

# Who Cares? Scotland's Response to the Education and Skills Committee Call for Evidence on Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

October 2020



Who Cares? Scotland (WC?S) is an independent advocacy and influencing organisation working with people who have experience of the care system. We provide direct advocacy, as well as opportunities for local and national participation. WC?S aims to provide Care Experienced people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience. At WC?S we ensure the voice of the Care Experienced population of Scotland informs everything we do as an organisation.

## Introduction

We fully support the aims of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill (the Bill) to establish an independent redress scheme for both financial and non-financial redress for survivors of historical child abuse in care settings in Scotland. We believe redress to be an important part of addressing the inequality and oppression experienced by Care Experienced people growing up in Scotland, in order to achieve a lifetime of equality, respect and love. However, our Independent Advocacy and participation evidence shows that the administrative process of this redress scheme must be designed with a detailed understanding of the lived experience of survivors. Further to the mechanisms of the redress scheme being defined on the face of the Bill, we also expect robust and detailed practice guidance to be utilised in decision-making about redress and by the panel deciding the administration of funds. This should include the types of support available and the type of non-financial redress for individual applicants. This will ensure the redress scheme is as sensitive and accessible as possible for survivors.

Our key asks to the committee in this response are:

- the **lived experience of Care Experienced people and survivors is at the heart of the Bill's design and when developing guidance** on the operation of Redress Scotland. The design of the scheme must be survivor-led to ensure understanding of the varied impacts and lifelong consequences of abuse experienced in childhood – as both 'historic' and contemporary in its effects and as unique for each survivor.
- the **definition of abuse includes the forced separation of siblings and families and the forced migration of children.**
- the **dates used in the Bill to define 'historical abuse' should match those of the Scottish Child Abuse Inquiry's terms of reference** as a minimum.
- the **application of definitions of abuse and its impact when deciding both financial and non-financial redress for applicants are not rigidly applied categories** that erase or discount experiences of abuse for individual survivors – including the definitions of what the impact of abuse may look like (such as a limited to diagnosable mental health conditions.)
- for survivors applying to the scheme, **as much of the burden as possible on the individual to provide new copies of evidence or accounts of abuse must be removed**

and the process of submitting evidence or records must be linked to the evidence already held by the Scottish Child Abuse Inquiry. If a survivor has already shared difficult and traumatic life experiences in one forum, it would be unfair and potentially harmful to ask an individual to go through that again in order to access redress.

- all survivors must have **access to choice-led, free, independent, and appropriate legal advice, independent advocacy and support** to navigate the application and appeals process for redress, as they require.

### Why redress matters to the Care Experienced community

A childhood spent in the care system has life altering consequences for an individual. The process of being removed from home is often a deeply traumatic experience for a Care Experienced person. The impact of their time in care is felt throughout their life and the trauma they carry from this period in their lives can be lifelong. This trauma is further exacerbated for Care Experienced people when they have experienced abuse of any kind in their childhoods. Child abuse continues to impact in adulthood, on future family and intimate relationships, as well as on the physical and mental health, education, career, and financial stability of a survivor.<sup>1</sup> Some survivors may tell someone about the abuse at the time it happens, whereas other survivors hold onto denial, shame, and self-blame for their entire lives without telling anyone. In many cases, abuse experienced by a survivor, and the resulting trauma, never feels 'historic' for that person, no matter how long ago the abuse took place.

It is important to recognise that each Care Experienced person that has experienced child abuse in a care setting feels the impact of their abuse, trauma, and time in care differently. Therefore, this Bill must recognise and understand the diverse individual consequences of child abuse in a care setting, without seeking to create universal categories of experiences of abuse and the possible impact felt as a result.

