

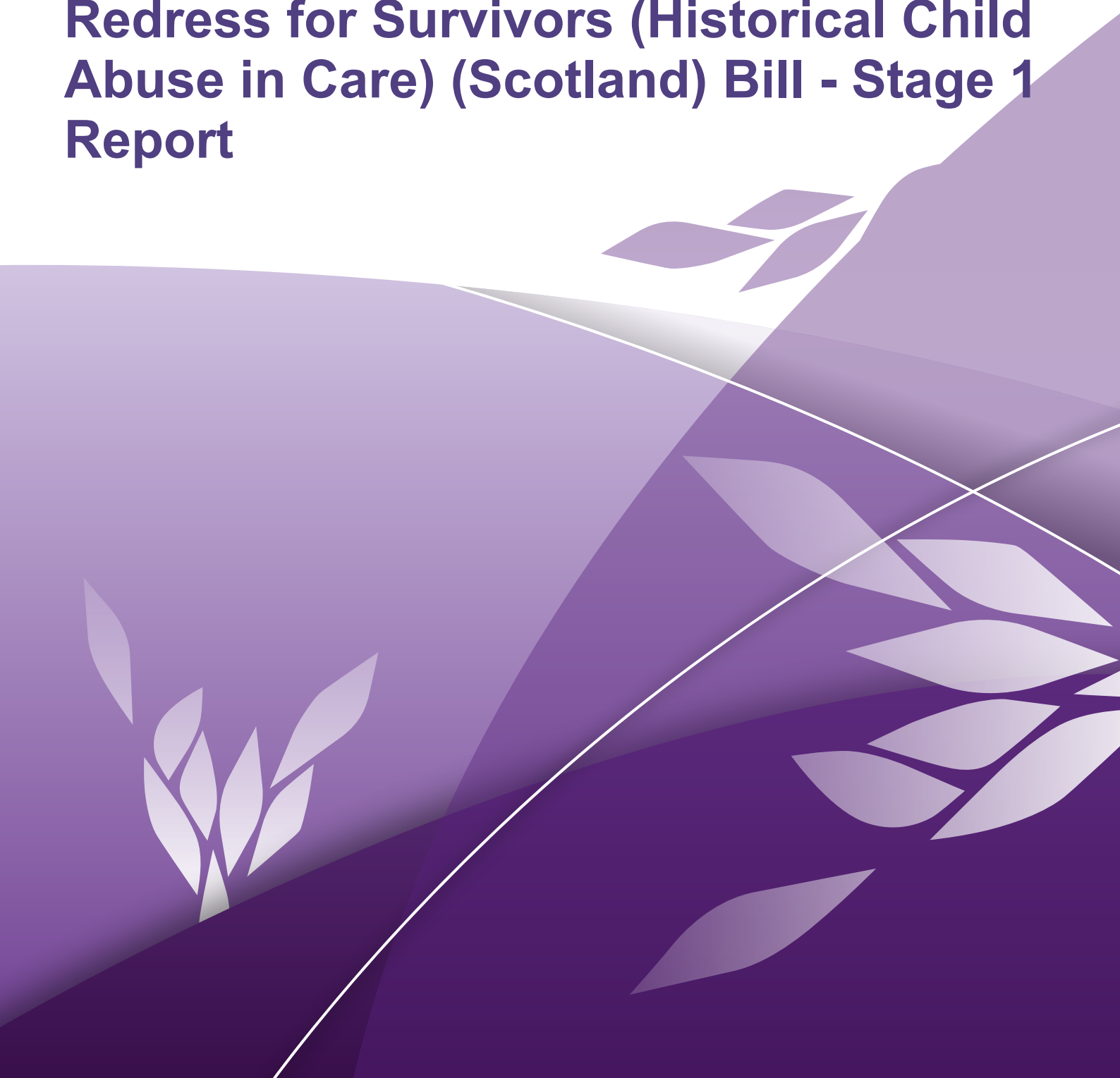


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Education and Skills Committee Comataidh Foghlam is Sgilean

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill - Stage 1 Report



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Education and Skills Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills.



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Executive Summary

Introduction

1. This report outlines the evidence heard by the Education and Skills Committee in considering the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill at Stage 1 and sets out the Committee's conclusions.
2. The Bill seeks to—
 - Create a time limited scheme to provide financial redress to survivors of historical abuse in care in Scotland or, in some circumstances, their next of kin;
 - Establish a Non-Departmental Public Body called 'Redress Scotland'ⁱ to deliver independent decision-making on applications for financial redress; and to
 - Provide eligible survivors of abuse access to non-financial redress, including emotional and psychological support.¹
3. In taking evidence at Stage 1, the Committee acknowledged the many years of campaigning by victims/survivors leading up to the Bill's introduction and the role that they had played in reaching this point. As such, the Committee sought to maximise opportunities to engage with a wide range of victims/survivors on the Bill to ensure that it fully met their needs.
4. Nothing should be inferred from the order in which particular issues appear in the report, including the weight of the importance the Committee may have placed upon them. Rather, the report should be viewed as a technical process, where each issue is examined in turn. The report and its recommendations should therefore be viewed as a whole.
5. A full list of the Committee's recommendations is available in the Summary of Recommendations section of this report.

Definition of Abuse

6. Section 17(1) of the Bill states that abuse for the purposes of this Bill is defined as being 'sexual abuse, physical abuse, emotional abuse and abuse which takes the form of neglect.'
7. In their evidence to the Committee, stakeholders highlighted specific types of abuse that they considered should come under these broad headings. The Committee welcomed the Scottish Government's inclusion of many of these in the draft Assessment Framework it published in early November 2020.

ⁱ A Non-Departmental Public Body is not part of the Scottish Government. It does, however, carry out functions on behalf of the Government and operates within a framework of governance and accountability set by Scottish Ministers.

8. Stakeholders did express concern, however, about the Bill's apparent exclusion of corporal punishment from the definition of abuse where it was considered lawful at the time. Many pointed out that some victims/survivors may not apply to the scheme, believing their abuse would be disregarded as corporal punishment, with others pointing out that corporal punishment was often used in an abusive way.
9. The Committee took on board the Cabinet Secretary's assurances that there will not be a blanket ban on the Redress Scotland panel considering corporal punishment, but rather that panel members will be required to take into account the context in which it was used, including its frequency and severity.
10. The Committee believes that the Scottish Government should revisit this part of the Bill to instil confidence in victims/survivors that the excessive use of corporal punishment will be taken into account in this Bill. The Committee also suggested that thought should be given to how to communicate this information in order to avoid inadvertently deterring some victims/survivors from applying to the scheme.

Relevant Care Settings

11. A key element of eligibility to the redress scheme is whether a victim/survivor was resident in a 'relevant care setting' at the time the abuse took place.
12. The Committee carefully considered the rationale behind the inclusion of some settings within this definition and the exclusion of others, including the Bill's focus on whether the state placed a child in that setting, rather than the parent or guardian.
13. Committee Members heard that the way in which this is currently arranged means that some children will not be eligible for redress, for example, if a child was placed in a boarding school by their parents, rather than their local authority. The Committee also recognised that this might mean that children in the same setting, experiencing the same abuse, might not be able to access redress on the basis that they were placed there by their family.
14. The Committee concluded that whilst there was a need to clearly define who could apply to the scheme, that there should be scope for Redress Scotland to consider some cases on an exceptional basis where, save for the requirement to have been placed in a setting by the state, victims/survivors would otherwise have been eligible for redress. In making this recommendation, the Committee was mindful of the fact that in the past, parents placing some children in voluntary care was a much more common occurrence.

Qualifying Dates

15. The Bill states that to qualify for a redress payment under the proposed scheme, a victim/survivor must have experienced abuse in a relevant care setting prior to 1 December 2004. The date was chosen as it was the day on which the then First Minister Jack McConnell MSP issued an apology to victims/survivors on behalf of the Scottish Government.

16. However, the Committee heard that stakeholders believe the eligibility date for the redress scheme should be consistent with that used for the Scottish Child Abuse Inquiry, which can consider abuse which took place up to 14 December 2014. Many stakeholders pointed out that if the dates were not aligned, a victim/survivor could give evidence to the Inquiry, but not then be able to apply for a redress payment. The Committee encourages the Scottish Government to explore whether the two dates could be aligned ahead of the Bill's Stage 2 consideration.
17. The Bill also allows a victim's/survivor's next of kin to make an application to the redress scheme where the victim/survivor has passed away. The next of kin provisions have a different eligibility date, requiring a victim/survivor to have died after 17 November 2016. The Committee suggests that this date should also be aligned with the eligibility for the wider scheme, in line with the Committee's recommendation that eligibility should be consistent with the Scottish Child Abuse Inquiry.

Evidential Thresholds & Decision-Making Processes

18. The proposed redress scheme set out in the Bill is designed to be much easier to access than taking a case through the civil courts, with lower evidential thresholds and no requirement to establish liability before a payment can be made.
19. The Bill provides for two types of payments to be made to victims/survivors. A fixed payment of £10,000 and individualised payments, set at £20,000, £40,000 and £80,000, depending on the abuse experienced. The evidence required for each category of payment is currently set out in a draft Assessment Framework, which was published by the Scottish Government in early November 2020.
20. The Committee heard concern from victims/survivors that the payment levels set out in the Bill were much lower than those that would be accessible via a civil litigation route. The Committee did recognise, however, that this was due to the redress scheme's lower evidential requirements.
21. The Committee also heard evidence from victims/survivors who suggested that instead of the £20,000, £40,000 or £80,000 payments, payments should be made within bandings (i.e. pitched somewhere between these levels), so that a payment could reflect the victim's/survivor's individual experiences. The Committee noted the range of views shared in both written and oral evidence on this topic.
22. The Committee welcomed the provisions in the Bill to provide support to victims/survivors to access their records, including the powers of compulsion. Committee Members also recommended that care provider records systems should be reviewed prior to the redress scheme opening for applications to ensure that accessing care records and other documents required for a redress scheme application will be as stress free as possible for victims/survivors.

Waiver & 'Fair and Meaningful' Contributions

23. The Bill seeks to encourage care providers whose organisations were responsible for historical child abuse to contribute to the fund from which redress payments will be made.
24. It goes on to state that those who make a 'fair and meaningful' payment to the scheme will be added to a list of contributors and, in exchange for their contribution, will benefit from a waiver. This will require a victim/survivor accepting a redress scheme payment to waive their right to take future civil action against an organisation contributing to the scheme. Where a care provider fails to make a contribution, the redress payment will be met by the Scottish Government.
25. The Committee found fundamental difficulties with these provisions in the Bill.
26. Care providers told the Committee that they required clarity in relation to payment levels and assurances that the level of payment required to join the contributors' list would not jeopardise current services or the future viability of the organisation.
27. The Committee notes the expectation by the Scottish Government that any care provider making a contribution to the scheme would pay anything beyond the first £10,000 of a redress payment.
28. However, the Committee also noted that the Scottish Government's own modelling in the Bill's Financial Memorandum outlines three different cost scenarios, based on a best estimate of how many children experienced abuse in care and the likely uptake of the redress scheme. As such, for those contributing to the scheme their overall financial contribution cannot be quantified.
29. 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 which cannot quantify an overall payment.
30. The Committee also considered the role that care providers' insurers may play in the scheme. 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.
31. As such, 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.
32. 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. Many stakeholders suggested that legal advice was key to helping victims/survivors fully understand the implications of such a decision

and that this should be proactively offered at the time at which it was most helpful to victims/survivors.

33. While not supporting the waiver, victims/survivors pointed out that they did not expect to be compensated twice for the same abuse, suggesting that an off-setting approach could be adopted in its place. This would allow redress scheme payments to be deducted from any future award made by the civil courts. The Committee recommended that the Scottish Government considered removing the waiver and find another way to avoid making double payments to victims/survivors.
34. The Committee also suggested that, where the Scottish Government still believes that a waiver should be integral to the redress scheme, it should provide the Committee with details of how it will seek to maximise care providers' participation in the scheme.
35. The Committee also asked the Scottish Government to re-examine some of the timescales in the Bill from a trauma-informed perspective, including deadlines, to accept a redress scheme payment or request a review.

Composition of Redress Scotland Panel

36. A strong theme running throughout the evidence the Committee heard was that systems and processes should be designed in such a way as to recognise trauma and the barriers some victims/survivors may face in accessing the scheme.
37. Some victims/survivors suggested that a way to tackle this would be by ensuring victim/survivor representation on the Redress Scotland panel making decisions on redress payments.
38. The Committee felt that there should not be a formal requirement for such representation on the panel (although someone with relevant experience could clearly apply to be a panel member), however, there should be further thought given to the role victims/survivors can play in both designing and monitoring the implementation of the redress scheme.
39. The Committee also requested further clarification from the Scottish Government as to the governance arrangements and scrutiny mechanisms which would be put in place in relation to Redress Scotland.

Next of Kin Payments

40. As previously discussed, the Bill has provision for next of kin to apply to the redress scheme where a victim/survivor is deceased. In addition to the need to align the eligibility date for next of kin payments with the rest of the scheme, the Committee explored and made recommendations in relation to length of time someone needs to have cohabited with a victim/survivor to qualify as next of kin ahead of the deceased person's children, where there is no spouse or civil partner. The Committee also explored the possibility of individualised payments being extended to next of kin, where there is sufficient evidence to merit this.

Victims/Survivors with Serious Offences

41. The Committee agreed with the case by case approach taken by the Scottish Government towards those with serious offences, suggesting it struck the right balance between allowing anyone to apply to the scheme, with retaining the ability to refuse a payment where such a payment would not be in the public interest. The Committee also recognised that there could be patterns of offending behaviour and that these could be rooted in trauma, including as a result of abuse.

Support Needs of Victims/Survivors

42. In evidence received by the Committee, a key theme was that any support provided by the scheme for victims/survivors should be trauma-informed and tailored to individual need. The Committee also wanted to ensure that those providing support were appropriately vetted to prevent third parties being able to financially benefit from the redress scheme, including those assisting with the application process.

Apologies and Non-financial Redress

43. The Committee heard from many victims/survivors that in addition to any payments they might receive, a meaningful apology was a vital element of the redress scheme, as was the provision of other forms of non-financial redress – e.g. emotional and psychological support.
44. Care providers told the Committee that further guidance on meaningful apology in the context of their own organisation would be helpful.
45. The Committee also encouraged the Scottish Government to look to other redress schemes for examples of best practice in relation to non-financial redress.

Duration of the Scheme

46. The evidence the Committee heard suggested that the proposed 5-year duration of the redress scheme was too short. Victims/survivors suggested that some people would find it difficult to come forward, particularly if they had to share information they had not yet shared with their own family. Others suggested that for those survivors no longer living in Scotland, it may take time for news of the redress scheme to reach them.
47. The Committee concluded that there should be a statutory obligation on the face of the Bill which would require the Scottish Government to review whether the scheme should be extended and that this review should take place no later than 4 years after commencement of the scheme and should specify which factors should be taken into account when deciding whether or not to extend the scheme.

Overall Conclusions on the General Principles of the Bill

48. 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 and as such, commends the general principles of the Bill to the Scottish Parliament and recommends that they be agreed.

Summary of Recommendations

Purpose of the Bill

49. In considering the Bill at Stage 1, the Committee has sought to ensure that its recommendations reflect the desire for victims/survivors to be treated with dignity, respect and compassion. The Committee recommends that the Scottish Government considers including a statement on the face of the Bill recognising these qualities and the need for them to be applied across each element of the redress scheme.

Definition of Abuse

50. The Committee notes the evidence it heard that the definition of abuse set out in section 17 is inconsistent with section 1 of the Limitation (Childhood Abuse) (Scotland) Act 2017 and as a result this may exclude some types of relevant abuse from the scope of the Bill. The Committee recommends that the Scottish Government should review the evidence received by the Committee on this point ahead of the Bill's Stage 2 consideration.
51. The Committee also notes the suggestion that the Scottish Government should consider whether cross-border UK placements should be brought within the scope of the Bill, where such placements were arranged by a Scottish Local Authority and the child's home authority retained a duty of care towards them. Again, the Committee encourages the Scottish Government to consider this proposal ahead of Stage 2.
52. The Committee notes stakeholders' wishes that specific actions and behaviours be recognised as abusive for the purposes of the proposed redress scheme.
53. The Committee acknowledges that the Scottish Government draft Assessment Framework (published after the Committee's call for evidence closed) includes many of the types of abuse which stakeholders suggested should be included. The draft Assessment Framework is discussed in more detail later in this report.
54. The Committee recommends that the Scottish Government reflects on the evidence heard by the Committee and continues its dialogue with victims/survivors and victim/survivor groups to ensure that all types of abusive behaviour relevant to this Bill, including peer to peer abuse, are recognised in the final version of the Assessment Framework.
55. The Committee acknowledges the Cabinet Secretary's assurances that there will not be a blanket ban on the panel considering corporal punishment, but rather that panel members will be required to take into account the context in which it was used, including its frequency and severity.

56. Whilst the Cabinet Secretary has provided a Draft Assessment Framework which provides further detail on how corporal punishment will be approached by the Redress Scotland panel,² it remains a concern to the Committee that having such a statement on the face of Bill risks giving the impression that certain types of abusive historical behaviour will in some way be condoned.
57. The Committee also notes the concern from some victims/survivors that an assessment of what was lawful would be based around what would be deemed acceptable at the time. Given that the redress scheme will span several decades, then the perception of what is 'acceptable' is likely to vary considerably and will be dependent on the panel's own understanding of the prevailing attitudes.
58. The Committee therefore recommends, in light of the evidence the Committee has heard, that the Scottish Government revisits this section of the Bill ahead of Stage 2. In doing so, the Scottish Government should consider how best to instil confidence in victims/survivors that the excessive use of corporal punishment will be covered by the scheme. Thought should also be given to the best way to communicate this information in order to avoid inadvertently deterring some victims/survivors from applying to the scheme.

Relevant Care Settings

59. The Committee recognises the challenges faced by the Scottish Government in creating a redress scheme which will meet the needs of children who were abused in care in Scotland.
60. The Committee also appreciates the disappointment expressed by some victims/survivors that their abuse will not be recognised by the redress scheme, simply as a result of them being placed a care setting by their parent or guardian. It may not always be clear to the person who is applying for redress how they came to be in a particular care setting, for example, if they were too young to understand this at the time or where care records have been lost or destroyed.
61. The Committee notes that in the past it was common practice for parents to place their children in voluntary care, and many children found themselves in residential establishments for religious reasons, due to a disability or as a result of a scholarship.
62. As many noted in evidence to the Committee, the abuse those children suffered was no less than that experienced by children who were placed there by the state.
63. The Committee is sympathetic to the fact that children placed by their parents or guardians should have the same expectation and entitlement to redress and remedy as those placed there by the state.
64. The Committee recognises that there is a need to clearly define the limits of the

redress scheme. However, the Committee believes that there should be scope for Redress Scotland to be able to consider some cases on an exceptional basis where, save for the requirement to have been placed in a setting by the state, victims/survivors would otherwise have been eligible for redress. Particular consideration should be given to those whose abuse took place at a time where placing children in voluntary care was common practice, as well as those for whom the circumstances surrounding their placement are unclear.

