair, just and reasonable way?
 - b) In what other ways, apart from financial, might service providers contribute to any potential financial redress scheme?
3. If your organisation has already been involved in some form of redress or reparation for victims/survivors of abuse in care, could you provide any further information on this?
4. If there is a decision to proceed with a financial compensation/redress scheme in Scotland, and there were to be further discussions regarding service providers' contributions, what would be the best way to progress this?
5. Do you have any additional comments?