We know that child abuse has long featured in the history of Care Experienced people's lives in Scotland. The scale of this abuse is being investigated by the Scottish Child Abuse Inquiry (SCAI) and interim reports highlight the culture of abuse which has been present in care in Scotland since the modern-day care system was established. In our own research, we learned of the 'Sons' of Mars', the 6000 orphaned, abandoned and 'destitute' boys who were taken from across Scotland to live on the ex-warship turned training facility (the HMS Mars), which was anchored in Dundee for 60 years. Boys were forced to live under a military-style regime, which involved abusive punishment for misbehaviour including being strapped to gym-horses and being beaten with a tawse.<sup>2</sup> Throughout history, Children's homes and orphanages across the country have been described as places of fear and hostility, and often have enforced regimes of torture and systemic abuse towards Care Experienced children.<sup>3</sup> In addition, Care Experienced children in Scotland were selected to be part of a 'government-induced

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<sup>1</sup> APPG on Adult Survivors of Childhood Sexual Abuse (2019), *Can adult survivors of childhood sexual abuse access justice and support?*, available online:

<https://static1.squarespace.com/static/5c8faf788d97401af928638c/t/5cd05b45eb3931052c31b479/1557158727790/Achieving+quality+information+and+support+for+survivors.pdf>

<sup>2</sup> Gordan Douglas, 'We'll Send Ye Tae the Mars: The Story of Dundee's Legendary Training Ship' (2008).

<sup>3</sup> Professor Louise Ratford (2020), *The Prevalence of Abuse in Scotland*, Scottish Child Abuse Inquiry Research, available online: <https://www.childabuseinquiry.scot/media/1211/prevalence-of-abuse-in-scotland-professor-lorraine-radford.pdf>

trafficking scheme'.<sup>4</sup> This scheme sent children to live in former UK colonies where the culture of abuse experienced by Care Experienced people in Scotland was replicated on a larger scale and remained unchecked for a longer period of time. Children were forcibly separated from their parents, brothers and sisters, and many of them were made to endure violent corporal punishment, physical, sexual and psychological abuse and neglect.<sup>5</sup>

These moments in the history of Care Experienced people remind us of the stark reality of abuse experienced in Scotland's care system for over 100 years. Many Care Experienced people who experienced these examples of child abuse in care settings are no longer alive to see "the wrongs of the past"<sup>6</sup> addressed or to receive redress. However, this Bill will help Scotland reflect on the reality of child abuse in care settings in order to grow, learn and remember the rich and important history of Care Experienced people.

### Definition of abuse in the Bill

The definition of abuse in the Bill should include the forced separation of siblings and families, which we know from our Care Experienced members has led to family relationships being unnecessarily severed, cutting off the potential for loving relationships to be present within their lives. This has been recognised already as a potential form of abuse in the official '[terms of reference](#)' for the [Scottish Abuse Inquiry \(SCAI\)](#). We would expect the Bill to match the SCAI's definition of abuse as the minimum for the Redress Scheme and to be sensitive and flexible in how individual cases of abuse are considered:

*"Abuse' for the purpose of this Inquiry is to be taken to mean primarily physical abuse and sexual abuse, with associated psychological and emotional abuse. The Inquiry will be entitled to consider other forms of abuse at its discretion, including medical experimentation, spiritual abuse, unacceptable practices (such as deprivation of contact with siblings) and neglect."*

However, we also ask that the Bill reflect other forms of abuse in specific cases beyond SCAI's definition, such as the forced migration of children. This is a form of abuse has been named publicly by former Prime Minister Gordon Brown, who said that programs of migration amounted to 'government-induced trafficking' during an evidence session in 2017 to the [Independent Inquiry into Child Sexual Abuse](#), covering England and Wales.<sup>7</sup>

### The dates used in the Bill to define 'historical abuse'

Whilst we recognise that this Bill has a specific focus on historical abuse in care settings, we also want to utilise this opportunity to draw attention to the contemporary voice of Care Experienced people who are survivors of abuse. The terms of reference of the SCAI state that, "the Inquiry is to cover that period which is within living memory of any person who suffered

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<sup>4</sup> <https://www.itv.com/news/2017-07-20/former-pm-gordon-brown-gives-evidence-to-independent-inquiry-into-child-sexual-abuse>

<sup>5</sup> Stephen Constantine, Et al, *Child Abuse and Scottish Children Sent Overseas through Child Migration Schemes*, Scottish Child Abuse Inquiry Research, available online:

<https://www.childabuseinquiry.scot/media/2520/child-abuse-and-scottish-children-sent-overseas-through-child-migration-scheme-executive-summary-june-2020-final-300620.pdf>

<sup>6</sup> Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Policy Memorandum (August 2020).