65. The Committee recommends that, in light of the evidence it has heard, the Scottish Government should revisit the Bill's current eligibility criteria ahead of Stage 2.
66. The Committee notes the Scottish Government's wish to retain flexibility in delivering redress to victims/survivors, including in respect to the definition of a 'residential institution'³. The Committee considers, however, that there is already sufficient information available to identify most institutions in which children were likely to have been resident. As such, any amendments to the definition of a 'residential institution' should be a very rare occurrence.
67. The Committee is mindful of the impact a change in definition might have on victims/survivors who might reasonably have expected to apply to the scheme, but now may no longer be able to do so.
68. The Committee therefore recommends that a no-detriment approach should be taken in relation to any regulation-making powers in the Bill. This would ensure that changes made via regulations could only be made for the purposes of widening eligibility, rather than seeking to restrict access to the scheme. The Committee believes that Redress Scotland should play a key role in advising Scottish Ministers of which additional settings should come under the remit of the scheme.
69. The Committee notes and welcomes the Scottish Government's intention to ensure these regulations are scrutinised by the Scottish Parliament under the affirmative procedure.⁴

Qualifying Dates

70. The Committee notes the evidence it has heard from victims/survivors and wider stakeholders about the current cut-off date to qualify for redress under the proposed redress scheme, including the impact this is likely to have on victims/survivors who experienced abuse between 1 December 2004 and 17 December 2014.
71. The Committee considers that using the earlier date is likely to arbitrarily exclude some victims/survivors who would otherwise benefit from the scheme.

72. The Committee recommends that the eligibility dates used for both the redress scheme and the Scottish Child Abuse Inquiry should be aligned and that the Scottish Government should provide further information regarding the financial implications of doing so ahead of Stage 2.

Evidential Thresholds/Draft Assessment Framework

73. The Committee recognises the significant challenges faced by the Scottish Government in creating an Assessment Framework which avoids creating a hierarchy of abuse, whilst also providing a clear rationale for awarding each payment level.
74. Whilst the current payment levels have large gaps between them, the Committee is conscious that there is a need to recognise that some experiences of abuse may have been more severe than others and that the panel should have some discretion in the level of payment it awards.
75. At the same time, the Committee is mindful of the effect such large variations in payment levels may have on victims/survivors, particularly in relation to the validation of their abuse.
76. The Committee recognises that the Assessment Framework will provide further detail of how the Redress Scotland panel's decision-making will function in practice.
77. The Committee is concerned by the current lack of detail in the draft Assessment Framework, and in the absence of liability being established by the redress scheme, recommends that the framework should provide further information about the amount/type of evidence required to be supplied by victims/survivors in order to access each payment level.
78. The Committee carefully considered the evidence it heard regarding alternative methods of assessing awards, including the possibility of bandings being used, rather than payments at fixed levels. The Committee notes the range of views shared in both written and oral evidence on this topic.
79. Whilst acknowledging and supporting the desire for the redress scheme to be up and running as soon as possible, the Committee believes this Assessment Framework is instrumental to the operation of the scheme and, as such, should be enshrined in secondary legislation and subject to Parliamentary scrutiny under the affirmative procedure.
80. The Committee also notes that, whilst the redress scheme is designed to have lower evidential requirements than civil litigation, that payments are significantly lower than those that would potentially be available to (post-1964) victims/

survivors via that route.

81. It is not for the Committee to recommend the levels at which payments to victims/survivors should be set. The Committee notes, however, that there is general dissatisfaction amongst victims/survivors at the current levels set out in the Bill.
82. The Committee recommends that ahead of Stage 2 the Scottish Government revisits the payment levels and awards currently set out in the Bill, taking into account the evidence the Committee has received, and that any increase in payment levels or other costs in the scheme should be reflected in a revised Financial Memorandum.

The Application Process

83. The Committee notes the content of the draft Assessment Framework and that many of the factors raised by victims/survivors throughout the Committee's Stage 1 consideration of the Bill have already been taken into account. The Committee recommends that the Scottish Government carries out further consultation with victims/survivors and victim/survivor groups on the draft Assessment Framework ahead of a final version being published.
84. The Committee recognises that for many victims/survivors, their journey in disclosing abuse may just be beginning. Expecting victims/survivors to be able to share intimate details of their abuse with the panel, when they may not have shared this with anyone else, including their family, may mean that some victims/survivors may not apply to the scheme. The Committee recommends that the Scottish Government should have these victims/survivors in mind when designing support mechanisms (discussed in more detail in the Support Needs of Victims/Survivors section of this report).
85. The Committee notes the statements in the draft Assessment Framework that supporting documentation and evidence provided in respect of an application may include 'previous statements/evidence given in other proceedings' and 'findings of fact published by the Scottish Child Abuse Inquiry in relation to the care setting.'⁵
86. However, the Committee would welcome further detail regarding what weight will be attributed to such statements, including in relation to the other documentation that might be required to support an application.
87. The Committee would also appreciate clarification of whether the Scottish Government has identified any potential barriers to victims/survivors sharing evidence provided to the Scottish Child Abuse Inquiry in this context.

Burden of Proof

88. The Committee notes the Cabinet Secretary's suggestion that the burden of proof required for the redress scheme will be 'significantly lower than the standard of proof in a civil case.'⁶
89. However, it remains unclear exactly which standard will be used, what its status will be in law, how this will interact with the draft Assessment Framework and what implications it will have in relation to determining both the fixed and individualised payment awards. The Committee would welcome clarification from the Scottish Government of these points ahead of Stage 2.
90. The Committee also believes that those applying to the scheme should have a clear picture of the key principles used to establish whether an application is genuine (including whether there is a presumption that they will be believed) and that these principles should be set out on the face of the Bill.
91. The Committee recognises that the Assessment Framework underpins this decision-making process and, as previously stated, recommends that this should be set out in regulations subject to the affirmative procedure.

Liability

92. The Committee notes the points raised by legal stakeholders in relation to Bill's current approach towards establishing liability, and in particular how this may make present challenges to the Redress Scotland panel in verifying whether abuse took place. The Committee therefore encourages the Scottish Government to reflect on this evidence ahead of the Committee's consideration of the Bill at Stage 2.

Compulsion to Provide Information/Evidence

93. The Committee also welcomes the Scottish Government's commitment to support survivors to access their records, including the powers of compulsion.
94. The Committee suggests that ahead of the redress scheme being launched, those holding historical care records should review their processes to ensure that for victims/survivors, the experience of accessing their files is as swift and straightforward as possible.

Capacity of Applicant

95. The Committee appreciates that for some victims/survivors, the receipt of a large sum of money may lead to risk, either in relation to their own well-being or the potential for exploitation. The Committee believes, however, that these risks can be managed within the scope of existing legislation and that section 49 of the Bill is therefore redundant and should be removed.
96. The Committee recognises that some victims/survivors will require support to access the redress scheme, including in making an application.
97. As any redress is designed to benefit only victims/survivors (and in some circumstances their next of kin), the Committee believes that those offering support to access the scheme should be carefully vetted and should have no financial interest in the process (for example, a firm offering to make an application in exchange for a percentage of a victim's/survivor's award).
98. As such, the Committee recommends that the Scottish Government should clarify exactly who will be eligible to make an application to Redress Scotland on behalf of a victim/survivor and who will be excluded from doing so.
99. The Committee welcomes the Cabinet Secretary's commitment to offering a wide range of support to victims/survivors and would suggest that individual victims/survivors are best placed to identify the support which would be of most help to them. This could include independent financial advice, advocacy or the provision of written information. Again, consideration should be made of any potential safeguarding concerns, including in relation to any third parties seeking to benefit from assisting victims/survivors to apply to the scheme.

Composition of Redress Scotland Panel

100. The Committee recognises the value in Redress Scotland panel members fully understanding the potential barriers victims/survivors might face in applying to the redress scheme, particularly in relation to how past trauma may manifest itself.
101. The Committee considered whether there should be a requirement for someone with survivor experience to appear on each Redress Scotland panel.
102. The Committee's view, however, is that, whilst there should be no barrier to a suitably qualified victim/survivor applying to become a panel member, there should not be a presumption towards each panel having victim/survivor representation.
103. Instead, the Committee encourages the Scottish Government to explore ways in which the 'strong survivor voice' identified in the Bill's Policy Memorandum⁷ and the Survivor Forum can best inform the development of Redress Scotland's work, including how they will ensure survivors are engaged in the setting up and

ongoing operation of the scheme.

104. The Committee recognises that Redress Scotland's key role is as a decision-making body, with the administrative functions of the redress scheme fulfilled by the Scottish Government. The Committee acknowledges that a Chair and at least five other panel members will be appointed to Redress Scotland, with a small secretariat supporting their work.⁸
105. The Committee requests further clarification from the Scottish Government of how Redress Scotland will be governed, including measures to scrutinise its performance and hold panel Members accountable across the lifetime of the scheme.

Role of Insurers

106. The Committee recognises that, as the redress scheme has lower evidential thresholds and will not establish fault or liability in relation to abuse experienced by an applicant in the way that a civil court would, it is currently very unclear which, if any, insurance providers would pay for an organisation's contribution to the scheme and on what basis that payment would be made.
107. The Committee notes the Scottish Government's view that the position of insurance companies 'is a significant factor for many potential contributors, including some who may otherwise struggle to make the fair and meaningful contributions required to justify the extension of the waiver to them'⁹ and that the waiver scheme (discussed later in this report) is predicated on the idea that organisations will be incentivised to contribute to the redress scheme as victims/survivors will not be able to raise a civil action once the waiver is signed.
108. The Committee remains unconvinced, however, that without the contributions of insurers, this provision will function as anticipated, as whilst insurers would be likely to pay for a civil award (where liability is established), there is no such certainty in relation to redress payments.
109. Given the voluntary nature of the redress scheme, the Committee has heard no evidence to suggest that insurance companies will contribute to the scheme on behalf of their policyholders, meaning the full costs of contributions from care providers are likely to have to be met from their own funds.
110. The Committee therefore recommends that the Scottish Government revisits this key element of the Bill, in light of the evidence the Committee has heard.

Sustainability of Care Providers

111. The Committee has heard evidence that, as currently envisaged, the Scottish Government's approach towards 'fair and meaningful' contributions will mean that some organisations which would otherwise have been willing contributors to the scheme, will ultimately choose not to contribute.
112. The Committee recognises that there is a moral obligation on care providers responsible for historical abuse to contribute to the scheme. In order to maximise participation of such organisations, the Committee recommends that the principles of 'fair and meaningful' be amended to 'fair, meaningful, affordable and sustainable' and the methodology used to calculate these payments should be transparent and appear on the face of the Bill.
113. The Committee recommends that this methodology should specifically take into account a) any payments or contributions in kind an organisation may have already made to provide redress/remedy to victims/survivors and b) the affordability of the payment, specifically in relation to whether it will negatively impact on an organisation's ability to continue to deliver services today and in the future. Consideration should also be made of whether payments could be 'capped' to allow organisations certainty that they will not exceed an agreed level.

Proposed Changes to Charity Law

114. The Committee recognises some of the challenges posed by the changes to charity law set out sections 14 and 15 of the Bill to charitable organisations who may wish to contribute to the redress scheme.
115. The Committee also notes that it will be impossible for trustees to agree to their charity participating in the scheme, where this would breach their duties to safeguard the organisation's longer-term financial viability.
116. The Committee heard that a key sticking point is the Scottish Government's suggestion that contributors to the scheme will make both an initial payment and, depending on the number of victims/survivors who come forward, potentially a number of further contributions over the lifetime of the scheme. Without any certainty from the outset as to the number of additional payments required, the overall cost of these and when they will require to be paid, trustees will be left with no choice but to advise against their organisation's involvement in the scheme.
117. Whilst the Committee appreciates that these changes have been mooted as a means of allowing more charitable organisations the flexibility to participate in the scheme, it is concerned that it may, in fact, have the opposite effect and deter otherwise willing organisations from taking part.
118. The Committee heard evidence from some care providers that attempting to use

restricted funds for any other purpose than a donor's wishes would potentially undermine charities' relationships with funders and potentially lead to a reduction in future funding.

119. The Committee recognises that engagement with the Bill creates a potential conflict for charity trustees and therefore recommends that the Scottish Government responds to the evidence received by the Committee on this aspect of the Bill ahead of the Committee's consideration at Stage 2.

Waiver

120. Whilst the Scottish Government's stated intention is to create a redress system which would offer more choice to victims/survivors, the overwhelming view conveyed to the Committee by victims/survivors was that the waiver restricted their choices and therefore they felt it should be removed.
121. The Committee also spoke to many care providers at Stage 1 and heard no evidence to suggest that the waiver would incentivise them to participate in the redress scheme.
122. The Committee therefore believes that the overwhelming evidence is that the waiver provision, as currently drafted, will not function in the way in which the Scottish Government hopes. The Committee would welcome further clarity from the Scottish Government as to the primary policy objective of the waiver, i.e. has it been included as a means of encouraging payments from care providers, of avoiding 'double payments' to victims/survivors or both?
123. The Committee is concerned that what may at first appear to be a binary choice for victims/survivors (whose abuse took place after 1964) between the redress scheme and civil justice routes, in fact requires a range of factors to be taken into account including victim/survivor finances, the ability for victims/survivors to explore and understand the consequences of signing the waiver both now and in the future, and (understandable) victim/survivor mistrust of authority.
124. The Committee further notes that, as currently drafted, the Bill requires victims/survivors to make key decisions with significant consequences (e.g. in relation to whether to accept an award and sign a waiver) within a matter of weeks, at a time when they may be highly stressed and/or where it may be difficult to source appropriate advocacy or legal support.
125. For example, section 47(3) of the Bill states that an offer of a redress payment is valid only for 12 weeks from the date on which the offer was received by the applicant and if the applicant wishes a review of this decision, they must request this in writing to Scottish Ministers within 4 weeks of receiving that offer.¹⁰
126. Whilst there are provisions built into the Bill to allow for those decision-making periods to be extended in exceptional circumstances, it is not clear what might

constitute such circumstances and the Committee would appreciate further detail of this, ahead of Stage 2.

127. The Committee also recommends that the Scottish Government revisit the points at which legal advice will be available to victims/survivors to ensure that it is proactively offered when they need it most, rather than asking victims/survivors to claim after the fact. The Committee also recommends that the Scottish Government should put safeguards in place to ensure that third parties are unable to benefit financially from assisting a victim/survivor to make an application to the scheme.
128. The Committee recognises the experiences of other redress schemes, who found costs escalated often due to spiralling legal costs, and therefore supports the capping of legal fees in relation to this scheme.
129. However, the Committee also takes on board the views of stakeholders that the current limits proposed for legal advice may be too low. The Committee encourages the Scottish Government to continue dialogue with stakeholders to ensure that the legal advice offered by the scheme can fully meet the needs of victims/survivors.
130. With the caveat of the Committee's recommendation to produce a revised Financial Memorandum in the event that substantive changes are made to payment levels or the way in which awards are made, the Committee is otherwise content with the content of the Bill's Financial and Policy Memoranda.

Alternatives to the Waiver

131. The overwhelming evidence received by the Committee from both victims/survivors and potential contributors suggests that the case for a waiver has not been adequately made. The Committee recommends that the Scottish Government considers removing the waiver and find another way to avoid making double payments to victims/survivors.
132. In making this recommendation, the Committee acknowledges that it is asking the Scottish Government to take a different path to other redress schemes.
133. The Committee requests that, where the Scottish Government believes a waiver should still remain integral to the scheme, it provides the Committee with details of exactly how it will incentivise care providers to participate, given the evidence the Committee has heard to the contrary. This information should be available ahead of Stage 2.

Next of Kin Payments

134. The Committee welcomes the inclusion of the next of kin payment in the Bill as a means of both recognising the abuse experienced by a survivor and the impact this may have had on their family.
135. The Committee is open to the idea that higher levels of next of kin payments may be justified in certain circumstances and recommends that the Scottish Government revisit the next of kin provisions in the Bill to establish whether individualised payments could also be available to next of kin, where there is sufficient evidence to merit this. Individualised payment levels are discussed in more detail in the 'Draft Assessment Framework' section of this report.
136. The Committee notes the importance of next of kin payments to both victims/survivors and relatives of deceased victims/survivors, and that the current cut-off point of 17 November 2016, appears likely to severely restrict applications. The Committee therefore recommends that the eligibility date for next of kin payments should be aligned with eligibility for the rest of the redress scheme.
137. The Committee is content that the evidential requirements for next of kin payments mirror those in place for victim/survivor applications.
138. The Committee recommends that the same principle should be applied should this section be amended to allow next of kin to make individualised payment applications.
139. The Committee recommends that to ensure consistency with section 26(2)(a), section 26(2)(b) of the Bill should be amended to ensure that where there is no surviving spouse or civil partner, that a cohabitant should be required to have lived with the victim/survivor for a minimum period of 6 months before being able to apply for a next of kin payment ahead of the deceased victim's/survivor's children.

Payments to Victims/Survivors Who Have Committed Serious Offences

140. The Committee believes that a balanced approach has been taken towards the question of whether those with serious convictions are eligible to receive a redress payment.
141. The Committee recognises that there are often patterns to offending behaviour and that some of this behaviour may be rooted in trauma. However, the Committee also recognises that there are some crimes so serious in nature that it may not be in the public interest for an individual to benefit from a redress scheme payment. The Committee believes that the approach taken in the Bill towards applicants with serious convictions is therefore appropriate.

142. The Committee agrees that it is important that such decisions are taken on a case by case basis, as set out in the Bill, rather than all applications automatically being denied. The Committee recommends that any guidance accompanying this section of the Bill should be trauma-informed and reflect the evidence the Committee heard regarding serious offences directly linked to abuse (e.g. the murder or serious assault of an abuser).

Support Needs of Victims/Survivors

143. The Committee recommends that the Scottish Government takes a trauma-informed approach towards the provision of support to victims/survivors and next of kin. Support should be available to those who are considering accessing the scheme, are in the process of making an application or who require after-care, having already made an application. Specific note should be taken of the potential impact on victims/survivors when accessing their care records.
144. Providers of such support should be carefully vetted to ensure that victims/survivors are safeguarded throughout the whole process.
145. The Committee recommends that victim/survivor choice should be at the heart of any support mechanisms created by the Bill, tailoring support to what victims/survivors themselves would find most helpful. This should offer the flexibility to allow victims/survivors to access existing support networks, where they would find this beneficial.
146. The Committee welcomes the Scottish Government's commitment to create a Survivor Forum to inform the development of many processes set out in the Bill. The Committee suggests that the Survivor Forum should play a key role in developing the support mechanisms victims/survivors will require to access the redress scheme.
147. Victims/survivors generally spoke very highly of the support provided to them by the Scottish Child Abuse Inquiry (SCAI). The Committee recommends that the Scottish Government should engage with the SCAI team in order to understand their approach towards support.

Apologies/Non-financial Redress

148. The Committee recognises that non-financial redress often extends far beyond the provision of emotional support and a meaningful apology and is something that should be tailored to victims'/survivors' individual needs. The Committee recommends that the Scottish Government reflects on the type of support that has been offered to victims/survivors by other redress schemes with a view to

replicating examples of good practice in a Scottish context.

149. The Committee recognises that any apology offered to a victim/survivor should be meaningful and offered at an appropriately senior level of an organisation. The language of that apology should be both dignified and respectful. It should demonstrate accountability for the abuse experienced by the victim/survivor and where possible, it should reflect the victim's/survivor's own needs, in terms of what would help them find closure.
150. The Committee recommends that training and guidance on meaningful apologies should be provided by the Scottish Government to care providers to ensure that all victims/survivors of historical child abuse in care receive a meaningful apology that is tailored to their personal circumstances and needs. The provision of this training and guidance should not be conditional on organisations making a 'fair and meaningful' contribution to the redress scheme.

