

Education, Children and Young People Committee

1st Meeting, 2023 (Session 6), Thursday 12 January 2023

Redress Scheme

The Session 5 Education and Skills Committee was designated as the lead committee for scrutiny of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. The Bill passed at Stage 3 on 11 March 2021, becoming an Act on 23 April 2021.

One of the main purposes of the Act was to set up a scheme to make financial payments to survivors of historical child abuse in care in Scotland, or in some circumstances where the survivor has died, to their partner or children. The scheme launched on 8 December 2021.

Background

As part of its post-legislative scrutiny work, the Committee has considered regular written updates from the Scottish Government on the operation of the redress scheme.

In correspondence with the Committee, dated [8 March](#), the Deputy First Minister provided an update on the first twelve weeks of the Redress Scheme, including the number of people who had submitted applications. The Deputy First Minister noted that a higher than anticipated number of applications had been submitted and explained that Redress Scotland was recruiting more caseworkers to deal with the higher workload.

Following consideration of this correspondence, at its meeting of 20 April, the Committee agreed to [write to the Deputy First Minister](#), on a number of related issues.

The Deputy First Minister provided a response to this on [16 May](#). He then provided a further update, dated [22 June](#).

Committee consideration

At its meeting today, the Committee will take oral evidence on this from—

- John Swinney MSP, Deputy First Minister and Cabinet Secretary for COVID Recovery;

- Gillian Nixon, Head of Operations, Redress Division; and
- Carol Lamont, Policy Lead, Redress Division, Scottish Government.

Supporting information

A SPICe briefing on the issues being considered at this session is provided at [Annexe A](#).

**Education, Children and Young People Committee Clerks
6 January 2023**



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Scotland's Redress Scheme

Introduction

The Committee will take evidence from the Deputy First Minister as part of their ongoing scrutiny of Scotland's Redress Scheme. Scotland's redress scheme was created following the passage of the [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021](#) which received royal assent on 21 April 2021. [SPICe produced a briefing](#) ahead of Stage 1 which may be useful for further background on the Bill. This paper sets out some background to the scheme and recent reports and publications.

Context

Scotland's Redress Scheme is for survivors of historical child abuse in care in Scotland. It has been set up to recognise and acknowledge what happened, and the harm this abuse caused. The scheme is designed to provide survivors with a choice in how to pursue financial payment and is an alternative route to traditional adversarial civil litigation. The scheme covers; physical abuse, sexual abuse, emotional abuse and neglect, and covers abuse that occurred in a relevant care setting in Scotland before 1 December 2004. There are three organisations involved in the administration of the scheme:

- Redress Scotland is a non-departmental public body which is responsible for assessing completed applications and determining the level of award. The Scottish Government published information on [those serving on Redress Scotland's panel in December 2021](#).

- A department in the Scottish Government is responsible for assessing applications initially, and sending these on to Redress Scotland once complete. Once Redress Scotland has made a determination, the Scottish Government department will make the payment.
- A survivors' forum has also been established which will engage with all applicants to gather feedback.

Developments since royal assent

Since the Act received Royal Assent, the Scottish Government published two information notes setting out developments in relation to the Redress Scheme.

In [May 2021 the Scottish Government stated](#) it was working to develop statutory guidance on how the law would work, how those involved can ensure they comply with the law and how some of the processes would operate. This [guidance was published in December 2021](#). The Scottish Government also worked with clinical psychologists and other experts to develop the [assessment framework](#), which was also published in December 2021. This was to give applicants an understanding of how their circumstances may match to payment levels. The Scottish Government worked with the UK Government to secure a Section 104 order to provide that the Act can be applied in the rest of the UK, and to ensure arrangements for benefits, tax and social care entitlement disregards are in place prior to the scheme commencing. This update also included a pledge from the Scottish Government to publish details of what a 'fair and meaningful contribution' to the waiver scheme would look like.

In [July 2021 the Scottish Government published an](#) update on the establishment of Redress Scotland and the Scottish Government Redress Division. The Government Division would provide application forms and support for those applying, while Redress Scotland as an independent body would make decisions on applications.

On the 21st September 2021, [the Herald reported that no money had yet been contributed to the Redress Scheme](#) in exchange for a waiver. The Scottish Government noted that:

"Discussions regarding participation in the scheme have been ongoing for some time and are at an advanced stage. No money has been received from contributing organisations yet as discussions are about securing contributions to the scheme in advance of it opening to applications."