<sup>7</sup> <https://www.itv.com/news/2017-07-20/former-pm-gordon-brown-gives-evidence-to-independent-inquiry-into-child-sexual-abuse>

*such abuse, up until such date as the Chair may determine, and in any event not beyond 17 December 2014”.*

We ask that the committee scrutinise why a decision has been taken to create a different timeline for the survivors seeking redress to those able to give evidence to the SCAI. The Bill’s eligibility criteria that ‘the abuse must have occurred before 1 December 2004’ is not explained in a clear way by the Bill team and we would like to understand and challenge why a choice has been made for this cut-off date to be used.

#### The level of payments offered to survivors

The decision-making process to determine financial redress payments must consider experiences of abuse on a case by case basis and without inflexible categories being applied to survivors’ experiences. It is important that a decision on the level of a payment does not involve Redress Scotland defining what ‘counts’ as abuse and what does not. If types or categories of abuse are applied rigidly in the redress process, this may impact individual’s perceptions of their own experiences of abuse and trauma and cause them to question it. This is also why consideration must be given to how a decision about the level of payment is communicated to a survivor. The process must acknowledge that this may be viewed as a way of a survivor’s experience being given a certain value or worth. Although it is appropriate to have differing amounts available to compensate survivors, there will always be sensitivities around calculating a form of abuse as having a specific financial value attached when deciding on the payment offered. Communication about payment decisions by Redress Scotland must be done sensitively and framed in the right way, with the input of survivors being central to getting that right.

A definition of abuse and how this is applied to specific individual’s lived experiences, also needs to consider the continuing, lifelong trauma and impact of ‘historic’ incidents. Understanding the impact of abuse may need to be considered in the redress process when calculating levels of redress payments, when determining the appropriate form of support for a survivor and potentially to understand what non-financial form of redress is required. This process of understanding impact must go beyond identifying diagnosable mental health conditions. Survivors living with the lifelong impact of experiences of abuse may never have received a mental health diagnosis which neatly labels the impact of their experiences. As such, an inclusive, sensitive and case-by-case approach must be used to explore this in a trauma-informed way with individual survivors seeking redress.

#### How to ensure that non-financial redress meets the needs of survivors

The above points on calculating financial payments also apply to understanding the types of non-financial redress which may be required for individual survivors accessing the scheme. Non-financial redress, in the form of an apology or other measure, is extremely important for survivors. When the Minister introduced the Bill to parliament, he acknowledged that the redress process is not about apportioning blame. However, for an apology to be given, there must be a sense of accountability. The importance of this form of redress cannot be overstated, as we have heard repeatedly from our Care Experienced members about the need for apologies from the state or care providers when things go wrong.

Taken alongside any financial redress, non-financial redress may be viewed by individuals as a form of reparative justice. This also links to the fact that the redress scheme is being designed as an alternative process to individual cases of litigation by survivors, which seeks

to find fault with a service, organisation or individual. If survivors are waiving their rights to seek justice through the court system for their experiences of abuse, then for those applying for redress process must feel satisfied they are achieving a sense of justice.

Non-financial redress is also potentially powerful in creating a reversal of blame for survivors about the abuse they have experienced. We understand from our experience working alongside Care Experienced people, that an individual may believe for many years that experiences of abuse were their responsibility or fault and not the responsibility of those who were in power. This links strongly with our experience of supporting individuals to give evidence to the Scottish Child Abuse Inquiry. An individual's understanding of their experiences in childhood are not static and we feel the redress process could reveal new insights for a survivor about what was or was not 'abuse' – and therefore who should be held responsible. The self-stigma of experiencing abuse heavily impacts this process and those engaging with redress may be at differing stages with their own engagement in recovery or understanding of their experiences of abuse. If non-financial redress is given which results in accountability for experiences of abuse sitting with an organisation, individual or the state, this may lead the individual to shift the blame away from themselves and contribute to how they personally understand those experiences.

It is also important that non-financial redress is given to Care Experienced people who have died and were known to have experienced abuse – especially if they do not have next of kin who could claim redress on their behalf from the scheme. At Who Cares? Scotland, we understand there are historic cases of abuse, such as those which have resulted in mass, unmarked graves. Included in the Scottish Child Abuse Inquiry is evidence of mass graves at the Smyllum Park Orphanage, where the bodies of at least 400 children are buried, and at Quarriers Village, where 115 grave markers hold the names of the 335 children buried.<sup>8</sup> We are only aware of these graves because of campaigns led by former residents of the two homes who discovered missing headstones and unmarked graves and wanted to ensure the children who lost their life in these institutions were not forgotten.<sup>9</sup> This has been led by the In Care Abuse Survivors group, who tirelessly campaign for justice.<sup>10</sup> The impact of redress is not only about the very important process of individual survivors receiving due compensation and justice, but also about an acknowledgement of historic failings of the state care system. Redress in this way creates accountability for the abuse of those who have died, and this not only addresses and acknowledges past experiences but also sends a clear message for those living in care today that this will not be allowed to be repeated.

