

Former Boys and Girls Abused In Quarriers (FBGA)

20th October 2021; Attention Convenor Stephen Kerr MSP,

Education and Children's and Young Persons committee who are reviewing several pieces of Subordinate legislation re: Redress for survivors (Historical Child Abuse In Care (Scotland Act 2021) Bill.

Redress Scotland Monetary and Assessment Framework;

- The Committee and Scottish parliamentarians must ensure that the Redress Scotland Scheme and the scaled monetary structure assessment framework, does not impede the Redress Scotland Chair and Individual Panel members to make and arrive at decisions that are impartial and independent and collectively. Such decisions must be based according to an individualised unique assessments into the survivor's whole life experiences affected by being abused in care.
- The Scottish Government is attempting to have a Redress Scheme scheme which is clearly not fully trauma informed and seeks to box in survivors to monetary scaled redress boxes in an assessment framework on a pretext of seeking consistency in decision making by the Chair and Panel members.
- The Redress Scotland framework, structure and make up and assessment framework **must not be too Ridged and Inflexible in nature**, in ways that impede open and transparent independent, impartial decision making by the Chair and individual Panel members and collectively.

External, Regulation and Oversight of Redress Scotland promoting Confidence and Trust

- The Scottish Government and the Redress Scotland Scheme CEO Joanna McCreddie and The Redress Scotland Chair, Johnny Gwynne must ensure that the both component parts to the Redress Scotland Scheme are open, transparent robust and credible, all Redress Scotland processes must be externally audited and regulated with ongoing oversight by this committee, Scottish Parliament, The Survivor Forum and the Scottish Parliaments, Adult Survivors of Childhood Sexual Abuse, Cross Party Group.
- It is our position that there should be a contract of services or a similar typed legally binding working arrangement publically available agreed between the two parties to the Redress Scotland Scheme 1, the Scottish Government and 2, The Redress Panel.
- The two component parts of the Redress Scotland Scheme must ensure they have in place adequate robust and credible data and management systems in place to prevent fraudulent applications. It is important that any evidence to support applications and presented by survivors in all applications is validated to ensure it is truthful and to prevent fraudulent applications.
- Recent Scottish Child Abuse Inquiry findings published on 29th September 2021 (SCAI report 6, re; Scottish Government evidence hearings covering 2002-2014 and SCAI findings highlighting the Scottish Civil Servants negative behaviours towards survivors in the past and the negative dealings also with the Scottish Government).

<https://www.childabuseinquiry.scot/case-study-findings/case-study-findings-pdf-version/case-study-findings-scottish-government/>

- For Survivors and Applicants to the Redress Scotland Scheme and Panel decision making processes to have full Trust and Confidence in all the Redress Scotland processes but in particular the Redress component part that sits within the Scottish Government. There must be independent and impartial, external inspections, audits and regulation and oversight of all the Redress Scotland processes.

- Redress Scotland and the Redress scheme must as a whole must produce Independent and Impartial external inspection, regulatory, audit and KPIs reports which are credible and robust.
- That ensures that audit and regulatory systems in place in both parts of the Redress Scotland Scheme and overall will measure Key Performance Indicators (KPIs), external oversight and external regulation providing Confidence and Trust to the primary stakeholders and the Public.
- These regulatory and management KPIs systems must be in place and be independently externally evaluated including audit reports available to the Scottish Parliament, the Public, Survivors and the Survivor Forum, Scottish Parliament Cross Party Group and any other parties of interest for full scrutiny.

Deceased former residents between the Redress Scotland Act being enacted in March 2021 and the Redress Scotland Scheme being actually operational circa; December 2021

- This is an issue of the upmost gravity that Stages 1 and 2 of the Redress Scotland Bill did not give consideration to. **A number survivors have died since the Redress Bill was enacted earlier this year.** Many survivors are in poor health, are elderly, or terminally ill.
- We are aware of a number of such cases where survivors have passed away since the Redress Bill was enacted earlier this year. We are aware that a survivor's family has written personally and directly to the office of Deputy First Minister John Swinney pleading with him personally to intervene on the matter relating to nominating a beneficiary in the intervening months since the Redress Scotland Bill was enacted
- It is our position that where a survivor has a nominated Power of Attorney or had nominated a beneficiary during the intervening months since the Redress Scotland Bill was enacted March 2021 and until the Redress Scotland Scheme actually becomes operational. Then such intervening cases should be fully accepted by the Redress Chair and the Redress Panel members. In a trauma informed and survivor centred process such as this.
- This would be in the best interests of the survivors and their families and uphold the principles of the Bill which are, Compassion, Dignity and Respect. These principles are otherwise "empty words" and "meaningless rhetoric" on paper submitted by a previous committee Convenor, Clare Adamson MSP.
- At the very least the Redress Scotland Chair and the individual Redress Scotland Panel members and collectively, should be given the discretion to decide such survivor death cases on a case by case basis.