Impact of Redress Payments on Benefits

151. Noting the Scottish Human Rights Commission's request that any redress payments should be disregarded as income for the purposes of benefits payments, the Committee recommends that the Scottish Government should continue its dialogue with the UK Government to ensure suitable arrangements are in place, prior to the redress scheme being open for applications.
152. The Committee further notes that redress payments should be disregarded as income for a range of other purposes, including for care home fees and any benefits payable via Social Security Scotland, and recommends that the Scottish Government should consider the circumstances to which this disregard could most usefully be applied.

Duration of Redress Scheme

153. The Committee recommends that in order to allow victims/survivors sufficient time to access the redress scheme, the Scottish Government should consider extending the scheme beyond its initial 5 year duration.
154. Section 29(2) provides for a regulation making power to allow the Scottish Government to extend the period during which Redress Scotland can consider applications. The Committee recommends that this should be amended at Stage 2 to place a statutory obligation on the face of the Bill which would require the Scottish Government to review whether the scheme should be extended.
155. The Committee recommends that this review should take place no later than 4 years after commencement of the scheme, and the Bill should specify which

factors will be considered in reaching a decision whether to extend or end the redress scheme and that this should be subject to Parliamentary scrutiny via the affirmative procedure.

Financial Memorandum

156. The Committee understands the rationale behind the estimates set out in the Financial Memorandum, given that it provides for three potential scenarios and takes into account the experiences of other redress schemes, however, the Committee notes the real uncertainties which exist in relation to the costs associated with the redress scheme.
157. The Committee recommends that, should any substantive changes be made to the financial elements of the Bill (for example, the level of payments or the scheme's eligibility), then the Scottish Government should produce a revised Financial Memorandum and that this should be available ahead of Stage 2.

Advance Payment Scheme

158. The Committee acknowledges the Scottish Government's intention for the new redress scheme to be functioning as soon as possible. The Committee recommends that, as an interim measure, the Scottish Government should consider reducing the qualifying date for the Advance Payment Scheme with immediate effect.
159. The Committee acknowledges that in making such a recommendation, it did not take evidence on the financial implications of this change, nor the impact it might have on the uptake of the Advance Payment Scheme.

Overall Conclusions on the General Principles of the Bill

160. The Committee acknowledges that victims/survivors have been fighting for redress for many years and this scheme is designed to provide an accessible alternative to civil litigation. For victims/survivors who were abused prior to 1964, the scheme will provide a way of accessing reparation for their abuse, where previously there was none.

161. The Committee welcomes the efforts that have been made by the Scottish Government to work with victim/survivor communities to shape many aspects of this Bill and hopes that this engagement will continue as the Bill progresses.
162. However, the Committee also recognises that this redress scheme will not provide the solution all victims/survivors are seeking and that some victims/survivors may still wish to pursue a different route.
163. The Committee also acknowledges that some survivors will be unable to benefit from this scheme, due to the way in which they found themselves in care.
164. The Committee believes that, whilst there are some fundamental issues with the Bill's waiver provisions and the way in which 'fair and meaningful' contributions to the scheme are calculated, the Bill provides a straightforward, easy to access scheme and that will play a vital role in helping victims/survivors obtain the redress and remedy to which they are entitled.
165. The Committee commends the general principles of the Bill to the Scottish Parliament and recommends that they be agreed.
166. The Committee looks forward to considering the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill at Stage 2.

Introduction

Content of Report - Advisory Note to Readers

167. This report reflects the evidence heard by the Committee since the Bill's introduction in August 2020.
168. Readers should be aware that the report contains a range of victim/survivor views on the Bill, alongside descriptions of childhood abuse, which some may find distressing.
169. If you require support, the following organisations should be able to assist:
- Future Pathways* - offers help and support to people who were abused or neglected as children while living in care in Scotland.
- Survivor Telephone: 0808 164 2005 (Monday to Friday 10.00am to 6.00pm)
- Email: registration@futurepathways.co.uk
- Website: <http://www.future-pathways.co.uk/>
- National Association for People Abused in Childhood (NAPAC)* - offers support to adult survivors of all types of childhood abuse, including physical, sexual, emotional abuse or neglect.
- Support line: 0808 801 0331
- Monday to Thursday 10am to 9pm, Friday 10am to 6pm
- Calls are free from landlines and mobiles. They will not show on a phone bill.
- website: <http://www.napac.org.uk/>

Report Structure

170. A Stage 1 report is part of the normal Parliamentary process and is designed to reflect the evidence heard by the Education and Skills Committee on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. You can find more information about how the Scottish Parliament makes law [here](#).
171. In drafting this report, the Committee was particularly aware that this Bill is of great importance to a wide range of stakeholders, including both victims/survivors and care providers responsible for historical abuse. The Committee has sought to examine the impact of aspects of this Bill in a balanced and fair way, taking into account the full range of evidence it heard.
172. With that in mind, nothing should be inferred from the order in which particular issues appear in the report, including the weight of the importance the Committee may have placed upon them. Rather, the report should be viewed as a technical

process, where each issue is examined in turn. The report and its recommendations should therefore be viewed as a whole.

Easy-read Summary

173. The Committee will also be publishing an easy-read summary of this report.

Committee Membership Changes

174. The Membership of the Committee changed during the course of the Committee's consideration of the Bill at Stage 1.

175. On 1 September 2020, Gail Ross MSP left the Committee and was replaced by Kenneth Gibson MSP. On 6 October 2020, Dr Alasdair Allan MSP left the Committee and was replaced by George Adam MSP.

Committee Approach to the Bill

176. The Committee drew upon the help of many people in scrutinising the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, including victims/survivors, victim/survivor groups, care providers, legal experts and human rights bodies. Committee Members wish to place on record their thanks to everyone who shared their views with the Committee and made suggestions for how the Bill could be improved.

177. The Committee sought to maximise opportunities for a wide range of victims/survivors to participate in its work on the Bill, including arranging for victims/survivors from In Care Abuse Survivors (INCAS), Former Boys and Girls Abused in Quarriers Homes and Wellbeing Scotland to meet with Committee Members privately. In order to respect their privacy, many of their names do not feature in this report, however, their views on the Bill do.

178. The Committee appreciates that to reach this stage has been a long journey and that some victims/survivors who campaigned for and contributed to this Bill are sadly no longer here to see it become a reality.

179. The Committee also wishes to thank members of the InterAction Action Plan Review Group for their work in helping the Committee understand the different stages of that journey and how the Bill came to be.

180. The Committee also wishes to place on record its thanks to Julie-Anne Jamieson and Anne McKechnie of the Scottish Child Abuse Inquiry team, who most generously shared their expertise with the Committee.

181. Finally, the Committee wishes to thank Professor Andrew Kendrick of the University of Strathclyde for acting as an advisor to the Committee and providing insight and expertise into a wide range of issues associated with this Bill.

Terminology Used

182. Various terms are used throughout this report to describe people who have experienced childhood abuse in care.
183. The Committee is mindful of the fact that some people who have experienced childhood abuse may choose to identify as 'survivors' and others as 'victims'.
184. Committee Members have opted to use the terms 'victim/survivor' or 'victims/survivors' to describe people with experience of childhood abuse, as this is inclusive of both preferences and is also the term used by the InterAction Action Plan Review Group.
185. Where someone has chosen to self-identify as either a 'survivor' or 'victim' in their evidence to the Committee, the Committee has kept their original wording, in order to reflect their personal preference.

Consideration by Delegated Powers and Law Reform Committee

186. The Delegated Powers and Law Reform (DPLR) Committee considered the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill and subsequently produced a [report](#) to Parliament on 2 December 2020.
187. The Education and Skills Committee agrees with the findings and recommendations of the DPLR Committee.
188. It recognises, in particular, the DPLR's concern that the negative procedure does not provide adequate opportunity for scrutiny of the form and content of the waiver, in light of the subject matter and the potential implications for applicants.
189. The Education and Skills Committee's views on the waiver are explored in more detail later in this report.

Consideration by Finance and Constitution Committee

190. The Finance and Constitution Committee issued a [call for views](#) on the Financial Memorandum accompanying the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill on 4 September 2020, with a closing date of 9 October 2020.
191. The Finance and Constitution Committee received [six written submissions](#) in response to this call for views and decided to take no further action in relation to the Bill.
192. The Committee did not hold a dedicated evidence session on the financial elements of this Bill, however, it has taken the evidence received by the Finance and Constitution Committee into account in producing this report.

Committee Consideration

193. The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill was introduced in the Scottish Parliament on 13 August 2020 by the Cabinet Secretary for Education and Skills. The Bill was accompanied by—
- [Policy Memorandum](#)
 - [Explanatory Notes](#)
 - [Financial Memorandum](#)
 - [Statement on Legislative Competence](#); and
 - [Delegated Powers Memorandum](#)
194. The Scottish Government has also published the following documents in relation to the Bill—
- [Island Communities Impact Assessment](#)
 - [Data Protection Impact Assessment](#)
 - [Business and Regulatory Impact Assessment](#)
 - [Fairer Scotland Duty Assessment](#)
 - [Human Rights Impact Assessment](#)
 - [Future Proofing Legislation Impact Assessment](#)
 - [Children's Rights and Wellbeing Impact Assessment](#)
 - [Strategic Environmental Assessment](#)
 - [Equalities Impact Assessment](#)
195. Under Rule 9.6 of the Parliament's Standing Orders, the Parliamentary Bureau referred the Bill to the Education and Skills Committee to consider and report on its general principles.
196. No secondary committee was appointed to consider the Bill.

Call for Views

197. At its meeting on 19 August 2020, the Education and Skills Committee considered its approach to its scrutiny of the Bill. It agreed to issue a call for evidence with a deadline of 2 October 2020 and to invite stakeholders to give evidence at a series of meetings during September, October and November 2020. The Committee also agreed to seek the views of victims/survivors through a series of meetings, held in private where victims/survivors wished to do so.
198. The Committee's call for evidence sought views on the content of the Bill as drafted,

and asked stakeholders to comment specifically on the following topics—

- The people who are eligible to apply to the scheme.
- The Bill's definition of abuse.
- The dates used in the Bill to define 'historical abuse'.
- The Bill's definition of 'relevant care settings'.
- The process of applying for redress and what advice and support applicants might need.
- The waiver scheme.
- The level of payments offered to victims/survivors.
- What would constitute a 'fair and meaningful' contribution to the scheme from organisations responsible for abuse.
- The process for dealing with applications to the scheme from people who have serious convictions.
- The process for family members to make an application on behalf of a victim/survivor who has since died.
- How to ensure that non-financial redress (e.g. an apology) meets the needs of victims/survivors.

199. The Committee held evidence sessions on [30 September](#), [7 October](#), [28 October](#) and [4 November](#). The Committee heard from—

- The Scottish Government Bill Team;
- Dr Maeve O'Rourke, National University of Ireland Galway;
- Individual victims/survivors and organisations representing victims/survivors;
- Legal bodies;
- Human rights bodies;
- Organisations likely to contribute to the Redress Scheme; and
- The Cabinet Secretary for Education and Skills

200. Detailed information on the Committee's evidence sessions is available at Annexe A of this report. Responses to the Committee's call for evidence can be found at Annexe B.

Purpose of the Bill

201. The Scottish Government states that their ambition for children and young people is to 'grow up loved, safe and respected so that they realise their full potential' and acknowledging that 'for many of Scotland's most vulnerable children who were in care in the past the reality was utterly different,' and that 'many children in care in Scotland were not treated with love or with respect and, rather than being kept safe, they were exposed to danger and abused by those responsible for their care....and failed by the institutions and systems entrusted to look after them.'¹¹
202. The Cabinet Secretary, in his evidence to the Committee on 4 November 2020, notes that 'we have introduced this vital Bill because acknowledging the unquestionable harm that was caused by historical abuse is the right thing to do,' before going on to state 'I want to take this opportunity to repeat the apology that I made to survivors on behalf of the Scottish Government in 2018,' acknowledging that 'their terrible experiences should not have happened, and we are truly sorry that they had to experience what they did.'¹²
203. The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill's key purpose is to create a time limited scheme to provide financial redress to survivors of historical abuse in care in Scotland or, in some circumstances, their next of kin. The scheme is initially designed to operate for 5 years.
204. To meet the aim of providing redress to victims/survivors, a new Non-Departmental Public Body called 'Redress Scotland' will be created to manage the scheme, which is initially designed to operate for 5 years. Redress Scotland will act as an independent decision-maker with a Chair and at least 5 other members who will decide whether a redress payment should be made to a victim/survivor and at which level.
205. The scheme will be non-adversarial and designed as an alternative to civil litigation, with the Bill's Policy Memorandum suggesting that 'the purpose of the scheme is to acknowledge and provide tangible recognition of harm as a result of historical child abuse in various care settings in Scotland,' that the scheme 'provides elements of accountability, justice and financial and non-financial redress for those who wish to access it' and that the Bill seeks to create a 'scheme which treats survivors with dignity and respect and which faces up to the wrongs of the past with compassion.'¹³
206. The proposed redress scheme will also provide access to non-financial redress, including emotional and psychological support.¹⁴
207. The cost of the scheme will initially be met by the Scottish Government. However, the Bill is designed to encourage those responsible for victims'/survivors' abuse to contribute to the scheme.
208. In return for a 'fair and meaningful' payment, a care provider will be added to a list of contributors. Care providers who are on this list will benefit from a waiver scheme which will operate by requiring a victim/survivor to sign a waiver if they accept an award from the scheme. This waiver will state that the victim/survivor will not pursue

civil litigation against the care provider in future.¹⁵

209. What constitutes a 'fair and meaningful' payment will be defined by Scottish Ministers and payment amounts will vary from organisation to organisation, taking into account a range of factors including the number of children accommodated by the organisation, the ages and years at which these children became accommodated there, the potential number of survivors of abuse who may apply to the scheme and the payment levels available in the redress scheme.¹⁶
210. In order for a victim/survivor to qualify for a redress payment under the proposed scheme—
- they must have experienced abuse prior to 1 December 2004. (The date was chosen as it was the day on which the then First Minister Jack McConnell MSP issued an apology to victims/survivors on behalf of the Scottish Government);
 - The abuse must have taken place in a 'relevant care setting'; and
 - The child should have been placed in that setting by the state, rather than by their parent or guardian.

For the purposes of this Bill abuse is defined as being 'sexual abuse, physical abuse, emotional abuse and abuse which takes the form of neglect.'¹⁷

211. The Bill provides both for a fixed rate payment of £10,000 and individualised payments of £20,000, £40,000 and £80,000. These individualised payments are inclusive of and not in addition to the fixed rate payment.
212. Next of kin are also able to apply to the scheme where a victim/survivor has died before being able to make an application. Next of kin payments are limited to £10,000.
213. The Scottish Government suggests that the expectation is that it will pay the first £10,000 of any award and that contributing care providers will be expected to cover any payment in excess of that. So where a victim/survivor is awarded £40,000, the Scottish Government would pay £10,000 and care provider would pay £30,000.
214. Where a care provider has not contributed to the scheme, then the victim/survivor would still receive the same level of payment and this would be paid entirely by the Scottish Government.¹⁸
215. The evidence which will be required to access each payment level in the scheme will be set out in guidance in the form of an Assessment Framework. A draft Assessment Framework was shared with the Committee in early November 2020 and the Committee comments on this later in this report.
216. The Bill also proposes a number of changes to existing charity law, including in relation to the use of restricted funds. The policy intention behind this is to make it easier for care providers to contribute to the scheme.
217. The Bill also clarifies the position for potential applicants who may have committed serious offences in the past. Whilst they are not excluded from the scheme, there is provision for a payment to be declined by the Redress Scotland panel on the basis

that it would not be in the public interest.

218. The Bill contains 7 Parts and 2 Schedules—

- Part 1 contains an overview of all the redress activity the Bill provides for and defines the 'redress scheme';
- Part 2 establishes Redress Scotland and sets out its functions and the support it will receive from the Scottish Ministers. It also requires that a list of contributors to the redress scheme be established and maintained, and facilitates charities becoming scheme contributors to the scheme where they wish to do so;
- Part 3 sets out eligibility criteria for all applicants to the redress scheme, including for applications by next of kin;
- Part 4 sets out how the application process will function, and makes provision about the requirements that will apply to applications, how they will be determined, types of redress payments, treatment of previous payments in respect of abuse, waiver, the time period during which offers are to remain valid, payment, review mechanisms, determination of applications where the applicant, or person in respect of whom the payment is sought has a serious criminal conviction, the process if an applicant dies, recovery of payments made in error and the reconsideration process, and information sharing and confidentiality.
- Part 5 makes provision with respect to the support available to applicants during the application process, including general support with the application, wider support for applicants and certain others in particular circumstances, reimbursement of costs incurred during the application process, and payment of legal fees;
- Part 6 creates a requirement for contributors to the redress scheme to report on their wider activity in connection with redress;
- Part 7 provides for the dissolution of the National Confidential Forum, the eventual dissolution of Redress Scotland, the Interpretation of this Act, and the commencement of this Act and its short title. ¹⁹

219. In considering the Bill at Stage 1, the Committee has sought to ensure that its recommendations reflect the desire for victims/survivors to be treated with dignity, respect and compassion. The Committee recommends that the Scottish Government considers including a statement on the face of the Bill recognising these qualities and the need for them to be applied across each element of the redress scheme.

Developments leading to the Redress Bill

220. The Committee recognises that this Bill is the result of many years of campaigning by victims/survivors and would not have happened without their input and their willingness to work constructively and in partnership to achieve meaningful redress

for victims/survivors.

221. The Bill was preceded by a number of key actions,²⁰ including:
- A consultation²¹ with victims/survivors of abuse in care, commissioned by the Scottish Government and undertaken by the InterAction Action Plan Review Group in partnership with CELCIS which, in September 2018, recommended a redress scheme.
 - An unreserved apology by the Deputy First Minister on behalf of the Scottish Government on 23 October 2018 which also committed to establish a financial redress scheme for victims/survivors of abuse in care.
 - The Scottish Government setting up a non-statutory Advanced Payment Scheme on 25 April 2019 which provides for an ex gratia payment of £10,000 to those who suffered abuse in care in Scotland before 1 December 2004, and who either have a terminal illness or are aged 68 or over (initially set at aged 70 or over).
 - The Scottish Government carrying out a consultation exercise in September 2019 which sought views on proposals for a financial redress scheme. An analysis of the responses to the consultation, as well as responses submitted, can be found on the website of the Scottish Government.
222. Further information about the context leading up to the creation of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill can be found in a [Bill briefing](#) produced by the Scottish Parliament's research centre (SPICe).