The Scottish Government published a [final information note ahead of the scheme launching in November 2021](#). This update confirmed that tax and benefit agreements were secured which would ensure there was no negative impact on survivors who receive an award through the scheme.

[Save the Children](#) announced on 8 December 2021 that they would be participating in the waiver scheme, becoming the first organisation to do so. The Scottish Government maintain a [contributors list](#): at present there are 16 participants in the waiver scheme (including public sector bodies like Scottish Ministers, local authorities, the Scottish Prison Service and NHS Scotland Boards).

Recent coverage/ publications

[Recent press coverage has highlighted concerns about the operation of the redress scheme](#), and in particular the treatment of survivors. As of November 2022 £8 million had been paid out to 189 survivors, an average of around £42,300 per claim. 15 (8%) of 189 applicants requested a review. The Scottish Government, in their comment in the above article, noted that a restriction order issued by the Chair of the Scottish Child Abuse Inquiry prevents applications from using their SCAI statements as part of a redress application.

A [freedom of information request, published in November, revealed that there were originally 12 case workers](#) in post when the redress scheme launched. This has increased to 16 (as at September 2022), with plans to increase the number to a total of 23. The [Deputy First Minister wrote to the Committee on 8 March 2022](#) and stated that Redress Scotland was recruiting ten more case workers to deal with the higher than anticipated volume of applications. [Subsequent correspondence on 16 May](#) noted that the number of case workers had increased to 14, with a target to recruit a further 9.

Redress Scotland have published 4 reports over the last few months; Redress Scotland's 2022 progress report (December 2022), a Facts and Figures Publication (November 2022) and Redress Scotland's corporate plan for 2022-23 (November 2022). The first [annual report will be published by September 2023](#).

2022 Progress Report

The [progress report](#) covers period up to 30 June 2022 – so figures from the facts and figures publication covered below are slightly more up to date.

In terms of governance, Redress Scotland have established an Oversight Board, an Audit and Risk Committee, a code of conduct, a conflict-of-interest policy, a risk register and a draft document which sets out how panel members will make decisions.

The processing time for Redress Scotland is measured as the time from a completed application being received from the Scottish Government, to when a decision is made and a decision letter returned to the Scottish Government. This was just under 20 days up to end of June 2022.

The paper highlights future areas of work – Redress Scotland will produce a corporate plan for 2023-26, and is working towards its first annual report and accounts.

Facts and Figures

The [facts and figures publication](#) includes data up to and including 31 October 2022, but which point a total of 298 applicants for redress. Monthly applicant numbers have generally increased over 2022.

Of these 298, 242 have been assessed and categorised by type of applications. The majority of applications, 58%, are individually assessed survivor applications, 19% fixed payment survivor, and 11% are next of kin.

Average length of time to make a decision from receipt of a completed application is currently a little over 21 days, a slight increase since the 2022 Progress Report which covered the period up to end June 2022. The panel has had to request further information from 26% of all completed applications.

The publication provides a breakdown of award levels for individually assessed redress awards; less than 2% denied (only two applications to end October 2022).

Level 5 redress awards (£100,000) are the largest proportion at 34%, followed by Level 4 (£80,000) at 26%, Level 3 (£60,000) at 20% and Level 2 (£40,000) at 13%. Level 1 (£20,000) and fixed payment awards (£10,000) accounted for 5%.

Redress Scotland plan to consult with the survivors' panel on the information they will publish in the future.

Redress Scotland Corporate plan

Redress Scotland's [corporate plan for 2022-23](#) sets out the actions being taken to establish the organisation during its first year of operation. The corporate plan sets out three strategic aims:

1. ensure all decisions are thoughtful, robust and take full account of the unique experience of individual survivors.
2. develop excellence in all aspects of the public body, from governance to operational delivery, with continuous quality improvement.
3. deliver on our responsibilities within Scotland's redress scheme and contribute to the overall success and impact of the scheme.

The plan pledges to establish various sub committees and boards including the Redress Scotland Oversight Board and the Audit and Risk Committee. These committees will scrutinise and approve our organisational strategy, scheme of delegation and reporting arrangements.

The corporate plan also identifies three main areas of work for Redress Scotland – operations, people, finance and resources.