Applicants Legal Fees

- It is unfortunate that the Scottish Civil Servants & Scottish Government haven't even taken the time out recently to properly fully engage and discuss this important area and bring survivors up to-date on what was submitted to the committee re; Legal Fees and the Waiver
- To explain this legalistic critical area of work in detail to survivors and the survivor community. Legal Fees and the Actual Waiver have had to be raised by FBGA recently in meetings and as yet no response. As for many survivors they simply cannot understand the legal framework structure, A and B, the layout and wording of the legal fees Scottish Statutory Instruments 2021 No.313.
- Clearly not a trauma informed nor a survivor centred approach and not explained in layman terms to survivors nor FBGA again creating mistrust of the Scottish Government and its Civil Servants. "The no hidden surprises" comes to mind with this approach by the Scottish Civil Servants.
- FBGA are concerned that currently Solicitors legal fees being proposed £250 as we understand it and the capped fee £1550 capped as we understand it as lay persons and as survivors, from advice we have received – That the legal fees lower limit and capped limit is not **"Fit for Purpose"** as proposed by the Scottish Government.

- These Legal fees being proposed currently are neither realistic, nor fair or reasonable.
- The current capped fee maximum amount £1550 pounds having consulted with a number of Solicitor Firms dealing with such historical abuse cases in Scotland clearly not sufficient to enable survivors to access proper quality legal advice relating to their own individual applications and circumstances while giving away “Rights” by having to sign a Wavier.
- These survivor cases may be complex in nature and also involve solicitors in assessment and determination while putting together an application on behalf of an applicant to Redress Scotland.
- There is currently no proposal for survivors to access a Queens Counsel (QC) legal advice nor any fees currently being proposed for QC legal advice work which is clearly unacceptable.
- In addition a good many of the survivors cases will require a Queens Counsel determination given that survivors are being asked to sign away their ‘RIGHTS’ and to ABANDON any future Civil Action (paragraph 3 proposed Wavier wording) by the imposition of the Wavier.
- The legal fees in the Republic of Ireland Redress Scheme were circa; 6000 Euros and in Northern Ireland Circa; 4000 pounds. In cases in NI that had considerable less legal fees survivors were disadvantaged and up in arms and lodging complaints.
- It is not acceptable in any circumstances that Survivors sign away their RIGHTS without having access to independent and impartial full quality legal advice and legal fees which are fair and reasonable, which is applicable to their own individualised case and circumstances of being abused in the previous Scottish in care system. Including Queens Counsel advice.
- We have serious reservations that the Redress Scheme will only consider exceptional and unexpected circumstances (section 4 of the payment of legal fees section) However it simply is not acceptable that such crucial and important decisions affecting survivors “RIGHTS” is decided by a Scottish Government state body that is asking the very same Survivors to give up their Rights by signing a Waiver.
- There definitely needs and must be an independent and impartial arbitrator body appointed when it comes to legal fees and any such Redress Scotland Review payment challenges.
- We draw the committee’s attention to the serious concerns and disputes raised by survivors relating to the Northern Ireland Redress Scheme (HIA).

Unintended Consequences

- This was raised many times by FBGA including in writing to the SHRC, in the Interaction Review Group and with the Scottish Government and its Civil Servants over many years.
- Yet we have not had a definitive response that Works and Pensions Department will exclude such Redress Scotland payment awards for those survivors on benefits or those who find themselves accessing Social Security benefits system now or in the near future while in receipt of a Redress Scotland payment.
- The Survivor Groups and the Survivor Community have informed the Scottish Government over many years that there should be no hidden surprises in any of these Redress Scotland processes or any unintended consequence in relation to a survivor in receipt of social security benefits and those survivors who receive Redress Scotland payments.

Waiver

Our position is unchanged and we oppose the imposition of a WAIVER in any shape or form and the taking away the RIGHTS of survivors to obtain what in most cases will be a derisory payment. This Redress Scotland Scheme does not even take into consideration the unique individualised abuse suffered and experienced by the survivor. A Redress Scotland Scheme which claims to be trauma informed process will not even consider IMPACT or whole life circumstances of the Survivor while seeking to take away their individual RIGHTS!

In addition we are now fully aware of the implications of such a Waiver and that is that the STATE seeks to remove survivors RIGHTS and to have survivors ABANDON any current civil legal proceedings (no 3 in the Waiver document).

The Wavier also seeks to remove for all time the RIGHTS of survivors to future civil proceedings including where new evidence comes to light and even in the event of future criminal prosecutions of abusers in the Scottish Criminal Courts.

Pre: 1964 Survivors; The Prescription Law in Scotland is not applicable to Pre;1964 survivors and they have no benefit in Scots Civil Law . So why is a Redress Scotland Scheme seeking such applicants to sign a WAIVER?

THE SHRC stated in its submission at STAGE 2 that the Waiver should not be applied concerning the STATE. Yet what did the Scottish Government do. It simply IGNORED its own Scottish Human Rights Commission.