Scottish Government Consultation

223. The Scottish Government issued a pre-legislative consultation on Financial Redress for Historical Child Abuse in Care on 2 September 2019, with a closing date of 25 November 2019.
224. The consultation sought views on the detailed design of a redress scheme for victims/survivors of historical child abuse in care which included—
- Defining eligibility of who would be able to apply to the scheme;
 - The structure of payments and what the evidence requirements should be;
 - Arrangements for making an application and the length of time the scheme should be open for applications;
 - Provision for next of kin;
 - How those responsible should make financial contributions to the scheme and wider support; and
 - How the redress scheme might be delivered.²²
225. The Scottish Government notes that 280 responses were received from individual

victims/survivors, victim/survivor representative organisations, local authorities, current and previous care providers, the third sector and the legal sector.²³ An analysis of consultation responses was published on 23 March 2020.²⁴

226. The Committee received some evidence which suggested that the findings of this consultation analysis report should be viewed with some caution, observing that some respondents found some of the questions confusing or did not fully understand the options being presented to them.
227. Thompsons Solicitors, for example, highlighted that some of the responses appearing to be in favour of the waiver provision were directly contradicted by the comments accompanying them.²⁵
228. Key findings identified in the consultation were—
- 88% of respondents agreed with the proposed wording of the purpose of the [redress] scheme, with 94% of respondents agreeing with the guiding principles proposed for the scheme.
 - 94% of respondents agreed with the proposed definition of abuse
 - 79% of respondents (85% of individuals, 46% of organisations) agreed with the proposal to limit eligibility for financial redress to situations in which institutions and bodies had 'long term responsibility for the child in place of the parent'.
 - There was widespread support for the proposals to allow child migrants and those with criminal convictions to apply, although in relation to the latter, some respondents argued that eligibility (or the level of payment) should take into account of the nature of the conviction.
 - 98% of respondents supported the proposal that a redress scheme should have the power to require bodies or organisations to release relevant documentation.
 - 95% of organisations and 88% of individuals agreed that individuals should be able to give oral testimony in support of their application (but should not be required to do so).
 - In relation to the assessment of claims, there was broad agreement that there should be no 'hierarchy' in terms of different types of abuse. Although some supported the idea of all applicants being treated the same, there was greater support for cases to be assessed in a 'holistic' way taking account of all circumstances, and a range of factors (including length of time in care and nature of the abuse). A recurring view was that the impact of the abuse should be key in determining payments.
 - There was widespread support for the suggestion that the scheme should offer assistance to victims/survivors in obtaining documentary records required for an application.
 - The principle of allowing applications from next of kin was widely supported, where the person who had been abused in care was now deceased.

- Three quarters of all respondents thought that anyone who has received a payment from another source (such as a civil court case) should still be eligible to apply to the redress scheme. Just over half of all respondents thought that redress payments should take account of any payments received from other sources.
- 94% of respondents said that organisations bearing responsibility for historical child abuse should contribute financially to the redress scheme.
- 97% of respondents agreed that there should be consequences for those responsible [for abuse] who do not make a 'fair and meaningful' contribution, whilst recognising that 'fair and meaningful' was still to be defined.
- There was widespread consensus among individuals and organisations that joint administration of financial redress and wider reparations would be helpful.
- 97% of respondents were in favour of wider reparations being available to everyone meeting the criteria for the redress scheme.
- There was general agreement that a personal apology should be given to victims/survivors alongside a redress payment and that a dedicated support service would continue to be needed once the financial redress scheme was in place.²⁶


229. The consultation analysis suggests that there were some areas in the consultation which attracted less support or where views were typically mixed—

- Proposals which were seen to restrict eligibility for the scheme were not widely supported. There was only minority support for the specific proposals to exclude those in fee-paying boarding schools (44%) and hospitals (41%) where the institution did not have long-term responsibility in place of the parent.
- Views were mixed on what should constitute 'historical' abuse. Overall 61% of respondents agreed with the proposed cut-off date of 1 December 2004, although the consultation analysis report caveats this by saying many individuals appear to find the way that this question was worded confusing.
- In terms of the evidence that should be required for a Stage One application, respondents generally supported the use of i) a signed declaration by the applicant that they had suffered abuse, (ii) a short written description of the abuse and its impact, and (iii) any existing written statement from another source which provides details of the abuse.
- In relation to Stage Two applications [now known as 'individualised payments'] organisations were more likely to favour the use of third party documentary evidence while individuals were more likely to want oral or written evidence provided directly by the applicant.
- In relation to factors that should be taken into account in determining levels of payments, the general impact of abuse was most commonly mentioned, but other respondents identified impact such as psychological harm, physical injuries and disabilities, alongside general consequences for relationships, health, education and employment.

- Just over half of those responding to the consultation thought that any previous payments (e.g. those received through civil action) should be taken into account in assessing redress payments. Amongst those who disagreed, a common view was that individuals should not be penalised for having pursued another source of justice at a time when redress had not been an option.
 - 57% of respondents agreed that applicants should choose between accepting a redress payment or pursuing a civil court action, although there were difference between local authorities, public sector partnerships and third sector respondents - and the consultation analysis suggested that caution should be exercised in interpreting the responses from individuals. The need to avoid double payments was raised, as was the importance of personal choice and good quality legal advice to assist claimants in making a decision.
 - In relation to next of kin payments, there was no clear consensus on a cut off date, although 42% of respondents chose 17 December 2014 as it aligned with the announcement of the Scottish Child Abuse Inquiry. There were mixed views on the payment next of kin should receive with 100% being the option attracting most support.
 - There was general agreement that organisations bearing responsibility for abuse should make a financial contribution to the scheme, but less consensus about exactly who should be considered responsible.
 - Organisations and individuals offered various comments on what would constitute fair and meaningful financial contributions to the scheme. Organisations said they required further information to answer this question, whilst individuals tended to name a percentage of the whole redress payment.
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Victims'/Survivors' Views on Redress

230. In considering evidence on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, the Committee has reflected on the evidence it has received from victims/survivors as to what impact childhood abuse has had on their lives and the difference that they hope the new redress scheme will make. A selection of victims/survivors' comments are outlined below, whilst other comments are interspersed throughout this report:

231.  Abuse never leaves a person. It is like a human shadow: sometimes it is behind you, and you can forget that it is there for a little while and get on, but then it moves to the side, at eye level, and you are conscious that it is there, so it starts to have an impact. However, there are times when that shadow is right in front of you and, no matter how strong a survivor you are, you cannot ignore it and you have to deal with it. ²⁸

232. ” I may get answers to why I was continually let down, what the failings were and why. I may not get any answers, but I am still entitled to try as hard as I can because I need to, in order to get closure or at least some part of it....I am serving a life sentence for what happened in the periods that should have been the happiest of our lives. So far, certainly in my case, the only person to have paid for what happened to me, is me. ²⁹
233. ” My Dad was in a Quarriers home with his younger brother and suffered horrific abuse from those caring for them...This experience as a child...resulted in my dad having mental health issues...affecting his life to a huge degree and resulting in him being unable to work and losing his family, marriage and what would have been a good quality of life for him and us as a family. This should be reflected in the redress since as I am sure you can appreciate no amount of money will compensate for this loss. ³⁰
234. ” It's truly felt like I slipped through the cracks after being abused in those places and just forgotten about, no use to anyone, just left to pick up the pieces myself. ³¹
235. ” It is important that calling us survivors is just a descriptor, we are and always have been....PEOPLE...we may have missed opportunities, but most have tried to live as part of our communities and managed to hold down jobs of all kinds, being traumatised as children wasn't the only obstacles we faced, our self-worth was impeded, yet it has taken a group of survivors 20 years to get recognition and law amended.... ³²

Definition of Abuse

General Comments on the Definition

236. Section 17(1) of the Bill provides a definition of abuse for the purposes of this Bill, stating that this means 'sexual abuse, physical abuse, emotional abuse and abuse which takes the form of neglect.'³³ Section 17(2) expands upon the definition of physical abuse, suggesting that this 'does not include corporal punishment to the extent that it was permitted under or by virtue of any enactment or rule of law at the time it was administered.'³⁴
237. The broader definition of abuse set out in section 17(1) was generally welcomed and recognised by stakeholders, recognising that it provided sufficient flexibility to allow for various experiences of abuse to be considered by the panel.³⁵ Further detail on how different types of abuse will be factored into the panel's decision-making is set out in the 'Draft Assessment Framework' section earlier in this report.
238. The Association of Personal Injury Lawyers had a wider technical comment on section 17(1), suggesting that in order to be consistent with section 1 of the Limitation (Childhood Abuse) (Scotland) Act 2017, section 17 'should be amended to say 'includes' and not 'means'.³⁶
239. East Lothian Council highlights the fact that the Bill, as currently drafted, 'omits abuse occurring in placements in England which were made by Scottish local authorities' and suggests that this should be rectified.³⁷

Specific Forms of Abuse

240. Several stakeholders sought reassurance that specific types of abuse would be recognised by the proposed redress scheme.
241. Dr Susannah Lewis suggests that the definition of 'emotional abuse' should include 'abuses of the child's right to family life e.g. separation from siblings or being moved to a different house or dormitory as a form of punishment', and that 'spiritual abuse' should be included to cover 'adults using their power as 'religious leaders' to groom, coerce, and control the children.'³⁸
242. Others felt that frequent moves could also be a form of emotional abuse for a child, suggesting that 'the labelling, stigma and criticism that one internalises from new carers and new communities is crushing as is the likely breakdown and failure of these placements.'³⁹
243. Peer to peer abuse was also raised in this context, with a distinction drawn by some stakeholders between a 'one-off fight amongst peers'⁴⁰ and scenarios where peer to peer abuse was allowed to happen on a regular basis.
244. Janine Rennie of Wellbeing Scotland provides the example of 'somebody who was

abused by an older child who was abusing a lot of the children in the care establishment, which did nothing to stop it happening', before suggesting that 'where there has been a case of negligence by the organisation in allowing peer-to-peer abuse, that should be considered under the bill.'⁴¹

245. The draft Assessment Framework produced by the Scottish Government suggests that 'section 21 of the Bill sets out that the scheme may make regulations about specific circumstances in which an applicant would not be eligible to apply to the redress scheme,' noting that these regulations could be used to 'exclude certain types of behaviour by peers, for example, to distinguish between a course of abusive conduct by peers and where the staff of the relevant care setting either condoned it or 'turned a blind eye' which would be eligible, and a one off fight between peers which was not know about by staff which would not.'⁴²

Corporal Punishment

246. Section 17(2) of the Bill, however, was seen as potentially much more problematic, with many stakeholders pointing out that whilst corporal punishment itself may have been lawful at the time, its application could often be highly abusive.
247. Wellbeing Scotland notes that 'as an organisation who have worked with abuse in care survivors for 26 years we have seen the significant impact on survivors of what may have been described as corporal punishment' and suggesting that 'for this to be allowed in any legislation was a failure by that legislation and those who produced it in the same way that failings in the care system enabled abuse of children.'⁴³
248. Sandra Toyer also queries how this caveat to the definition in s17(1) can be applied in practice, noting that 'survivors are asking who will determine what is meant by 'corporal punishment', what model or era will they be referencing - 1930, 1940, 1950, 1960 and so on, suggesting that whilst there were commonalities of method, there were also differences. Who will determine what was legal at the time they were in care and when does it cross over to abuse?'⁴⁴
249. The Committee heard that specifically excluding corporal punishment from the definition of abuse (where it was lawful at the time) could also have a deterrent effect, with the potential for some victims/survivors to choose not to apply for an individualised payment, either because they don't know what corporal punishment means in the context of the redress scheme or because 'they feel the Government have sanctioned assault.'⁴⁵
250. Arthur Thornton describes not being able to sleep after reading that corporal punishment would not be covered by the scheme, stating that 'law or no law, I emphasise that in my case...this was ABUSE and should not be discarded or approved as legal.'⁴⁶
251. In her evidence to the Committee on 30 September 2020, Dr Maeve O'Rourke, National University of Ireland Galway, identified that whilst corporal punishment may have been 'lawful', 'it does not necessarily mean that it was compliant with the European Convention on Human Rights or other international human rights

instruments', suggesting that instead of the current provisions 'there should be an approach to understanding corporal punishment within the context of the broader abuse that person suffered.'⁴⁷

252. The Cabinet Secretary's stance on this issue appears to have shifted in light of the evidence heard by the Committee. The Bill's Explanatory Notes state that 'corporal punishment that was lawful at the time it was administered does not constitute physical abuse for the purposes of the Bill,'⁴⁸ whilst the draft Assessment Framework states that 'abuse will be judged by the standards of the time at which it was committed and not by present day standards', noting that in relation to corporal punishment this means a punishment which was 'administered in accordance with prevailing law and guidance at the time will not be considered abusive', before noting that the Scottish Child Abuse Inquiry found that at times 'the corporal punishment inflicted was above and beyond what would have been acceptable in a school setting, approved school setting or family setting' and that 'such cases would constitute abusive conduct for the purposes of the redress scheme.'⁴⁹
253. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary goes on to suggest that 'the bill does not say that corporal punishment is disregarded as a factor; it says that, although there was provision for corporal punishment in the past, if it was used zealously and inappropriately, that can be taken into account in reparations that are made.'⁵⁰

254. The Committee notes the evidence it heard that the definition of abuse set out in section 17 is inconsistent with section 1 of the Limitation (Childhood Abuse) (Scotland) Act 2017 and as a result this may exclude some types of relevant abuse from the scope of the Bill. The Committee recommends that the Scottish Government should review the evidence received by the Committee on this point ahead of the Bill's Stage 2 consideration.
255. The Committee also notes the suggestion that the Scottish Government should consider whether cross-border UK placements should be brought within the scope of the Bill, where such placements were arranged by a Scottish Local Authority and the child's home authority retained a duty of care towards them. Again, the Committee encourages the Scottish Government to consider this proposal ahead of Stage 2.
256. The Committee notes stakeholders' wishes that specific actions and behaviours be recognised as abusive for the purposes of the proposed redress scheme.
257. The Committee acknowledges that the Scottish Government draft Assessment Framework (published after the Committee's call for evidence closed) includes many of the types of abuse which stakeholders suggested should be included. The draft Assessment Framework is discussed in more detail later in this report.
258. The Committee recommends that the Scottish Government reflects on the evidence heard by the Committee and continues its dialogue with victims/survivors and victim/survivor groups to ensure that all types of abusive behaviour relevant to this Bill, including peer to peer abuse, are recognised in the final version of the Assessment Framework.

259. The Committee acknowledges the Cabinet Secretary's assurances that there will not be a blanket ban on the panel considering corporal punishment, but rather that panel members will be required to take into account the context in which it was used, including its frequency and severity.
260. Whilst the Cabinet Secretary has provided a draft Assessment Framework which provides further detail on how corporal punishment will be approached by the Redress Scotland panel,⁵¹ it remains a concern to the Committee that having such a statement on the face of Bill risks giving the impression that certain types of abusive historical behaviour will in some way be condoned.
261. The Committee also notes the concern from some victims/survivors that an assessment of what was lawful would be based around what would be deemed acceptable at the time. Given that the redress scheme will span several decades, then the perception of what is 'acceptable' is likely to vary considerably and will be dependent on the panel's own understanding of the prevailing attitudes.
262. The Committee therefore recommends, in light of the evidence the Committee has heard, that the Scottish Government revisits this section of the Bill ahead of Stage 2. In doing so, the Scottish Government should consider how best to instil confidence in victims/survivors that the excessive use of corporal punishment will be covered by the scheme. Thought should also be given to the best way to communicate this information in order to avoid inadvertently deterring some victims/survivors from applying to the scheme.

Eligibility Criteria

Relevant Care Settings

263. The Committee heard that stakeholders and victims/survivors were generally content with the definition of 'relevant care settings' set out in section 18 of the Bill, although there were reservations expressed about some settings and circumstances being excluded from the definition, as well as concerns expressed about the regulation making power set out in section 18(4) of the Bill .
264. The Committee recognises that, historically, children were placed in a wide range of care settings by both the State and their parents. This includes children being placed away from home due to a learning disability, a long-term health condition or a mental health need. In the present day, most children are cared for in a home setting. However, in the time period covered by the redress scheme, being separated from their parents and sent to a hospital, residential establishment or institution was a much more common approach.
265. As such, the Committee recognises the difficulty the Scottish Government has had in defining 'relevant care settings,' given the wide range of circumstances and locations that could potentially be engaged by the Bill.
266. At the same time, the Committee is mindful of the evidence it received from some victims/survivors who suggested that the relevant care settings in the Bill eligibility were too narrowly drawn, and that as a consequence the abuse they experienced would not be recognised.
267. Section 18(1) states that for the purposes of this legislation a 'relevant care setting' includes a 'residential institution in which the day-to-day care of children was provided by or on behalf of a person other than the parent or guardian of the children resident there'⁵² and 'a place, other than a residential institution, in which a child resided while being— i) boarded-out, ii) fostered.'⁵³
268. A 'residential institution' is defined in section 18(3) as ' a children's home; a penal institution; a residential care facility; school-related accommodation or secure accommodation'⁵⁴
269. However, the definition excludes a child who was boarded-out or fostered 'with a relative or guardian of the child' or 'under arrangements between a parent or guardian of the child and another person unless that person was i) a public authority, or ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child's interests.'⁵⁵
270. This is problematic to Bruno Bernacchi who notes that 'I do not qualify for any redress as it was my parents that sent me to a boarding school', pointing out that 'the fact that they paid for me to be educated, cared and looked after by the order that ran the boarding school is indeed no different as the abuse I was subjected to was every bit as horrendous as those who suffered due to the States's decision to send children to these establishments.'⁵⁶

271. The Faculty of Advocates suggests that if 'the overall purpose of the scheme is to recognise the wrongs of historical abuse and to allow survivors the right to compensation as part of the process to remedy those wrongs', then 'the redress scheme should first and foremost be focused on those who were abused and should not seek to differentiate between different types of children who suffered harm'.⁵⁷
272. This point is echoed by David Whelan of Former Boys and Girls Abused in Quarriers Homes, who suggests that the focus should be on who had responsibility for children's well-being and stating that 'if the state had a duty of care, responsibility and inspection and it failed in those duties, it failed those children, whatever setting they were in.'⁵⁸
273. The practical implications of differentiating between children on the basis on which they were placed in a care setting is likely to lead to inherent unfairness, with John McCall suggesting 'there is a scenario whereby a boarding school may have say ten children abused of which say three were State sponsored. Three would receive Redress and seven would not, yet all were abused within the same establishment and probably by the same abusers.'⁵⁹
274. Judith Robertson of the Scottish Human Rights Commission suggests that the definition used in the Bill is also potentially problematic for disabled children, who may have been placed in care by their parents and who would therefore be unlikely to qualify for redress.⁶⁰
275. Several other stakeholders, including Social Work Scotland, suggest that the scope of the relevant care settings included in the Bill should be widened to include 'children who were in the care of medical professionals' or 'institutionalised specifically for a learning disability or their mental health'⁶¹
276. The ability to vary the definition of a 'residential institution' (set out in a regulation-making power in section 18(4)) was also a cause for concern, with several stakeholders highlighting that this could change eligibility to the scheme at any point throughout the scheme's duration, meaning that a victim/survivor who anticipated applying may now no longer be able to do so, with the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) expressing concern that this 'would mean applicants not being clear at any one time about their ability to make an application.'⁶²
277. A similar concern was raised by the Faculty of Advocates in relation to the regulation making power in section 21 of the Bill, which provides Scottish Ministers with the ability to create exceptions to eligibility to the redress scheme.⁶³
278. The Policy Memorandum accompanying the Bill states that the redress scheme is aiming to cover two categories of care setting in Scotland, stating that 'the first category concerns children who were 'in care' because their families (including extended families) were unable to look after them on a day to day basis and, in consequence, the children required to be placed in an institutional care setting' and that 'the second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school), or arrangements were made by a local or education authority in relation to the boarding of children in schools not managed by

that authority and the authority met the costs of that.'⁶⁴

279. The Policy Memorandum summarises that approach by suggesting that 'consistent with that aim, the scheme is therefore not intended to cover arrangements where a child resided with their family or extended family (such as, for example, kinship care arrangements), nor private arrangements by which a child came to reside somewhere other than with a family or extended family member and which were not instigated primarily as a result of arrangements made in exercise of public functions (such as, for example, private fostering or private healthcare arrangements).'⁶⁵

280. The Committee recognises the challenges faced by the Scottish Government in creating a redress scheme which will meet the needs of children who were abused in care in Scotland.