- Operations – initially this has focused on setting up the processes and systems to discharge the new organisations duties. Redress Scotland pledge to engage and consult with a number of stakeholders to ensure that these systems are effective, particularly for survivors.
- People – Redress Scotland highlight the importance of wellbeing to their workforce, and pledge to appoint external advisors to identify and mitigate risk in terms of health and safety, and emotional safety of staff. Redress Scotland aim to have their full, permanent team in place by the end of 2022.
- Finance and resources – during 2022 the organisation was focused on establishing the finance and reporting functions which will support the production of annual accounts and ensure that expenditure is well managed, meeting all obligations and meeting survivors' expectations.

On the overall approach to their work, Redress Scotland states that:

Our values of dignity, respect and compassion underpin how we work, what we do and why we are here. We expect these values to challenge us throughout 2022-23 to work to high standards and be open, honest and flexible. This means that we expect that we will change and develop throughout the year.

Background

The Redress Act – Parliamentary process

The Education and Skills Committee was assigned as the lead committee for consideration of the Bill, and published its [Stage 1 report on 9 December 2020 \(an easy read summary is also available\)](#). The report did support the general principles of the Bill, noting that 'The Committee believes that, whilst there are some fundamental issues with the calculation of 'fair and meaningful' contributions and the waiver, the Bill does provide a straightforward, easy to access scheme for victims/survivors'. In terms of the operation of the waiver scheme, the Committee made a number of observations and recommendations:

- Proposed changes to charity law, designed to make it easier for care providers to participate in the scheme, were also identified as problematic, with many stakeholders pointing out that charitable trustees would always need to act to safeguard the future viability of the charity, something that appeared to be at odds with the modelling in the Financial Memorandum.
- From the evidence heard, the Committee is unclear whether insurance providers would commit to making a payment to the scheme in the absence of liability for abuse being established.
- Care providers wishing to contribute to the scheme will almost certainly have to make any payments from their own funds. This is likely to act as a further disincentive for organisations to participate, particularly given that civil action, with its higher evidential requirements and establishment of liability, is likely to give rise to an insurance payment, whereas an application to the redress scheme is not.
- The waiver itself proved unpopular with victims/survivors, many of whom viewed it as restricting their right to choose civil litigation in future. Many highlighted the need for victims/survivors to make an informed choice about signing the waiver, particularly where they might feel compelled to take a redress payment due to difficult financial circumstances.
- The Committee recommended that the Scottish Government considered removing the waiver and find another way to avoid making double payments to victims/survivors, such as an offsetting approach which would allow the victim/survivor to pursue a civil case, and if successful any Redress payments already made could be deducted from the compensation awarded by the court.

The Scottish Government [responded to the Committee's report on 16 December](#). In response to the concerns raised about the waiver scheme, the Scottish Government noted that;

- The Scottish Government have sought to make the waiver fair. Crucially, the waiver only applies to those organisations that make a fair and meaningful contribution.
- where a survivor's care provider did not contribute to the redress scheme, the survivor would be entitled to receive a redress payment and then also to pursue litigation and, if successful, they would be entitled to keep both payments
- applicants for individually assessed payments (as opposed to those who qualify only for the fixed payment) would only be asked to sign a waiver when they know what their full award has been assessed.

- On considering the evidence the committee has heard, we will commit to bring forward amendments at Stage 2 to increase the 12 week acceptance period to 26 weeks/6 months, and the 4 week review request period to 8 weeks.
- We have tried to minimise this risk (of a provider defaulting after securing a waiver) as much as possible in the design and structure of contributions (by allowing providers to be removed from the contributor list; by having the power in Section 12(8) of the Bill to pursue contributions agreed but unpaid as a debt due to the Scottish Government; and to demonstrate good faith, by seeking an initial, albeit not full (to assist affordability), payment before an organisation is placed on the contributor list).
- Section 89 of the Bill makes clear that funding for legal advice earlier in the process is also provided, which means all survivors who apply to the scheme will have access to free legal advice throughout the process, should they wish to take this up. Applicants and potential applicants will be made aware of this.