In addition to an apology being an important form of non-financial redress, we welcome that the Bill contains provisions in Sections 85 and 86 for 'emotional and psychological support in connection with the abuse to which the application relates.' We ask the committee to scrutinise how this offer of support will be implemented in practice and ask that there be concrete therapeutic services provided, as individual survivors require.

The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme

For applicants to the redress scheme, it is particularly important to design a process which is sensitive, accessible and flexible to the individual needs of any Care Experienced person. As

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<sup>8</sup> [https://childabuseinquiry.scot/media/1890/aps-doc-findings-final-hyperlinked-11\\_oct.pdf](https://childabuseinquiry.scot/media/1890/aps-doc-findings-final-hyperlinked-11_oct.pdf)

<sup>9</sup> <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-49853718>

<sup>10</sup> <https://access-incas.co.uk/>

an organisation, we have extensive experience supporting Care Experienced individuals to navigate bureaucratic and administrative systems in order to access financial and other supports. As a result, we understand what the barriers can be and how to avoid them when designing an application process.

### **Providing evidence and records**

It is extremely important that any burden on the individual is removed as much as possible. The need to provide new copies of evidence or accounts of historical abuse should be removed. We want to see explicit detail in the guidance around the gathering of information and the process of evidencing a case of historical abuse. Individual applicants should be supported to find records and files to support their applications for redress. It can be a highly bureaucratic and difficult process for individuals to navigate accessing their public records, for example their social work files.<sup>11</sup> Redress Scotland must have mechanisms in place to make these requests either on behalf of applicants (with their consent) or with support from independent support organisations who understand this process.

In addition, we would like to see the types of evidence which will be accepted within redress applications to be flexible and go beyond statutory service records, such as the police – which may rely on survivors having self-reported incidents of abuse at the time they took place. If the types of evidence accepted by Redress Scotland are too narrow, this could exclude survivors from the scheme who felt unable to report or speak up about the abuse they experienced at the time – or for many individuals, for decades afterwards.

We also want to see an explicit link made between the evidence and records held by the Scottish Child Abuse Inquiry and the evidencing process for applicants seeking redress. If a Care Experienced person has already gone through the difficult process of sharing their traumatic life experiences in one forum, it would be unfair and potentially harmful to ask an individual to go through that again in order to access the redress scheme. A formal link must be put in place for the Inquiry to share appropriate information, records and first-hand evidence from survivors, in order to create an evidence base for the consideration of a financial payment, apology or other.

### **Access to legal advice, independent advocacy and other supports**

We welcome the Bill's inclusion of financial support for applicants being made available through legal aid to access free legal advice for the scheme. However, we ask the committee to make sure this Bill goes further in the concrete support offered to survivors. As an operational body, Redress Scotland must be able to go further in helping survivors to access appropriate legal advice or other support from a supportive source which meets the individual's needs.

We strongly believe support must be pro-actively made available for applicants, which is accessible and free. We know from our experience as an independent advocacy organisation, that ensuring a survivor fully understands their rights under the scheme and their ability to seek redress will be essential in ensuring their access to justice. The burden on an individual to acknowledge and speak out about a highly stigmatised, often traumatic experience of

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<sup>11</sup> Who Cares? Scotland has highlighted the difficulties our Care Experienced members have when trying to access their care records, this work was summarised into a report in August 2019, available on our website here: <https://www.whocaresscotland.org/wp-content/uploads/2019/09/WCS-Report-Care-Records-Access-Campaign-August-2019.pdf>

abuse and then also needing to evidence that experience through an administrative process, cannot be stressed enough.