281. The Committee also appreciates the disappointment expressed by some victims/survivors that their abuse will not be recognised by the redress scheme, simply as a result of them being placed a care setting by their parent or guardian. It may not always be clear to the person who is applying for redress how they came to be in a particular care setting, for example, if they were too young to understand this at the time or where care records have been lost or destroyed.

282. The Committee notes that in the past it was common practice for parents to place their children in voluntary care, and many children found themselves in residential establishments for religious reasons, due to a disability or as a result of a scholarship.

283. As many noted in evidence to the Committee, the abuse those children suffered was no less than that experienced by children who were placed there by the state.

284. The Committee is sympathetic to the fact that children placed by their parents or guardians should have the same expectation and entitlement to redress and remedy as those placed there by the state.

285. The Committee recognises that there is a need to clearly define the limits of the redress scheme. However, the Committee believes that there should be scope for Redress Scotland to be able to consider some cases on an exceptional basis where, save for the requirement to have been placed in a setting by the state, victims/survivors would otherwise have been eligible for redress. Particular consideration should be given to those whose abuse took place at a time where placing children in voluntary care was common practice, as well as those for whom the circumstances surrounding their placement are unclear.

286. The Committee recommends that, in light of the evidence it has heard, the Scottish Government should revisit the Bill's current eligibility criteria ahead of Stage 2.

287. The Committee notes the Scottish Government's wish to retain flexibility in delivering redress to victims/survivors, including in respect to the definition of a 'residential institution'⁶⁶. The Committee considers, however, that there is already sufficient information available to identify most institutions in which

children were likely to have been resident. As such, any amendments to the definition of a 'residential institution' should be a very rare occurrence.

288. The Committee is mindful of the impact a change in definition might have on victims/survivors who might reasonably have expected to apply to the scheme, but now may no longer be able to do so.
289. The Committee therefore recommends that a no-detriment approach should be taken in relation to any regulation-making powers in the Bill. This would ensure that changes made via regulations could only be made for the purposes of widening eligibility, rather than seeking to restrict access to the scheme. The Committee believes that Redress Scotland should play a key role in advising Scottish Ministers of which additional settings should come under the remit of the scheme.
290. The Committee notes and welcomes the Scottish Government's intention to ensure these regulations are scrutinised by the Scottish Parliament under the affirmative procedure.⁶⁷

Qualifying Dates

291. Section 16 of the Bill sets out the date before which abuse must have occurred, in order for a victim/survivor to be eligible for redress. The 1 December 2004 date was chosen as it was the date when the then First Minister Jack McConnell made a public apology to victims/survivors in the Scottish Parliament.⁶⁸
292. There were mixed views from stakeholders on this date. Whilst some were content with the Scottish Government's rationale for its selection, others pointed out it was inconsistent with the Scottish Child Abuse Inquiry's remit, which extends until 17 December 2014.
293. This disparity between the two cut-off dates could mean that a victim/survivor whose abuse took place between the 2004 and 2014 deadlines could give evidence to the Inquiry, something that East Lothian Council suggested was likely to raise victims'/survivors' expectations,⁶⁹ however they could not claim redress, with Police Scotland also suggesting that 'it would be appropriate for the Redress Scheme to use the same date'⁷⁰ and the Association of Personal Injury Lawyers noting that 'survivors of child abuse which took place after 1 December 2004 will find it difficult to understand why they are prevented from making an application to the scheme.'⁷¹
294. Wellbeing Scotland also suggests that differences between the eligibility dates for the redress scheme and the Inquiry would mean many victims/survivors missing out, stating that 'when we analysed our statistics on clients, we realised that 30 per cent of them fell into the category of cases that fall outwith the period when claims are allowed.'⁷²

295. According to the Scottish Human Rights Commission, if the 2004 date currently set out in the Bill remains, 'almost a generation of children in care would have no right to claim financial redress for historical abuse.'⁷³

296. The Explanatory Notes accompanying the Bill state that the possibility of aligning eligibility for the redress scheme with the Scottish Child Abuse Inquiry remit was considered, but rejected on the grounds that there had been significant improvements to care provision since 2004 and the 2004 date was believed to represent 'a more appropriate cut-off point in the context of this redress scheme' as it 'keeps the focus of the scheme on abuse which should be considered 'historical'.⁷⁴

297. The qualifying date for next of kin payments is explored later in this report.

298. The Committee notes the evidence it has heard from victims/survivors and wider stakeholders about the current cut-off date to qualify for redress under the proposed redress scheme, including the impact this is likely to have on victims/survivors who experienced abuse between 1 December 2004 and 17 December 2014.

299. The Committee considers that using the earlier date is likely to arbitrarily exclude some victims/survivors who would otherwise benefit from the scheme.

300. The Committee recommends that the eligibility dates used for both the redress scheme and the Scottish Child Abuse Inquiry should be aligned and that the Scottish Government should provide further information regarding the financial implications of doing so ahead of Stage 2.

Evidential thresholds/Decision-making Processes

Draft Assessment Framework

301. In order to help the Redress Scotland panel assess the level of payment which should be offered to a victim/survivor, the Scottish Government has developed a draft Assessment Framework. This was shared with the Committee in early November 2020 and provides further details of the two types of payment created by the Bill.
302. These are a fixed rate of payment of £10,000 and an individualised payment, which is set at three levels, £20,000, £40,000 and £80,000.
303. This Assessment Framework states that the fixed rate payment is designed to 'provide choice for those who seek financial redress without having to provide a detailed account of their abuse'.⁷⁵
304. Anyone successfully applying for a fixed rate payment will, for the duration of the scheme, retain the right to subsequently apply for an individually assessed redress payment (from which any fixed rate redress payment which has previously been paid to the applicant will be deducted).⁷⁶
305. The draft Assessment Framework states that individualised payments are 'intended for those who meet all the eligibility requirements of the scheme and who choose to have their experience of abuse individually assessed,' suggesting that 'the assessment will involve a more detailed examination of the facts and circumstances of their experience and will require more by way of supporting information.'⁷⁷
306. Payments awarded can be one of three amounts £20,000, £40,000 or £80,000. The draft Assessment Framework also sets out the factors Redress Scotland panel members will take into account when deciding which level of payment is appropriate, expanding on the Bill's definition of abuse and providing further information about the type of evidence that might be required by the panel.
307. These payment levels generated a great deal of evidence from victims/survivors and other stakeholders. Whilst there was recognition that a simplified system that was more easily accessible to victims/survivors than civil litigation may offer an attractive option to some victims/survivors, many felt the amounts set out in the Bill vastly underestimated the abuse they had suffered. Several stakeholders highlighted that the payment levels in the Bill were significantly lower than those that could be achieved via civil litigation or some previous redress schemes elsewhere in the world.
308. To provide wider context in relation to the proposed redress scheme in Scotland, the Committee heard evidence from Dr Maeve O'Rourke, National University of Ireland Galway,⁷⁸ who talked about the experiences of victims/survivors seeking redress in Ireland.

309. Some victim/survivor organisations also highlighted the variance between the payments offered by the scheme in Scotland and those available in other countries, with In Care Abuse Survivors (INCAS) highlighting that 'the payment levels set out in sections 37 and 38 of the Bill are considerably lower than those of the equivalent Irish redress scheme' and querying why 'survivors who were abused at the hands of one organisation in Scotland should be told, in effect, that the harm they suffered is less significant, in terms of redress, than someone who suffered the same abuse, at the hands of the same organisation, in Ireland.'⁷⁹
310. The Committee also referred to a comparative study carried out by the InterAction Action Plan Review Group,⁸⁰ which compared the processes associated with applying for redress, alongside the payment amounts offered. A table of payment levels is included in this report at Annexe C.
311. The £10,000 fixed rate payment in particular was unpopular amongst victims/survivors. In her written submission to the Committee, Anne Macdonald notes that 'the scale of redress payments should be higher. Compensation of ten thousand pounds in today's economy and for having endured horrific abuse and life chances in an extremely low sum.'⁸¹ Fred Crainer also suggests that 'Offering £10k and expecting me to sign a waiver forfeiting my human right to justice is not on....I have complained about serious child abuse and the way I have been treated so far is inexcusable. I will not be applying for your redress. I want justice and closure,'⁸² with Sandra Toyer also stating that 'everyone I have spoken to believes the proposed lower level of £10,000 is an insult to their human worth and suffering.'⁸³
312. At the other end of the payment scale, Dr Susannah Lewis suggests that 'the maximum payment award proposed is too low', proposing that this should be raised 'to at least £100,000, with the panel having the ability to award higher payments in the severest of cases.'⁸⁴
313. Janine Rennie, in her written submission, points out the disparity between the payment levels proposed by the Scottish Government and those available to victims/survivors pursuing civil litigation, noting that 'the Redress scale is not reflective of the level of damages in any personal injury case. The £80,000 level is around three years of an average salary where victims/survivors have lost employment for decades due to Complex Trauma.'⁸⁵ She goes on to note the pressure that some victims/survivors might feel to accept a payment, even if this is much lower than they might otherwise be entitled to, noting that 'for many survivors they live with such poverty and debt that they will feel compelled to accept the £10,000 payment and forego their right to pursuing a civil action because of the fear they experience of how they will survive.'⁸⁶
314. Others recognised the difficulty in putting a price on individual victims'/survivors' experiences, which could vary significantly in both the type of abuse and the impact that it would have had on them. The Committee recognised the challenges in offering meaningful acknowledgement of an individual victim's/survivor's experience of abuse, whilst also meeting victims'/survivors' wishes that the redress scheme provide a combination of fixed payment awards and individualised tiered payments.
315. One alternative to this approach considered by the Committee, was the possibility of making payments within bandings (e.g. £10,000-£19,999, £20,000-£39,999 or

£40,000-£80,000), rather than setting individualised payments at £20,000, £40,000 and £80,000.

316. This was an approach favoured by the Faculty of Advocates who suggested that instead 'it would be fairer to have a range within each level' and that this would enable 'decision-makers, having considered the circumstances holistically, properly to assess the appropriate figure for each case.'⁸⁷

317. The case for making awards within bandings was further explored by David Whelan of Former Boys and Girls Abuse in Quarriers Homes who also noted that payment levels could be higher—

” We believe that the upper limit does not address the most complex and serious abuse....we do not believe that £80,000 is sufficient to address that harm and the trauma that it created. We would like to see the panel being given explicit discretion in making decisions. It seems to us as though the Government has put something together and discretion has been taken away from the panel. We would like the bill to give the panel the discretion to make awards that fit the individual.⁸⁸

318. Simon Collins of In Care Abuse Survivors (INCAS) also expresses concern about the fixed payment levels, suggesting that the way they have been formulated is particularly unhelpful—

” I am concerned about the broad banding. For example, if there has been a level of abuse that would justify a payment of £10,000 but the bandings go up to £20,000, then £40,000 and then £80,000, it follows that there will be a line in each of those bandings. Someone who falls on one side of that line will be looking at a scenario in which, because they have spent one week or one month less in care, or one less thing has happened to them, that level of grading means that they are assessed as having suffered abuse that has half the value of the next level up.⁸⁹

319. This approach, however, was rejected by the Scottish Government in the Bill's Policy Memorandum, suggesting that 'having a range within each level would further individualise payments and distinguish the experiences of survivors,'⁹⁰ with the draft Assessment Framework being designed to 'set out distinct levels which allow for a differentiation in levels of payment while avoiding the need for overly detailed highly individualised assessments.'⁹¹

320. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills explained how the different payment levels were arrived at—

” Essentially, we looked at a range of schemes in different jurisdictions and examined the feedback that we received in relation to the advance payment scheme, and then we constructed the model that is in the bill, which involves the assured payment from Government and then, based on the evidence that is able to be drawn together about the experiences of individuals, three additional individual payment levels that could be constructed, which we feel are sufficiently distinctive to be materially different from each other and to provide the opportunity to recognise the difference between the levels of abuse that individuals suffered and for which reparation is to be made.⁹²

321. However, the Cabinet Secretary did not appear to rule out a revision of the payment levels, stating—

” There is no perfect, defined position. I cannot say...that there is a cast-iron reason why the maximum payment has to be that figure; it would not be appropriate for me to say that....I am open to considering the appropriateness of the levels, including the maximum level, in the spirit of an engaged parliamentary process. ⁹³

322. Some stakeholders were keen to emphasise that for victims/survivors of abuse taking place before 1964, the redress scheme would be the only option open to them, with In Care Abuse Survivors (INCAS) seeking to ensure the Scottish Government made good on previous commitments to pre-64 victims/survivors that they would be 'treated equitably when compared to those who had a right to pursue claims in the court.' ⁹⁴

323. The Committee recognises the significant challenges faced by the Scottish Government in creating an Assessment Framework which avoids creating a hierarchy of abuse, whilst also providing a clear rationale for awarding each payment level.

324. Whilst the current payment levels have large gaps between them, the Committee is conscious that there is a need to recognise that some experiences of abuse may have been more severe than others and that the panel should have some discretion in the level of payment it awards.

325. At the same time, the Committee is mindful of the effect such large variations in payment levels may have on victims/survivors, particularly in relation to the validation of their abuse.

326. The Committee recognises that the Assessment Framework will provide further detail of how the Redress Scotland panel's decision-making will function in practice.

327. The Committee is concerned by the current lack of detail in the draft Assessment Framework, and in the absence of liability being established by the redress scheme, recommends that the framework should provide further information about the amount/type of evidence required to be supplied by victims/survivors in order to access each payment level.

328. The Committee carefully considered the evidence it heard regarding alternative methods of assessing awards, including the possibility of bandings being used, rather than payments at fixed levels. The Committee notes the range of views shared in both written and oral evidence on this topic.

329. Whilst acknowledging and supporting the desire for the redress scheme to be up and running as soon as possible, the Committee believes this Assessment Framework is instrumental to the operation of the scheme and, as such, should be enshrined in secondary legislation and subject to Parliamentary scrutiny under the affirmative procedure.

330. The Committee also notes that, whilst the redress scheme is designed to have lower evidential requirements than civil litigation, that payments are significantly lower than those that would potentially be available to (post-1964) victims/survivors via that route.
331. It is not for the Committee to recommend the levels at which payments to victims/survivors should be set. The Committee notes, however, that there is general dissatisfaction amongst victims/survivors at the current levels set out in the Bill.
332. The Committee recommends that ahead of Stage 2 the Scottish Government revisits the payment levels and awards currently set out in the Bill, taking into account the evidence the Committee has received, and that any increase in payment levels or other costs in the scheme should be reflected in a revised Financial Memorandum.

The Application Process

333. Prior to the publication of the Scottish Government's draft Assessment Framework, several concerns were raised by stakeholders in relation to how the redress scheme application process would work in practice.
334. Digby Brown LLP suggests that 'it should be recognised that the application process and any subsequent representation at appeal will be within the capability of some but by no means all applicants.'⁹⁵
335. Glasgow City Council and Glasgow City Health and Social Care Partnership suggest that a trauma-informed approach is required towards the assessment process and that 'it may be beneficial to define the meaning of 'trauma informed' in this specific context', including 'operationally...for all involved in supporting the delivery of the Scheme.'⁹⁶
336. Several victims/survivors highlighted the difficulties in applicants potentially attaining the higher payment levels, with Anne Macdonald suggesting that 'many survivors will find it impossible to provide intimate details of their abuse as they have never spoken about certain aspects and events with anyone.'⁹⁷
337. This was a point echoed by Pauline Omond, who states 'It's not easy to discuss difficult issues - often hidden deep inside the self because they hurt too much to acknowledge.'⁹⁸
338. Andy Tait suggests that the assessment process used by the redress panel will need to be 'as easy and as unobtrusive to the survivors as it possibly can be', noting that 'it's hard to talk about the abuse which has happened and all so very raw to talk about this.'⁹⁹
339. Several victims/survivors responding to the Committee's call for views on the Bill, had previously given an account of their abuse to the Scottish Child Abuse Inquiry. Those victims/survivors wanted to ensure that the evidence they had given to the

Inquiry would also be taken into account by the panel when applying to the proposed redress scheme, with William Connelly suggesting that 'if a High Court Judge believes what we have said why do we need to go through it all again and provide proof to a panel.'¹⁰⁰ Who Cares? Scotland makes a similar point, noting that 'if a survivor has already shared difficult or 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.'¹⁰¹

340. Janine Rennie emphasises the need to understand how long it takes for a victim/survivor to tell even their therapist what happened to them...often months or years' and noting that 'survivors have told me they will never tell a panel about the sexual abuse they experienced' and noting that the panel should not 'feel like a PIP assessment', before describing this as 'something that made one of my clients suicidal due to the humiliation.'¹⁰²
341. Others suggested that they would welcome having 'the option of speaking to the panel face to face', suggesting that 'at the very least it will give the panel members a clearer picture of how the abuse impacted the survivor and provide a level playing field for all.'¹⁰³
342. Dr Maeve O'Rourke of National University of Ireland Galway observes that 'even though a non-adversarial procedure is proposed, there is a real need to ensure that there are still fair procedures, that people know what documentation they are supposed to be providing and that, if someone else is providing it, survivors get to see it.'¹⁰⁴
343. Who Cares? Scotland also highlights the importance of ensuring panels consider 'experiences of abuse on a case by case basis and without inflexible categories being applies to victims'/survivors' experiences', suggesting that '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.'¹⁰⁵
344. Who Cares? Scotland also emphasises the need to consider carefully 'how a decision about the level of payment is communicated to a survivor', suggesting that 'the process must acknowledge that this may be viewed as a way of a survivor's experience being given a certain value or worth' and that 'communication of 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.'¹⁰⁶
345. There were mixed views on whether the criteria for assessing awards should sit in regulations, guidance or on the face of the Bill, with Una Doherty QC from the Faculty of Advocates, speaking prior to the publication of the draft Assessment Framework, suggesting that 'the guidance - if that is what it is to be - would have to offer more explanation about what is expected', noting that 'at the moment, it is troubling there is no indication of how those determinations are to be made.'¹⁰⁷
346. Iain Nicol of the Law Society of Scotland suggests that 'it is imperative that regulations are introduced to explain what is required to justify each level of award', noting that 'I would have preferred to see the explanation of the level of awards in the primary legislation, because secondary legislation is not necessarily subject to the same burden of scrutiny.'¹⁰⁸

347. The Scottish Government's draft Assessment Framework sets out the different types of information/evidence that would be considered in support of an individually assessed payment application. These include—

- ” • A detailed account of the abuse suffered;
- Previous statements/evidence given in other proceedings;
- Medical or social work or care records from the period the applicant was in care;
- Medical records since leaving care, for example, where an applicant has made reference to the childhood abuse experience in relation to treatment for physical injury or psychological or psychiatric harm;
- Previous reports/disclosures to the police or to others; Statements from third parties (witnesses to the abuse, or to disclosure of abuse by the applicant or potentially other survivors from the same care setting);
- Criminal convictions of perpetrators;
- Criminal convictions relating to the abuse occurring within the care setting;
- Findings of liability within previous civil cases relating to abuse occurring within the care setting;
- Findings of fact published by the Scottish Child Abuse Inquiry in relation to the care setting; and
- Relevant inspection reports or other records noting concerns regarding the care setting.¹⁰⁹

348. The draft Assessment Framework also goes on to outline 'relevant matters' that are to be taken into account by the panel, which include—



- The age of the applicant at the time of the abuse;
- The relationship to the perpetrator;
- The number of perpetrators;
- The number of relevant care settings in which the applicant was abused;
- The experience of multiple types of abuse;
- The personal circumstances of the survivor (for example, race, religion or disability);
- The length of time spent in relevant care settings where the applicant experienced abuse;
- The extent to which the child was singled out and treated differently from others in the care setting at the same time;
- The extent to which allegations of abuse made by the survivor, at the time or subsequently, were not given proper consideration.