Scottish Child Abuse Inquiry Evidence and evidence validated in Redress Scotland processes

Survivors have been requesting over many months that the Scottish Government liaise with SCAI to request that survivors can utilise their testimonies and statements given to SCAI. The Scottish Government has simply stalled on this and not provided clarity to survivors on this matter and not sought a definitive response from SCAI.

- Evidence gathering and validation of all applications and their evidence submitted in support must be robust and credible to prevent fraudulent applications.
- Please refer to Kaufman Canada report 2002 “Searching for Justice” on how such survivor processes and Redress schemes should properly operate in the Public interest.
- The Kaufman 2002 report also addresses the serious consequences if such survivor schemes fail to have proper systems in place to validate what they are being told is truthful and the damage that occurs if it fails to do so including that those who had no part in abuse are tarnished alongside genuine applicants.

<https://www.novascotia.ca/Just/kaufmanreport/fullreport.pdf>

Eligibility Criteria

- FBGA,s position remains the same as we stated at the previous committee Redress Hearing stage 2 when asked a question on eligibility by Beatrice Wishaw MSP.
- Where the STATE had a “Duty of Care” and failed in its duty of care and responsibilities including any inspection and regulatory failures including systemic failures. The STATE must ultimately be held accountable.
- Then FBGA’s position is that all survivors in any such establishments being investigated by the Scottish Child Abuse Inquiry in addition to what the Scottish Government have labelled as “Relevant Settings” under eligibility should have “fully the right” to access the Redress Scotland Scheme.

FBGA Assessment Framework Feedback and purported engagement with Scottish Civil Servants

Unfortunately the recent Scottish Civil Servant led engagement meetings has been extremely rushed, there has been no substantive time to scrutinise, neither review properly or discuss in detail the key elements and the details of the Redress Process and Redress Bill with these Civil Servants as far as we and others are concerned.

Sufficient time was not provided by Civil Servants to address and raise such important matters that we wish to on behalf of survivors and those we represent and the Survivor Community. Rushed Redress civil servant type meetings of engagement have generally been too rushed and been unsatisfactory, as time is clearly running out to have genuine Survivor led engagement and input.

FBGA waited 10 months for the Civil Servants to agree to meet with us on the assessment frame work on the 11th October 2021. Engagement has been generally requested by survivors through the Interaction Review group including FBGA requesting in writing to meet with the Scottish Civil Servants to discuss the SCAI report 6 and help support how lessons can be learnt from the past especially for survivors and their families.

We await the Scottish Government's and their Civil Servants response to our invitation to meet with us to discuss the SCAI report 6 and other important matters on behalf of the survivors we represent.

FBGA have met Joanna McCreadie CEO Redress Scotland and Johnny Gwynne Chair of Redress Scotland (Introduction meeting to FBGA). The initial meeting was positive and constructive; a follow up is being arranged.

Facilitated engagements by the SHRC have helped FBGA and supported survivors throughout in the Interaction Review Group processes. It is hoped to resume these meetings soon as we can as we are currently without a Chair due to illness. FBGA have been in touch with the SHRC as these Interaction meetings must be survivor led and facilitated impartially and independently.

FBGA Assessment Framework & Survivor Forum responses submitted to the Scottish Government Civil Servants and the Scottish Human Rights Commission (hard copies of these can be emailed if required)

The Scottish Government's draft assessment framework document (which FBGA received from Civil Servants) is seriously lacking in insight into the abuses suffered by survivors. Key elements of survivors experiences of abuse were omitted. The Assessment Framework is not trauma informed. We feel if not significantly amended the application of the current assessment framework will cause substantial harm to survivors mental health, and huge distress to survivors and their families.

These views are shared by FBGA and our two "experts by experience" commissioned by us, who are both skilled and experienced at treating trauma. One is a practicing psychotherapist with lived experience, the other a practicing principal clinical psychologist with lived experience.

FBGA have made many requests for access to information in relation to the creation of the assessment framework, which was submitted by other parties and individuals. Our requests have included the information which the civil servants reported was provided by trauma therapists and clinical psychologists, to ensure that the framework was trauma informed.

This information has not been provided despite our many requests and as time is running out FBGA has had to resort to making a Freedom of Information Request to the Scottish Government to have access. We await the outcome of this FOI request. As an original survivor group Interaction Review member this is unacceptable.

1, FBGA commissioned Assessment Framework by lived experienced clinician's, and former residents, submitted by FBGA, comments & feedback marked in RED to the Scottish Government on the 10th September 2021; 2, FBGA Survivor Forum Framework Document submitted to the Scottish Human Rights Commission, Interaction Review Group and Scottish Government on the 10th May 2021.

https://www.fbga.co.uk/fbgaCommissionedResponse2ProposedAssessmentFramework10_09_21redacted.pdf

<https://www.fbga.co.uk/fbgaSurvivorForumSubmitted2ReviewGroup4ApprovalMay2021.pdf>