Who Cares? Scotland believe a lifetime of Independent Advocacy should be available to Care Experienced people of any age – as we know many older Care Experienced people cannot access appropriate legal advice or independent advocacy support when they need it. Within the face of the Bill there must be an acknowledgement of the spectrum of representation that exists, including Independent Advocacy. For some survivors, it will be important to have the option for Independent Advocacy working alongside legal representation, in order to provide the right representation at the right time. This would include independent support to understand available options, rights, entitlements and someone to help navigate this complicated system of redress.

Our own experience with supporting several our Care Experienced members to give evidence to the Scottish Child Abuse Inquiry, demonstrated to us the acute need for support to understand the full implications of engaging with a formal process of investigation. The redress scheme can be viewed as a parallel formal process focusing on experiences of abuse, with complex terms of references governing the decision-making processes in order to create redress outcomes for individual applicants about some of the most challenging experiences they have lived through and may continue to be impacted by.

The case study below details an extremely challenging experience one of our Care Experienced members had when going through a 2-year application process in order to receive financial compensation from the UK-wide [Criminal Injuries Compensation Authority \(CICA\)](#):

*A Care Experienced individual shared their experience applying for criminal injuries compensation through CICA, related to sexual abuse they experienced in childhood and the process took them 2 years to complete. During this process, they found the criteria set to calculate the level of payments to be rigid, with no room for individual circumstances to be considered. The process was extremely harmful in how it was designed, with their experience being that their abuse was perceived by CICA as 'not serious enough' as it had to fit into certain categories of assault – which were valued at differing levels. The payment was also calculated by the frequency of the cases of abuse in a set way, that did not consider the sustained impact of individual instances of abuse. The CICA criteria also scrutinised the impact the abuse had on the individual through a highly medicalised lens, in which only diagnosable mental health issues were valued as 'enough evidence' and had to be ratified by a doctor's note in order to be taken seriously and included within the application.*

*Further to this, the burden was on the individual to find their own counselling and mental health records to 'prove' they were impacted, and this went as far as having to submit evidence of attempting to complete suicide. This was an extremely distressing process and involved re-reading and re-living extremely difficult moments in their life. This was made worse when CICA came back to the individual stating that this evidence was not going to be considered in their compensation application – due to a lack of mental health diagnosis. The individual tried all avenues to find evidence for their application, including from social work and formal court records, which detailed how the consequences of their abuse led to relationship breakdowns and them being taken into state care. Yet again, this was all not considered as relevant evidence by CICA. Further to this, due to CICA stating they would need police records of the abuse being reported, the individual had to find the record of when they*

*first reported the abuse to the police – and this involved re-reading for the first time since the incident, what had happened on that day.*

*The impact of applying for compensation in such an uncaring and bureaucratic process was significant for the individual's own sense of their mental health and impacted their journey recovering from the abuse they had experienced. It felt as if their experiences were minimised and that the reality of living with the impact of experiences of abuse was not understood in the process. They described the 2-year process of 'proving' the impact the abuse had on their life as 'demeaning and inhumane'. It even led to them feeling pressurised to re-engage with mental health services, convinced that a diagnosis was the only way the impact of their abuse could be enough for the CICA claim. This was when they realised the claim for compensation had gone too far in its impact on their own life and led them to reluctantly accept the initial offer from CICA. When the award decision came through, the only choice given was to accept or reject the offer, with no information provided about how this would impact their right to appeal in future. The communication from CICA was also almost always through letters, mostly about evidence being repeatedly rejected in the claim – with no follow-up contact or aftercare given. When calling to understand the decision, a call centre with an unknown person on the end of the phone was used to relay the information.*

The Care Experienced member who went through the CICA process has chosen to share this case study with the committee, to demonstrate the damage which can be done when an administrative scheme, which relates to survivors' experiences of abuse, is not designed in a person-centred or sensitive way. As has been detailed, this process was extremely difficult for the individual and they want to prevent others who have experienced abuse from going through anything similar. We urge the committee to understand the responsibility attached to administering a redress scheme, which asks for individuals to come forward and speak about the abuse they have been through. The redress scheme must be scrutinised to safeguard against causing further harm to applicants and the potential to re-traumatise those accessing redress needs to be understood as a severe risk – which would achieve the very opposite of the aims of this Bill.

Should you wish to discuss the contents of this briefing, please contact:

**Lucy Hughes, Policy Officer, [lhughes@whocaresscotland.org](mailto:lhughes@whocaresscotland.org)**