349. The draft Assessment Framework elaborates on the Bill's approach towards the impact of abuse, noting that 'the redress scheme will assess the abuse itself rather than the longer term impact it had on the survivor...survivors will not be required to establish or evidence the extent to which their adult lives have been affected by the abuse they suffered as children. Redress Scotland will not look into the circumstances of the child's life before or after they went into care. The intention is that survivors will not be assessed at a lower level of payment if they outwardly appear to have 'coped' better than others with the fact of abuse.'¹¹⁰

350. This was at odds with many victims'/survivors' understanding of how their application would be assessed by the redress scheme, with Pauline Omond suggesting that impact should be taken into account, noting that 'no-one forgets their past or how they were shaped by events - some of which still haunt me to this day'.¹¹¹

351. Dr Susannah Lewis, however, suggests that impact-related conditions could be used as 'evidence that the survivor was abused e.g. where there is evidence of Post-Traumatic Stress Disorder, behaviour consistent with 'neurodevelopmental trauma' (due to neglect), or where a survivor has mental health difficulties consistent with 'attachment disorder.'¹¹²

352. Anne Macdonald is keen to ensure that 'in providing evidence of abuse it should be understood that one abuse act can be as traumatising as several instances', noting that 'if the Redress Scheme insists otherwise there is a hierarchy of abuse which further diminishes survivors' abuse experiences and stigmatised them.'¹¹³

353. The Committee notes the content of the draft Assessment Framework and that many of the factors raised by victims/survivors throughout the Committee's Stage 1 consideration of the Bill have already been taken into account. The Committee

recommends that the Scottish Government carries out further consultation with victims/survivors and victim/survivor groups on the draft Assessment Framework ahead of a final version being published.

354. The Committee recognises that for many victims/survivors, their journey in disclosing abuse may just be beginning. Expecting victims/survivors to be able to share intimate details of their abuse with the panel, when they may not have shared this with anyone else, including their family, may mean that some victims/survivors may not apply to the scheme. The Committee recommends that the Scottish Government should have these victims/survivors in mind when designing support mechanisms (discussed in more detail in the Support Needs of Victims/Survivors section of this report).
355. The Committee notes the statements in the draft Assessment Framework that supporting documentation and evidence provided in respect of an application may include 'previous statements/evidence given in other proceedings' and 'findings of fact published by the Scottish Child Abuse Inquiry in relation to the care setting.'¹¹⁴
356. However, the Committee would welcome further detail regarding what weight will be attributed to such statements, including in relation to the level of payment or other documentation that might be required to support an application.
357. The Committee would also appreciate clarification of whether the Scottish Government has identified any potential barriers to victims/survivors sharing evidence provided to the Scottish Child Abuse Inquiry in this context.

Burden of Proof

358. As currently drafted, the Bill is silent on the burden of proof applied when considering applications to the proposed redress scheme, with the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) noting that 'it is understood that the test for proof or evidence of a claim is not intended to be laid out in such terms as being on the balance of probabilities', before acknowledging that 'this is a well understood term in Scots law and likely to be in reality the approach that will have to be taken by Redress Scotland for individually assessed payments.'¹¹⁵
359. Similarly, the Faculty of Advocates states that 'when the panel is reaching a determination under section 34 it is not clear what standard of proof it is to apply', suggesting that 'the applicable standard of proof be 'balance of probabilities', and that 'for the Bill to remain silent on the standard of proof risks inconsistent approaches being adopted in practice.'¹¹⁶
360. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills stated that 'the burden of proof that will be required in the bill's redress scheme will, without a doubt, be significantly lower than the standard of proof in a civil case.'¹¹⁷

361. The Committee notes the Cabinet Secretary's suggestion that the burden of proof required for the redress scheme will be 'significantly lower than the standard of proof in a civil case.'¹¹⁸
362. However, it remains unclear exactly which standard will be used, what its status will be in law, how this will interact with the draft Assessment Framework and what implications it will have in relation to determining both the fixed and individualised payment awards. The Committee would welcome clarification from the Scottish Government of these points ahead of Stage 2.
363. The Committee also believes that those applying to the scheme should have a clear picture of the key principles used to establish whether an application is genuine (including whether there is a presumption that they will be believed) and that these principles should be set out on the face of the Bill.
364. The Committee recognises that the Assessment Framework underpins this decision-making process and, as previously stated, recommends that this should be set out in regulations subject to the affirmative procedure.

Liability

365. The proposed redress scheme's ability to offer victims/survivors with both financial and non-financial redress without the requirement to establish liability for the abuse they experienced, was seen by many to be a positive step, with some stakeholders noting that the lowering of evidential requirements was likely to widen access to the scheme.
366. Others, however, sounded a note of warning, with the Faculty of Advocates noting that if 'neither the offer of a redress payment nor the failure to make an offer is to be taken as a finding as to whether or not a person who is referred to in an application acted, or failed to act, in a way suggesting in the application' then 'this seems to preclude the panel from determining whether abuse actually took place. That being so, it is not obvious how the panel can even determine whether the eligibility criteria in section 16 are met since one of those criteria is that a person "was abused"', noting that 'the same problem would apply, by extension, to section 22. We do not see any way around the panel being required to determine whether, as a matter of fact, the alleged acts/events which amounted to abuse took place.'¹¹⁹
367. The Faculty of Advocates goes on to state that 'the way in which section 34 is worded suggests that the panel does not even have to decide whether abuse happened. That cannot be right, because they must be satisfied that it happened or there should not be a payment at all....that needs to be addressed, otherwise there will be no consistency in the approach. The panel members have to know that they must at least be satisfied that the abuse happened.'¹²⁰
368. Whilst it was generally acknowledged that instances of fraud would be rare, the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) also suggested that 'some steps should be taken to protect and minimise advantage being taken of the scheme' in order to 'ensure real survivors are fully compensated.'

369. The Committee notes the points raised by legal stakeholders in relation to Bill's current approach towards establishing liability, and in particular how this may make present challenges to the Redress Scotland panel in verifying whether abuse took place. The Committee therefore encourages the Scottish Government to reflect on this evidence ahead of the Committee's consideration of the Bill at Stage 2.

Sourcing Records

370. The Scottish Government's draft Assessment Framework accompanying the Bill suggests that 'survivors applying for individually assessed redress payments will require to provide supporting evidence that they were resident in a relevant care setting and that they were abused whilst there.'¹²²
371. Stakeholders highlighted significant challenges for victims/survivors in providing evidence of their time in care.
372. The Law Society of Scotland suggests that 'there are often practical difficulties in coming up with even a basic level of evidence,' noting that 'if the bill's premise is to make access to redress easier for vulnerable survivors, we should be thinking about the possibility of not insisting on proof of residence other than by way of an affidavit' and suggesting that 'in the scenario in which an applicant cannot come up with documentary evidence to prove residence, the statement that they are expected to produce could simply contain confirmation of the basic requirements,' and that to make the process more accessible, Redress Scotland could accept 'a sworn statement to justify the basic level of payment.'¹²³
373. Nicky McKinstrey highlights that it took over 1.5 years to source their files,¹²⁴ with Pauline Omond observing that 'I find myself in a very difficult position in terms of proving eligibility because the Local Authority have told me that they have lost my Case Notes...'¹²⁵
374. Survivors First suggests that the assumption victims/survivors will be able to easily access their records is flawed, observing that 'roughly 90% of survivors who come forward are going to fall at this hurdle', asking 'where on earth is someone who was abused forty or fifty years ago going to find such information?'¹²⁶
375. An anonymous survivor suggests that 'if I and my fellow survivors cannot provide documentary evidence, through no fault of our own, that the local authority met our costs, we will be ineligible for financial redress, the way the Bill is currently presented....I do not believe discriminating against survivors because organisations chose to lose or destroy evidence is the aim of the government and I believe it would be unjust if it was allowed to happen. It would turn into a postcode lottery and survivors would feel cheated and deprived of justice.'¹²⁷
376. However, the Scottish Government appears confident that it will be able to assist

those victims/survivors struggling to find their care records, with Donald Henderson, Deputy Director, Redress, Relations and Response Division, providing reassurance that what might at first appear impossible, may be possible, noting that 'when we have walked survivors through the advance payment scheme, which is very much simpler and has the equivalent of the fixed-rate payment, we have worked with them on proving that they were in care', noting that 'survivors have come to us thinking that they did not have evidence and we have helped them to find it. We have not rejected a single case because somebody could not establish that they were in care—sometimes very many decades ago. We have always found a way.'

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377. The Draft Assessment Framework provides further detail on the kind of support victims/survivors could expect from the Scottish Government in sourcing records, suggesting that—

” Where a survivor has been unable to obtain any evidence to support their account of the abuse taking place, the staff of the Scottish Government division carrying out the administrative and processing functions of the redress scheme will work with them to try and obtain evidence. This may, in appropriate circumstances and with the consent of the survivor, including supporting the survivor in commissioning and paying for medical or psychological reports. Such reports would be for the purpose of supporting the fact of abuse and of its impact. ¹²⁹

378. The Committee is broadly content with the provisions in the draft Assessment Framework relating to support for victims/survivors in tracing their records.

Compulsion to Provide Information/Evidence

379. The Scottish Human Rights welcomes the inclusion of the power for Scottish Ministers to 'compel any individual or body (other than the applicant) to provide them with specified information or other evidence for the purposes of the determination of an application for a redress payment,' noting that whilst the expectation is that most organisations will comply with voluntary requests for information, 'the initial InterAction work made clear that access to records was one of the key asks of survivors, whether to facilitate personal understanding of the past or to support civil claims' and noting that 'if organisations are able to provide survivors with records which can support their claim, then this represents an important part of the reparation process.' ¹³⁰

380. Several Local Authorities noted that there would be resource implications in supporting victims/survivors to access their records, with Angus Council suggesting that 'there are many types of information that would potentially be considered in support of an individually assessed payment in addition to the survivor's account within the application form.....' and that such information may cover both their childhood and adulthood.' ¹³¹

381. Stirling Council also notes that there may be increased pressure on individual local authorities to provide support to victims/survivors where they are hosting records from previous regional councils. ¹³²

382. The Committee also welcomes the Scottish Government's commitment to support survivors to access their records, including the powers of compulsion.
383. The Committee suggests that ahead of the redress scheme being launched, those holding historical care records should review their processes to ensure that for victims/survivors, the experience of accessing their files is as swift and straightforward as possible.

Capacity of Applicant

384. The Scottish Human Rights Commission raises significant concerns about section 49 of the Bill, which provides panels with the ability to 'give directions around payment and management of the redress payment 'for the benefit of the applicant as it considers appropriate.' The Commission states 'these powers exist where an applicant is under the age of 16 years, is an adult with incapacity or is 'a person whose ability to manage the redress payment is otherwise impaired due to mental or physical illness, disability, age or any other reason.'¹³³
385. The Commission expresses concern that the Bill potentially allows the Redress Scotland panel too much discretion in assessing the capabilities of a person to manage a redress payment, noting that 'in particular, references to illness and disability are very concerning.'
386. The Commission goes on to note that safeguards are already in place to protect vulnerable people from exploitation, including 'a formal legal safeguarding framework in place through the Adults With Incapacity (Scotland) Act 2000 and any restrictions or directions on payments should be made in accordance with a recognised legal procedure, such as through powers of attorney or financial guardianship', suggesting that 'linked to the provisions on support and advice, survivors should be supported throughout their application process and may wish to accept help with managing any payments received. Survivors should identify the most appropriate support for them and any payment management plan should be arrived at in full agreement with the survivor.'¹³⁴
387. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills did not share the Scottish Human Rights Commission's concern about section 49, suggesting that—
- ” I am not sure that I would quite see that as an issue. The concept of capacity is well defined in Scots law. What we are trying to do in the bill is acknowledge that some survivors will have experienced such trauma that they face significant challenges in their lives and may require some support to deal with issues that may emerge from the redress scheme and also the substantial payments that may arise. I do not think that those survivors would be classified within the terms of the Adults with Incapacity (Scotland) Act 2000, but they will be provided with some support to help them to manage their affairs.¹³⁵
388. The Committee wrote to the Cabinet Secretary following his appearance on 4 November 2020 and asked him to provide further clarification on this aspect of the

Bill.

389. In a letter received by the Committee on 13 November 2020, the Cabinet Secretary states that section 49 of the Bill was drafted following concerns raised via the Scottish Government's pre-legislative consultation on the proposed redress scheme, that 'consideration be given to the potential safeguarding issues which may arise following receipt of payment for some vulnerable applicants,'¹³⁶ with the Cabinet Secretary going on to state that the Scottish Government intends to develop guidance for Redress Scotland 'to ensure that this section is only used when absolutely necessary and with respect to the rights, wishes and needs of an applicant', noting that 'we also plan to signpost recipients of a redress payment to financial advice, where they will have the option to access support and advice on how to manage their payment.'¹³⁷
390. The Cabinet Secretary also stresses in his letter that this section takes into account existing legislation, noting that 'there is no intention to create a new legal framework for adults with incapacity or vulnerable applicants and section 49 in no way cuts across the existing Adults with Incapacity (Scotland) Act 2000'¹³⁸ and that the guidance set out in section 97 of the Bill will 'reinforce that this power should only be utilised where there has been sufficient engagement with the applicant and/or their representatives (where possible), to allow them to make an informed decision as to whether the use of these powers would be appropriate.'¹³⁹
391. The Committee carefully considered the concerns raised by stakeholders about section 49 and the potential that it would create a parallel system for assessing victims'/survivors' capacity.
392. Whilst taking into account the Cabinet Secretary's reassurances that this section is not intended to cut across existing legislation, the Committee believes that section 49 is not the best way to deal with safeguarding concerns identified in the Scottish Government's pre-legislative consultation.
393. Existing legislation, including the Adults with Incapacity (Scotland) Act 2000 already provides a framework to assess where an individual may be at risk, due to a lack of capacity. The threshold for using the powers under this Act is high, recognising that intervention of this sort should only be used when significant concerns exist and following the principle of minimal intervention.
394. Whilst appreciating the Cabinet Secretary's assertion that section 49 has been drafted to take account of such legislation, section 49(1)(a) refers to a payment to someone under the age of 16, to whom the Adults with Incapacity (Scotland) Act 2000 would not apply (as 'adults' for the purposes of the 2000 Act are defined as being aged 16 and over).¹⁴⁰
395. Section 49(1)(c) is also particularly unhelpful, given that it conflates the concept of 'capacity' with someone who is 'impaired due to mental or physical illness, disability, age or any other reason.'¹⁴¹ This arguably goes much further than the 2000 Act and risks decisions being taken on the basis of pre-conceived ideas, rather than a formal assessment of capacity with any of the 2000 Act's accompanying safeguards.
396. The Committee notes that there is a right to review associated with section 49,

however, it believes that this should not be relied upon to provide the appropriate checks and balances required for the use of such an extensive power.

397. The Committee appreciates that for some victims/survivors, the receipt of a large sum of money may lead to risk, either in relation to their own well-being or the potential for exploitation. The Committee believes, however, that these risks can be managed within the scope of existing legislation and that section 49 of the Bill is therefore redundant and should be removed.
398. The Committee recognises that some victims/survivors will require support to access the redress scheme, including in making an application.
399. As any redress is designed to benefit only victims/survivors (and in some circumstances their next of kin), the Committee believes that those offering support to access the scheme should be carefully vetted and should have no financial interest in the process (for example, a firm offering to make an application in exchange for a percentage of a victim's/survivor's award).
400. As such, the Committee recommends that the Scottish Government should clarify exactly who will be eligible to make an application to Redress Scotland on behalf of a victim/survivor and who will be excluded from doing so.
401. The Committee welcomes the Cabinet Secretary's commitment to offering a wide range of support to victims/survivors and would suggest that individual victims/survivors are best placed to identify the support which would be of most help to them. This could include independent financial advice, advocacy or the provision of written information. Again, consideration should be made of any potential safeguarding concerns, including in relation to any third parties seeking to benefit from assisting victims/survivors to apply to the scheme.

Composition of Redress Scotland Panel

402. According to the Bill's Policy Memorandum, Redress Scotland will be a 'new, Non-Departmental Public Body (NDPB)' whose role it will be 'to make decisions on applications for redress in order to ensure that decision-making is independent of the Scottish Government.'¹⁴²
403. The Policy Memorandum goes on to state that the combination of a small NDPB with administrative support from a dedicated Scottish Government division was chosen as it 'offered the best value for money and the lowest risk of delay to the scheme opening', whilst also allowing for 'effective governance, with a suitable degree of independence from the Government for those making decisions on redress applications, and a strong survivor voice.'¹⁴³
404. Schedule 1 of the Bill states that Scottish Ministers must appoint members to the panel which will assess redress scheme applications where they have 'such skills, knowledge and expertise as the Scottish Ministers consider relevant to the carrying out of the functions of Redress Scotland.'¹⁴⁴

405. In their evidence to the Committee, some victims/survivors expressed anxiety that the panel would not have sufficient understanding of abuse from a victims'/survivors' perspective, whilst others wanted to ensure power imbalances between the panel and applicants would be minimised.
406. William Murphy suggests that 'my worry and concern is that the panel members will have had no experience of this [abuse] and may lack sufficient empathy,'¹⁴⁵ with Nicky McKinstrey stating 'I have concerns if lawyers will be part of the panels because the victim should be able to have their own lawyer to ensure they are being treated fairly.'¹⁴⁶
407. The Scottish Human Rights Commission suggests that 'consideration should be given to setting out any specific professional background or skills that Redress Scotland members should have in primary legislation', noting that 'an understanding of human rights, legal knowledge and knowledge of complex trauma are all important attributes that should be represented in the membership of Redress Scotland.'¹⁴⁷
408. Former Boys and Girls Abused in Quarriers Homes suggests that 'a range of knowledge and understanding should be represented in any Panel set-up which will have decision making roles in the Redress Scheme,' suggesting that 'all Panel members should be wholly independent, impartial with integrity to arrive at decision making which is open to full scrutiny internally and externally.'¹⁴⁸
409. In private evidence sessions with victims/survivors, the possibility of survivors themselves being represented on the panel was also suggested.
410. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills explored victim/survivor involvement in the assessment process—

” ...on the difficult issue of whether survivors should be on awarding panels, I am not opposed to the idea. The feedback from our dialogue with survivors was that we must consider whether being involved in decision making on cases would potentially traumatise survivors—and we came down on the side on which we came down in that regard.

Having said that, the Government wants to ensure that we constantly hear survivors' views in the process, to ensure that we understand, are aware of and take account of the survivor's perspective in every way that we can in the shaping and delivery of the scheme.¹⁴⁹

411. The Committee recognises the value in Redress Scotland panel members fully understanding the potential barriers victims/survivors might face in applying to the redress scheme, particularly in relation to how past trauma may manifest itself.
412. The Committee considered whether there should be a requirement for someone with survivor experience to appear on each Redress Scotland panel.
413. The Committee's view, however, is that, whilst there should be no barrier to a suitably qualified victim/survivor applying to become a panel member, there

should not be a presumption towards each panel having victim/survivor representation.