The Bill was subject to a number of amendments at Stage 2, including:

- The introduction of the principle that applicants and potential applicants are to be treated “with dignity, respect and compassion” by those involved with the redress scheme (section 11A).
- Giving the Scottish Ministers the power to remove an organisation from the list of scheme contributors where the organisation has failed to make the financial contribution agreed to (section 13A).
- Removal of section 15 of the Bill which would have allowed the Scottish Ministers to make regulations permitting charities to use “restricted funds” to pay into the scheme (these are charitable funds which can only be used for a particular purpose specified by the donor).
- Extending the application period for applications for redress to the longer of either five years from the point the Act comes into force or two years from the point where the Scottish child abuse inquiry has published its final report. The Scottish Ministers must also carry out a review of whether this period should be extended (section 31 of the Act).
- The introduction of a legal presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant’s knowledge and belief (section 34(2A))
- An increase to the maximum level of redress payment from £80,000 to £100,000 (section 38).
- Increasing the time period in which applicants can accept an offer of a redress payment from twelve weeks to six months (section 47).
- Giving applicants for redress the right to have access to any evidence obtained by Redress Scotland in determining their application with the exception of information that would be likely to identify any person other than the applicant, or which would contravene data protection legislation – the aim being to ensure that applicants are able to access the full picture of their time in care as children (section 78A).
- The requirement on the Scottish Government to set up a forum for survivors (section 93A). The Scottish Government had committed to do this in the Policy Memorandum, but this commitment was not a statutory one in the Bill itself.

At Stage 3, further amendments were agreed including:

- The introduction of a new provision (section 9 of the Act) aimed at improving the information and guidance on the redress scheme which will be available to survivors.
- The introduction of an obligation on scheme contributors to acknowledge the wrongfulness of, and the harm caused by, the historical child abuse when making contributions to the scheme (section 14(1)(c) of the Act).
- The introduction of a requirement on the Scottish Ministers to consider the “sustainability” of an organisation’s services when determining whether a proposed contribution to the scheme is a "fair and meaningful financial contribution" (section 15(2)(b)(ii))

Various amendments proposing changes to the waiver procedure were not agreed to at Stage 3. The Parliament did, however, agree to amend the Bill at Stage 3 so that the Scottish Ministers are under an obligation to lay a report before the Scottish Parliament on the operation of the waiver procedure 18 months after the waiver procedure comes into force. This report has to include an assessment of the impact of the waiver on applications for redress payments and the effectiveness of the waiver in encouraging bodies to become scheme contributors (see section 48 of the Act).

The operation of the waiver scheme

The [Policy Memorandum](#) notes that “redress payments will be conditional upon the applicant signing a waiver, relinquishing their right to continue or raise civil actions in respect of the abuse, against the Scottish Government and those organisations that have made fair and meaningful financial contributions to the scheme.” Note – the waiver will only apply to an individual applicant where the organisation involved in their experience of abuse has contributed to the scheme, so it is not certain that all applicants will be asked to sign a waiver. The waiver is offered as an incentive to those who bear historic responsibility for the abuse to contribute to the scheme, as by removing the potential civil liability relating to the abuse (at least in so far as the victims/ survivors elect to sign the waiver) this could increase certainty about the overall exposure, and remove a barrier to organisations contributing. This assumes that any payment would have to come from an organisations own funds however, and does not account for the role that insurance companies might pay. If an organisation expects that their insurance will cover any civil liability, then they do not have a financial incentive to contribute via the waiver scheme.

The Scottish Government also noted in the Policy Memorandum that they understood it was important to survivors that financial contributions were received from those organisations ultimately responsible for the abuse.

The Scottish Government note that the Redress scheme is designed to be an alternative to civil litigation, but that it may not be the preferred approach for all applicants, and that the creation of the Redress scheme does not prejudice the ability of survivors to pursue action through the courts, but that the waiver scheme will be necessary to ensure that no double payments are made for the same abuse.

The [Financial Memorandum](#) contained a wide range of potential costs associated with the Bill, and there is considerable uncertainty about the level of costs that will ultimately be borne by the Scottish Government. This uncertainty comes from not knowing exactly how many victims/ survivors there are and how many will apply to the scheme, but also due to the uncertainty around what contributions will be received from organisations which bear historic responsibility for the abuse. It sets a central estimate of a total cost to the Scottish Administration and other bodies of £390.49 million, of which the vast majority (£299m) relate to redress payments. This estimate is based on 8,000 applicants and 1,500 next of kin applicants.

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