414. Instead, the Committee encourages the Scottish Government to explore ways in which the 'strong survivor voice' identified in the Bill's Policy Memorandum¹⁵⁰ and the Survivor Forum can best inform the development of Redress Scotland's work, including how they will ensure survivors are engaged in the setting up and ongoing operation of the scheme.
415. The Committee recognises that Redress Scotland's key role is as a decision-making body, with the administrative functions of the redress scheme fulfilled by the Scottish Government. The Committee acknowledges that a Chair and at least five other panel members will be appointed to Redress Scotland, with a small secretariat supporting their work.¹⁵¹
416. The Committee requests further clarification from the Scottish Government of how Redress Scotland will be governed, including measures to scrutinise its performance and hold panel members accountable across the lifetime of the scheme.

Financial Contributions to the Redress Scheme

Need for Clarity & Transparency

417. A key tenet of the Bill is that the organisations responsible for historical child abuse should be encouraged to contribute to the fund from which redress payments will be made, with the Committee agreeing with the Cabinet Secretary's assertion that those organisations have a 'moral obligation' to do so.¹⁵²
418. In order to incentivise care providers to make a contribution, the Bill creates a waiver scheme (explored in more detail later in this report), which can only be accessed by those making a 'fair and meaningful' contribution to the scheme. The Bill states that the definition of what would constitute a 'fair and meaningful' contribution is a matter for Scottish Ministers.
419. Participation in the scheme by care providers is designed to be voluntary, with the Cabinet Secretary for Education and Skills explaining 'our judgement is that in order to create obligations to compel financial contributions to the redress scheme, we would have to create a scheme which made binding determinations on fault or negligence more akin to a court type process', noting that 'we do not want to simply mimic the court process, we already know that does not work for all survivors.'¹⁵³
420. In his evidence to the Committee, the Cabinet Secretary restated that the redress scheme will not be for everyone and that some survivors will prefer to pursue civil litigation instead, stressing that 'the Scottish Government is trying to put in place a reliable and dependable means for survivors to have an acknowledgement of their suffering and some reparation for that', noting that 'it does not take away their right to go to court.'¹⁵⁴
421. A common observation amongst potential contributors to the scheme, however, was that even where there was a desire to contribute, there was insufficient detail in the Bill to allow organisations to say with any certainty whether they would be able to contribute to the proposed redress scheme, with Aberlour noting '....some organisations that could be liable to claims through the scheme remain uncertain about the potential number of claims they may be exposed to. Therefore we would require clarity regarding the overall level of contribution and what is seen as meaningful before committing to the scheme.'¹⁵⁵
422. In a letter to the Committee received on 13 November, the Cabinet Secretary for Education and Skills outlined two models being developed to allow organisations to be included on the 'contributors' list' set out in section 12 of the Bill. The first, designed for larger organisations, will mean that 'following the initial assessment, contributors will be asked to pay a proportion as an initial contribution to the scheme, and to pay the remaining instalments in accordance with a contractually agreed payment schedule', before going on to explain that the payment amounts will be subject to regular review and that 'as a result of a review, the remaining instalments could be adjusted up or down, but organisations will ultimately be agreeing to pay for all individually assessed payments beyond the Scottish

Government £10,000.'¹⁵⁶

423. The second model which is being proposed will be for 'very small organisations, or those likely to be named in very low numbers of applications resulting in payments' and would require that organisation to 'agree a specified sum by way of an initial payment' and then 'the Scottish Government will fund payments relating to that contributor in the first instance but will seek reimbursement from it on a regular basis' and in the case that the initial contribution exceeds the payments made, then this would be reimbursed.¹⁵⁷
424. COSLA also suggests that a third approach could be taken by Local Authorities who, rather than paying for individual cases in their area, could instead pool resources, suggesting that to do so would 'streamline the process for survivors so that they would not have to take a case against a particular local authority; rather there would be collective responsibility.'¹⁵⁸
425. Section 13 of the Bill 'requires the Scottish Ministers to prepare and publish a statement of principles on which they will determine whether a contributor should be included in, or removed from, the scheme contributor list,'¹⁵⁹ with section 45(1) providing that 'in order to receive a redress payment under the scheme, an applicant must agree to to abandon any relevant civil proceedings, and to waive their right to raise such proceedings in the future.'¹⁶⁰
426. The Committee notes that the Scottish Government's draft Statement of Fair and Meaningful Principles was not published until 2 November 2020, by which point the Committee had considered the majority of its evidence on the Bill at Stage 1.
427. Following his appearance before the Committee on 4 November 2020, the Committee wrote to the Cabinet Secretary for Education and Skills to request further details of the 'algorithm' that care providers appearing in an earlier evidence panel had suggested would be used to calculate contributions.
428. The Cabinet Secretary replied on 13 November 2020, stating that any initial assessment would be calculated using information from 'the organisation involved, the Government's Actuary's Department (GAD), and the Scottish Government' and this would include consideration of 'the number of children accommodated by the organisation; the ages and years in which these children were admitted to the organisation, where known; an estimate of how many former residents of the organisation may still be alive in 2021; the potential number of survivors of abuse who may apply to the scheme and the payment levels available in the redress scheme.'¹⁶¹
429. The Cabinet Secretary also notes that 'the Scottish Government will pay all the costs of setting up and delivering the redress scheme, the costs associated with providing support to survivors during the application process, legal costs for survivors to apply and costs associated with delivering non-financial redress, such as therapeutic support'¹⁶² and that 'The Scottish Government will pay in full the cost of redress payments to survivors if the organisation that provided their care does not make a fair and meaningful contribution to the scheme, or where the organisation no longer exists and no successor organisation contributes.'¹⁶³

430. In considering evidence on the potential definition of a 'fair and meaningful' contribution to the scheme, the Committee was struck by the potential open-ended nature of this arrangement over the lifetime of the redress scheme, given that an organisation would be expected to make an initial contribution and then subsequent payments dependent on the number of victims/survivors coming forward, without any certainty of what their eventual overall payment would be.
431. Victims/survivors also suggested that further clarity regarding individual assessments of 'fair and meaningful' payments would be useful, with In Care Abuse Survivors (INCAS) noting that 'if the level or contribution is not disclosed, survivors will have no way to be assured that the contribution has, in fact, been fair and meaningful.'¹⁶⁴

Number of Potential Applicants

432. As stated earlier in this report, a key element influencing the level of contributions care providers will be expected to make is the number of potential applicants to the redress scheme who experienced abuse under their care.
433. The Bill's Financial Memorandum estimates that between 3,000 and 11,000 people will be able to apply for a redress payment.¹⁶⁵
434. In order to provide a realistic indication of the likely costs associated with delivering the scheme, an estimate based towards the top of that scale was chosen, and costs have been calculated on the basis that 11,000 victims/survivors were likely to apply,¹⁶⁶ leading to an anticipated overall cost of £400m, which includes the delivery of the scheme, legal fees, and wider support (e.g. counselling).¹⁶⁷
435. In considering the Bill's Financial Memorandum, the Committee recognised that there was scope for significant variation in this figure, due to a number of unknown variables, including the exact number of children abused and the number who wish to and/or are able to make an application.
436. For that reason, the Financial Memorandum sets out three 'sensitivity analyses.'¹⁶⁸ These set out three possible scenarios on the basis of a low, medium or high level of applications to the scheme. When all three of these scenarios are taken into account, the Financial Memorandum estimates that overall costs for the scheme may range anywhere from £300m to £600m,¹⁶⁹ with the medium uptake scenario likely to lead to costs of £300m to £350m, based on an average payment in the region of £30,000 per applicant (estimated at 11,000 applicants and excluding administration and associated costs).¹⁷⁰
437. Further assumptions are made to inform this estimate, including that most of those applying to the scheme will opt for the individually assessed payment option, rather than seeking a fixed rate payment¹⁷¹ and that £80,000 payments would be restricted to 'the most severe experiences of abuse,'¹⁷² with the largest proportion of payments being anticipated at £20,000, alongside 'a smaller proportion of payments at £10,000 and of £40,000.'¹⁷³

438. The Financial Memorandum stresses, however, that each application will be decided on its own merits and that this modelling should not be construed as any kind of target or quota.¹⁷⁴
439. Any 'fair and meaningful' contributions to the scheme from care providers can be used to off-set some of the Scottish Government's expenditure arising from individualised payments. However, where an organisation chooses not to participate in the scheme, then the full costs of the scheme will be borne by the Scottish Government.¹⁷⁵ As the level of these contributions will vary between different care providers, and there is no certainty yet as to who will choose to participate in the scheme, then any contributions made cannot yet be factored into the costs of the scheme.¹⁷⁶
440. Donald Henderson, Deputy Director, Redress, Relations and Response Division at the Scottish Government, suggests that whilst the overall estimate for the scheme is in the region of £400m, that 'this is intensely difficult territory in which to estimate the final number of applicants and the average award that would be made', noting that 'in the considerable research that we have conducted into other schemes running internationally, we have not found a single case in which the initial estimates were correct', noting that in Ireland despite diligent work by civil servants 'their estimates were out by multiples.'¹⁷⁷

441. The Committee understands the rationale behind the estimates set out in the Financial Memorandum, given that it provides for three potential scenarios and takes into account the experiences of other redress schemes, however, the Committee notes the real uncertainties which exist in relation to the costs associated with the redress scheme.¹⁷⁸
442. The Committee recommends that, should any substantive changes be made to the financial elements of the Bill (for example, the level of payments or the scheme's eligibility), then the Scottish Government should produce a revised Financial Memorandum and that this should be available ahead of Stage 2.

Role of Insurers

443. The role of insurers in helping care providers make larger contributions to the redress scheme was raised with the Committee in both written and oral evidence, with both insurance organisations and care providers expressing doubt that insurance coverage could be used to meet contributions to the redress scheme.
444. The Association of British Insurers notes in its written submission that 'insurance policies covering personal injury, including historical child abuse claims will be triggered only when a legal liability is established', noting that 'there is a lack of detail in the Bill on the level of evidence proposed by the Scottish Government to meet the requirement for a redress payment and so it is not clear whether that level of evidence meets the standard required under civil law to trigger an insurance policy.'¹⁷⁹

445. The Association of British Insurers goes on to note that 'the lack of clarity in the Bill as introduced means it is not possible for an insurer to confirm its position on the Bill at this point in time as there are too many unknown factors,'¹⁸⁰ noting too that 'it will be an individual commercial decision for an insurer whether or not they provide a contribution to an organisation they have insured if that organisation decides to make a financial contribution to the proposed redress scheme'.¹⁸¹
446. This is a point echoed by COSLA who notes that 'the design of the redress scheme means that it is unlikely that Councils can draw on historic insurance cover to help fund the Local Government contribution,' noting that 'less stringent evidentiary requirements and the lack of determination of liability means that Councils would likely fail to access historic cover for this specific purpose, despite having purchased cover in good faith, to provide a level of protection from these and other related risks.'¹⁸²
447. The Cabinet Secretary also acknowledges a number of key difficulties identified in relation to insurers, including that 'the historical insurance landscape is complex and fractured; organisations have varied amounts of cover and this may not apply consistently across the time periods covered by the scheme; and some organisations believe that having paid insurance premiums, they should not also have to pay redress.'¹⁸³
448. If a key cornerstone of the scheme is that the waiver provision set out in section 45 of the Bill will not only encourage care providers to contribute, but also provide an incentive to insurers to pay into the scheme (given that the waiver will rule out victims/survivors pursuing civil litigation in future), then the Committee remains unconvinced that this will operate as the Scottish Government envisages.
449. To involve insurers as contributors, significant changes would have to be made to the evidential requirements of the scheme in order to establish liability, which would risk undermining the principles which underpin its operation, i.e. that it should provide victims/survivors with a straightforward and accessible alternative to pursuing civil litigation.
450. The Committee therefore considers that in all likelihood, care providers will have to source contributions to the redress scheme from their own funds.
451. This provides a further disincentive to their participation as, where a care provider chooses not to make a 'fair and meaningful' contribution to the scheme, the Scottish Government has stated that it will underwrite any redress payments to victims/survivors.
452. The Scottish Government suggests that the existence of the waiver would guard against future civil litigation. However, from an organisational perspective, where suitable insurance cover is in place, then civil litigation may appear to be a less risky option as, even if the award to a victim/survivor is much higher than that provided for under the redress scheme, it is the insurance company which will bear the brunt of the costs.
453. The Committee recognises that, as the redress scheme has lower evidential thresholds and will not establish fault or liability in relation to abuse experienced

by an applicant in the way that a civil court would, it is currently very unclear which, if any, insurance providers would pay for an organisation's contribution to the scheme and on what basis that payment would be made.

454. The Committee notes the Scottish Government's view that the position of insurance companies 'is a significant factor for many potential contributors, including some who may otherwise struggle to make the 'fair and meaningful' contributions required to justify the extension of the waiver to them'¹⁸⁴ and that the waiver scheme (discussed later in this report) is predicated on the idea that organisations will be incentivised to contribute to the redress scheme as victims/survivors will not be able to raise a civil action once the waiver is signed.
455. Given the voluntary nature of the redress scheme, the Committee has heard no evidence to suggest that insurance companies will contribute to the scheme on behalf of their policyholders, meaning the full costs of contributions from care providers are likely to have to be met from their own funds.
456. The Committee therefore recommends that the Scottish Government revisits this key element of the Bill, in light of the evidence the Committee has heard.

Sustainability of Care Providers

457. Acknowledging the likelihood that care providers would have to fund contributions to the scheme from their own funds, a key issue for care providers was how their current financial state would be taken into account when 'fair and meaningful' payments were being calculated.
458. Many pointed out that affordability was key to their participation in the scheme. A number of factors were raised as being worthy of consideration when assessing what a 'fair and meaningful' contribution might be, including any past efforts to provide redress to victims/survivors and the sustainability of any current services. Others suggested that the way in which contributions were collected could have an impact, with the possibility of staged payments potentially making it easier for some organisations to participate.'¹⁸⁵
459. OSCR points out that COVID-19 has taken its toll on many charitable organisations, suggesting that 'fundraising capacity and service delivery across the charity sector has been severely impacted,' and that 'in this environment significant redress contributions from reserves or restricted funds may put charities in a very difficult position.'¹⁸⁶
460. In her evidence to the Committee on 4 November 2020, Viv Dickenson of the Church of Scotland Social Care Council (CrossReach) suggests that 'it would certainly help if the notion of affordability was put into it [the Bill] in some way', observing that 'the financial memorandum and the way that "fair and meaningful" has been translated into an algorithm are particularly difficult and need further scrutiny.'¹⁸⁷
461. COSLA also suggests that Local Authorities may be expected to pay up to £200

million as part of the scheme, noting that 'Local authorities are in a different position from the charitable sector in relation to what is deemed affordable. The more the councils have to contribute to the scheme, the more it will take resources away from a range of services and contribute to the pressures that are already there.'¹⁸⁸

462. Some potential contributors to the scheme were keen to ensure that past efforts to provide redress to victims/survivors were factored in to any calculations of contributions, with Quarriers also suggesting that the concept of a 'fair and meaningful' contribution could be repositioned to include requiring organisations to - 'issue a public apology to survivors of abuse; demonstrate that they are committed to working with survivors as part of a process of reconciliation and non-financial redress; commit to and publish a voluntary level of funding to the Redress Scheme which is affordable, and which will not be to the detriment of people currently being supported; and commit to providing records and supporting survivors' requests for information.'¹⁸⁹
463. Care providers still providing services today recognised that a delicate balancing act may need to be struck to allow organisations to both meet the needs of victims/survivors of historical child abuse in care, whilst still continuing to meet the needs of children and young people accessing their services today.¹⁹⁰
464. As the Church of Scotland Social Care Council (CrossReach) observes in its written submission, whilst it has 'a commitment to survivor support through a variety of different services and an acknowledgement of harms done in the past', its 'resources are limited and the scale of our financial contribution to the Scheme cannot be such that we are forced to withdraw support from those currently being cared for in our communities.'¹⁹¹
465. David Whelan of Former Boys and Girls Abused in Quarriers Homes also recognises the need to take into account organisations' ability to function in future, noting that 'the current organisation cannot be allowed to fail on the back of past wrongs. The organisation's financial position needs to be considered, as does the delivery of services now and in the future,' suggesting that 'if organisations genuinely cannot contribute a substantial amount, an equitable solution must be found.'¹⁹²

466. The Committee has heard evidence that, as currently envisaged, the Scottish Government's approach towards 'fair and meaningful' contributions will mean that some organisations which would otherwise have been willing contributors to the scheme, will ultimately choose not to contribute.

467. The Committee recognises that there is a moral obligation on care providers responsible for historical abuse to contribute to the scheme. In order to maximise participation of such organisations, the Committee recommends that the principles of 'fair and meaningful' be amended to 'fair, meaningful, affordable and sustainable' and the methodology used to calculate these payments should be transparent and appear on the face of the Bill.

468. The Committee recommends that this methodology should specifically take into account a) any payments or contributions in kind an organisation may have

already made to provide redress/remedy to victims/survivors and b) the affordability of the payment, specifically in relation to whether it will negatively impact on an organisation's ability to continue to deliver services today and in the future. Consideration should also be made of whether payments could be 'capped' to allow organisations certainty that they will not exceed an agreed level.

Proposed Changes to Charity Law

469. In addition to concerns raised by care providers about the methods being used to calculate 'fair and meaningful' payments, many stakeholders expressed concern at the proposed changes to charity law contained in sections 14 and 15 of the Bill.
470. According to the Bill's Explanatory Notes, section 14 of the Bill makes provision for financial contributions made by charities to the scheme to be 'treated as being in furtherance of the charity's charitable purposes and consistent with the charity's constitution, providing public benefit, not being contrary to the interests of the charity, and being within the powers exercisable by the charity trustees of the charity.'¹⁹³
471. Section 15 of the Bill provides for 'Scottish Ministers to make regulations regarding charities' use of restricted funds to make financial contributions to the redress scheme,'¹⁹⁴ noting that 'before making the relevant regulations, the Scottish Ministers must consult the Office of the Scottish Charity Regulator.'¹⁹⁵
472. Barry McCaffrey, a solicitor with the Scottish Government, suggests that section 14 is designed to address any 'potential barriers to contributions that might be contrary to an organisation's constitution or that do not meet the charity test' by 'removing any doubt about contributions from charitable bodies contravening charity law in any way,' before going on to note that 'a lot of contributions to charities may be tied up in what are called restricted funds, which are for a specific purpose' and suggesting that section 15 of the Bill is designed to 'remove barriers that would otherwise be in the way of contributions to the fund from charitable bequests that are tied up in restricted funds.'¹⁹⁶
473. Charitable care providers raised significant concerns regarding these provisions, pointing out they risked duplicating or amending existing provisions in the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).
474. SCVO notes that 'charity trustees have a legal duty to make case by case decisions in the best interests of their charities. They are guided in this decision making by the charitable aims of their organisation' and that 'we do not believe that Scottish Ministers should be able to alter the charitable aims of groups of charities; rather, any change to charitable aims and objectives should be a matter for the individual charity. Where Trustees wish to make a contribution to the financial redress scheme but face a barrier to doing so through their current charitable aims, they could make an application to the charity regulator to amend those aims to allow them to make a donation.'¹⁹⁷

475. This is a view echoed by OSCR in their written submission to the Committee, who note that charity trustees have legal duties under the 2005 Act, which 'include the duty to act in the interests of the charity and to act with the care and diligence that is reasonable to expect of someone managing the affairs of another person,' noting that 'charity trustees, following detailed consideration of the impact on their charitable activities, might reach the view that, on balance, a significant contribution to the Redress Scheme is not in the interests of the charity due to the adverse impact it might have on current and future services and beneficiaries.'¹⁹⁸
476. Dr Ron Culley of Quarriers is concerned that section 14 gives the impression that 'any contribution made is not "contrary to the interests of a charity," before noting that 'if the board of Quarriers was asked to make a multimillion-pound contribution by way of participation in the scheme to the degree that it endangered the charity, by definition that would not be in the interests of the charity, but by reading the bill one would infer that it was perfectly fine, so that is highly problematic.'¹⁹⁹
477. The potential for restricted funds, normally used to fund a particular project or work stream, to be redirected towards a contribution to the redress scheme was also of concern to charities, who noted that there are already 'already procedures in place for application to OSCR to amend the use of those funds'²⁰⁰ where Trustees have restricted funds 'they are no longer able to use for the purposes for which they were given.'²⁰¹
478. OSCR also suggests that there could be a 'major unintended consequence'²⁰² of changes to charity law in relation to restricted funds, noting that 'legislating to remove donor conditions on restricted funds and enabling them to be used in a manner which does not further the charity's purposes may affect donor, funder and public confidence in charities. Legislating in this way may undermine the fundamental principle of trust that underpins charitable giving and could impact on future donations - not just for the charities covered by the Redress Scheme, but more widely.'²⁰³

479. The Committee recognises some of the challenges posed by the changes to charity law set out sections 14 and 15 of the Bill to charitable organisations who may wish to contribute to the redress scheme.
480. The Committee also notes that it will be impossible for trustees to agree to their charity participating in the scheme where this would breach their duties to safeguard the organisation's longer-term financial viability.
481. The Committee heard that a key sticking point is the Scottish Government's suggestion that contributors to the scheme will make both an initial payment and, depending on the number of victims/survivors who come forward, potentially a number of further contributions over the lifetime of the scheme. Without any certainty from the outset as to the number of additional payments required, the overall cost of these and when they will require to be paid, trustees will be left with no choice but to advise against their organisation's involvement in the scheme.
482. Whilst the Committee appreciates that these changes have been mooted as a

means of allowing more charitable organisations the flexibility to participate in the scheme, it is concerned that it may, in fact, have the opposite effect and deter otherwise willing organisations from taking part.

483. The Committee heard evidence from some care providers that attempting to use restricted funds for any other purpose than a donor's wishes would potentially undermine charities' relationships with funders and potentially lead to a reduction in future funding.
484. The Committee recognises that engagement with the Bill will create a potential conflict for charity trustees and therefore recommends that the Scottish Government responds to the evidence received by the Committee on this aspect of the Bill ahead of the Committee's consideration at Stage 2.

Waiver Provision

485. As previously stated, a key element of the proposed redress scheme is the existence of a waiver, designed to offer those organisations making a 'fair and meaningful' contribution to the scheme protection from future civil litigation.
486. This waiver only operates where an organisation responsible for historical abuse has made a 'fair and meaningful' contribution to the scheme. If no such contribution has been made, then the victim/survivor would be free to accept both the payment from Redress Scotland and pursue civil litigation against the care provider.

Key concerns

487. Despite the intention to create a system which would offer more choice to victims/survivors, the overwhelming view conveyed to the Committee by victims/survivors was that the waiver restricted victim/survivor choice and should therefore be removed.
488. As Janine Rennie of Wellbeing Scotland notes 'when we carried out our own consultations on the bill with survivors, it was the biggest issue for them....A lot of them expressed extreme anger about the waiver scheme and wanted to take significant action against it.'²⁰⁴
489. Anne Macdonald went further, stating that inclusion of the waiver provision '...exploits the right of self-determination for survivors whose lives have been controlled by their abusers, the institutions that denied the abuse had happened, various governments' failures to address historical abuse and a society that looked the other way,'²⁰⁵ with Richard Tracey noting that 'it is suggested that the purpose of the waiver is not to allow parties to reduce or escape liability. I see that somewhat differently and believe that is exactly what it is going to do. Again, our right to answers and explanations which are a massive part of closure, will be denied.'²⁰⁶
490. The Scottish Government disagrees with this assessment, noting that 'the creation of the redress scheme does not prejudice the ability of survivors to choose that path [civil litigation]. The scheme gives survivors more, not less, choice as to how to pursue financial reparation. Redress does not replace existing avenues of financial reparation'.²⁰⁷
491. The waiver provision operates by requiring a victim/survivor to sign a waiver stating that they will abandon any current or future civil proceedings at the point of accepting a payment from the redress scheme.
492. Simon Collins of INCAS suggests that the waiver is not as straightforward as it might first seem, noting 'applicants would choose whether they were simply electing to accept a payment, but they would have to go beyond that—they would have to waive and give up a fundamental right to further action. Therefore, it should never be seen as just a choice. If there was no requirement for a waiver, there would be a straight choice.'²⁰⁸
493. However, the Scottish Government suggests that 'to allow survivors to pursue both

redress and litigation diminishes the scheme's capacity to provide an adequate national response which seeks to face up to the injustices of the past in order to support survivors and others to move forward,'²⁰⁹ before noting that 'in exchange for relinquishing their right to pursue a remedy through the civil courts,' victims/survivors will be provided with 'a package of financial redress alongside access to non-financial reparations including apology and support.'²¹⁰

494. Not all victims/survivors agreed that the waiver would restrict choice, with Helen Holland of INCAS noting that 'the reality is that the time bar has been lifted since 2017. If a survivor had the body of evidence required to enable them to go down that route [civil litigation], the process should already have been started,' before going on to suggest that 'the reality is that there are choices. I hear people saying that survivors are being denied their rights. However, at this moment in time, they are not. No waiver will be signed until a survivor agrees that doing so is the right thing for them, at which point they will also be given legal advice.'²¹¹
495. In her evidence to the Committee on 30 September 2020, Dr Maeve O'Rourke, National University of Ireland Galway, stated that whilst she understood the waiver was designed to encourage organisations to contribute to the scheme, she was less convinced by the suggestion that 'it would provide a swifter, non-adversarial and more trauma-informed response to historical child abuse'²¹², stating that this 'confuses the waiver with the scheme' and that she did not 'see any benefit of the waiver, other than to the taxpayer.'²¹³
496. Other concerns related to whether victims/survivors would truly understand the implications of signing the waiver, or make an informed choice to do so, particularly given the potential for their circumstances, and their prospects of success in civil litigation to change over time.
497. Simon Collins of INCAS also comments on this issue, noting 'someone might make a decision based on the fact that, at the time, they stand alone in claiming that they were abused in a particular setting and have no support. Throughout their life, since they were abused as a child, they have been alone and without support, so they might elect, properly and appropriately on the advice that is given, to go down the route of redress. However, a year later, or five years later, someone else might come forward and, all of a sudden, access to the civil courts would be opened, but that person would have signed a waiver that would prevent them from going forward.'²¹⁴
498. The Faculty of Advocates notes that 'expert legal advice is necessary if applicants are to reach an informed decision as to whether applying to the redress scheme is preferable to pursuing civil litigation in their particular circumstances.'²¹⁵
499. Others suggested that the timing of legal advice was key, with Digby Brown LLP commenting that victims/survivors are 'strongly encouraged to seek legal advice only at the point of an offer'²¹⁶ and that a decision on whether or not to sign a waiver will need to be made within 12 weeks of receiving an offer, noting that 'in those circumstances, that simply will not be sufficient time for proper informed advice to be given.'²¹⁷
500. Others noted the apparent contradiction of section 89 of the Bill which suggests that

fees for advice 'will not include any fees incurred in connection with legal advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment'. Stakeholders questioned how a victim/survivor could reach an informed decision where such advice on one of the options available did not appear to fall within the remit of the Bill, with Aberlour suggesting that 'Section 89(3) should be removed to allow for the provision of holistic legal advice being given to the survivor on their prospects of success in raising a civil claim.'²¹⁸

501. Others pointed out that for some survivors, a precarious financial situation, particularly in the current financial climate, meant they may feel their options were limited, placing pressure on them to accept what could be a substantial amount of money, albeit much lower than could be achieved via civil litigation, with Janine Rennie of Wellbeing Scotland suggesting that 'many survivors have been waiting for a number of years—indeed, decades—for the redress scheme, and many will accept the £10,000. A lot of survivors are living in extreme poverty and have high levels of debt, so they will think, "I need to accept this."' ²¹⁹
502. The victims/survivors Committee Members spoke to also emphasised the need for trust in care providers following through with their commitment to contribute, noting that, as the Bill is currently drafted, it continues to offer protection to organisations via the waiver, even where a payment has been agreed, but not been paid into the redress scheme fund.
503. Judith Robertson, Chair of the Scottish Human Rights Commission notes that 'ultimately, if a provider does not contribute to the scheme even though they had committed to doing so, that would not then enable the removal of the waiver', before going on to recommend that 'should the waiver scheme go ahead, there should be a mechanism in place whereby organisations that do not make agreed upon contributions cannot benefit from a waiver.'²²⁰
504. Many victims/survivors felt that the waiver benefited only the contributing organisations, whilst potentially restricting their rights to access justice. Others raised the potential for human rights issues to arise from the waiver.
505. The Scottish Human Rights Commission suggests that whilst the waiver does not appear to breach any convention rights, 'it is not good practice'²²¹ and that 'there is a balance to be struck in relation to the role of, and the contributions made by, providers and those who have undertaken the abuse' suggesting that this does not necessarily need to be done 'at the cost of sacrificing the rights of survivors in the process.'²²²
506. In his evidence to the Committee on 28 October 2020, Simon Collins of INCAS notes that it is important to consider what signing a waiver means to individual survivors, noting that 'a pre-1964 survivor who signs a waiver is signing away nothing, because they have no right to access the courts as things stand. For others, it may depend on whether they would have the prospect of success in a civil case if they did not sign the waiver.'²²³
507. Survivors First asks why the Scottish Government is asking 'survivors of child abuse...to give up their right to raise civil action,' ²²⁴ noting that 'the Scottish Child Abuse Inquiry was set up so that those who abused the children of Scotland could

be held accountable, but how can you have accountability without justice?' ²²⁵

508. Further concerns were raised by stakeholders about the cap on legal fees of £1000 + VAT, with the Scottish Human Rights Commission noting in its written submission that 'the Commission does not believe this ceiling is appropriate given the likely amount of legal work required in providing advice as to whether to accept a redress payment and sign a waiver.' ²²⁶

509. Lisa McCloy, Bill Team Leader, suggests that in respect of legal fees 'we have looked at what happened in other redress schemes, and we are aware that legal fees can escalate in some of them. That is not something that we want for this scheme—we want the majority of the money to go to survivors, although we do respect that there is a need for independent legal advice. We are therefore proposing that ceiling limits or caps are placed on the legal advice, to try to control the legal expenses of the scheme. However, we recognise that there will be cases that are more complex than the fee will allow for, so there is a mechanism in the bill for solicitors to apply to exceed the ceiling and a mechanism to review decisions on whether to allow someone to exceed the fees.' ²²⁷

510. Whilst the Scottish Government's stated intention is to create a redress system which would offer more choice to victims/survivors, the overwhelming view conveyed to the Committee by victims/survivors was that the waiver restricted their choices and therefore they felt it should be removed.

511. The Committee also spoke to many care providers at Stage 1 and heard no evidence to suggest that the waiver would incentivise them to participate in the redress scheme.

512. The Committee therefore believes that the overwhelming evidence is that the waiver provision, as currently drafted, will not function in the way in which the Scottish Government hopes. The Committee would welcome further clarity from the Scottish Government as to the primary policy objective of the waiver, i.e. has it been included as a means of encouraging payments from care providers, of avoiding 'double payments' to victims/survivors or both?

513. The Committee is concerned that what may at first appear to be a binary choice for victims/survivors (whose abuse took place after 1964) between the redress scheme and civil justice routes, in fact requires a range of factors to be taken into account including victim/survivor finances, the ability for victims/survivors to explore and understand the consequences of signing the waiver both now and in the future, and (understandable) victim/survivor mistrust of authority.

514. The Committee further notes that, as currently drafted, the Bill requires victims/survivors to make key decisions with significant consequences (e.g. in relation to whether to accept an award and sign a waiver) within a matter of weeks, at a time when they may be highly stressed and/or where it may be difficult to source appropriate advocacy or legal support.

515. For example, section 47(3) of the Bill states that an offer of a redress payment is valid only for 12 weeks from the date on which the offer was received by the applicant and if the applicant wishes a review of this decision, they must request

this in writing to Scottish Ministers within 4 weeks of receiving that offer.²²⁸

516. Whilst there are provisions built into the Bill to allow for those decision-making periods to be extended in exceptional circumstances, it is not clear what might constitute such circumstances and the Committee would appreciate further detail of this, ahead of Stage 2.
517. The Committee also recommends that the Scottish Government revisit the points at which legal advice will be available to victims/survivors to ensure that it is proactively offered when they need it most, rather than asking victims/survivors to claim after the fact. The Committee also recommends that the Scottish Government should put safeguards in place to ensure that third parties are unable to benefit financially from assisting a victim/survivor to make an application to the scheme.
518. The Committee recognises the experiences of other redress schemes, who found costs escalated often due to spiralling legal costs, and therefore supports the capping of legal fees in relation to this scheme.
519. However, the Committee also takes on board the views of stakeholders that the current limits proposed for legal advice may be too low. The Committee encourages the Scottish Government to continue dialogue with stakeholders to ensure that the legal advice offered by the scheme can fully meet the needs of victims/survivors.
520. With the caveat of the Committee's recommendation to produce a revised Financial Memorandum in the event that substantive changes are made to payment levels or the way in which awards are made, the Committee is otherwise content with the content of the Bill's Financial and Policy Memoranda.

Alternatives to the waiver

521. In considering the waiver provisions, the Committee also considered alternative approaches which could replace the waiver. One such alternative was the used of off-setting, that is, the ability for a redress payment to be taken into account when a payment arising from civil litigation is calculated. Essentially, this would mean that a redress scheme payment would be deducted from any future civil award.
522. As Digby Brown LLP observes in its written submission to the Committee, 'a fairer and more workable, approach would be to operate an offset in the event that civil damages have been or will be recovered. This mirrors the equivalent system under the CICA Scheme. No satisfactory explanation has been given as to why the redress scheme cannot operate in a similar way', noting that 'the insistence that a waiver has to be signed to recover a payment benefits only the scheme contributors', suggesting that 'it would clearly be inequitable to have double compensation for the same injury but the principle of offset allows any payment recovered under the scheme to be repaid if the survivor is ultimately successful in a civil claim.'²²⁹

523. This is a point echoed by Kim Leslie of the Association of Personal Injury Lawyers, who states that 'we have to accept that complexity is not an argument against an offset provision. The scheme works the other way, in that previous payments can be deducted', noting that 'the logic is simply not there' and that 'offset is certainly an available option.'²³⁰
524. Janine Rennie of Wellbeing Scotland states that from a victim/survivor perspective, 'most of the survivors that we have spoken to feel that it would be fair for them not to be compensated twice', noting 'this is why a lot of them are saying that there is really no need for the waiver' and suggesting 'they would be quite happy to accept the payment that was most suitable for them and to subtract any other payment that they already had, if it made the process easier.'²³¹
525. The Scottish Human Rights Commission is also supportive of this approach and had previously sought to encourage the Scottish Government to take a different approach than the waiver, stating that 'we proposed the offsetting option, which would involve offsetting payments that are received through the redress scheme against any future payment that might come from a civil case.'²³²
526. Iain Nicol of the Law Society of Scotland suggests that 'it is important to bear in mind that there is no argument for doubly compensating victims', noting that 'it is anticipated that the redress scheme will be quicker than civil litigation.....if a victim got a settlement of £40,000 or £80,000 relatively quickly from Redress Scotland and then proceeded with civil litigation, it is expected that there would be an obligation on them...to repay any compensation to avoid double compensation' and suggesting 'that might give contributors some reassurance that they would not be doubly penalised.'²³³
527. In his letter to the Committee on 13 November 2020, the Cabinet Secretary for Education and Skills notes that 'it would be possible to develop a redress scheme without provision for waiver whilst also preventing double payment for the same matter', suggesting that 'the Bill could have provided that any payments made under the scheme are offset, or deducted, from any future award of damages by a court...or out of court settlement.'²³⁴
528. He goes on to note that 'however, offset is not an incentive to third parties to financially contribute to the scheme, as they may still face the conduct of legal action (albeit the amount they have originally paid would be deducted, except for legal costs which may be irrecoverable)', before suggesting that 'I am clear there would be little incentive for organisations to commit to the incurring the cost of a financial contribution now, in the absence of any claim...instead they would choose to wait until a court action was raised before making any settlement.'²³⁵
529. The Cabinet Secretary concludes by suggesting that 'we have not been able to identify any redress scheme anywhere in the world where providers make contributions but receive no waiver...neither have we seen any scheme that secures contributions by using an offsetting model.'²³⁶

530. The overwhelming evidence received by the Committee from both victims/survivors and potential contributors suggests that the case for a waiver has not

been adequately made. The Committee recommends that the Scottish Government considers removing the waiver and find another way to avoid making double payments to victims/survivors.

531. In making this recommendation, the Committee acknowledges that it is asking the Scottish Government to take a different path to other redress schemes.
532. The Committee requests that, where the Scottish Government believes a waiver should still remain integral to the scheme, it provides the Committee with details of exactly how it will incentivise care providers to participate, given the evidence the Committee has heard to the contrary. This information should be available ahead of Stage 2.

Next of Kin

Eligibility Dates

533. Section 39 of the Bill makes provision for a next of kin payment to be paid where a victim/survivor has died prior to making an application to the redress scheme. This payment is the equivalent of the fixed rate payment (£10,000) and can be made to one person or shared (for example, between surviving children).²³⁷
534. Several stakeholders queried why the next of kin payment would only apply to the families of victims/survivors who had died after the 17th of November 2016, suggesting that this had the potential to severely limit families' ability to claim.
535. Police Scotland questions whether there was a need for a date at all, noting that '...we are of the opinion that there should be no cut-off date', suggesting that 'where a survivor, who would have been eligible to apply, has died prior to implementation of the Scheme, then Police Scotland believes that their next of kin should not be disadvantaged by when their relative died.'²³⁸
536. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills explained the rationale behind choosing the 2016 cut-off date for next of kin payments—
- ” It was in 2016 that I announced that we were going to move to such an approach..... The rationale is of a similar character to that behind the definition of historical abuse as that which preceded December 2004, which was when the former First Minister Jack McConnell made a public apology in Parliament to victims/survivors. It is simply about establishing reference points for eligibility for the scheme to make absolutely clear the circumstances in which individuals—or... next of kin—would be eligible.²³⁹
537. Former Boys and Girls Abused in Quarriers Homes suggest, however, that the date is 'arbitrary' and 'discriminatory', noting that it 'fails to take into account a number of circumstances' and 'raises a number of serious concerns'. Former Boys and Girls Abused in Quarriers Homes goes on to suggest that 'legitimate cases exist whereby deceased victims-survivors families will not benefit due to this cut-off date being so late', meaning that 'opportunities for the families of deceased victims-survivor is very limited now.'²⁴⁰
538. In speaking to victims/survivors themselves, the Committee heard that many had siblings who had been in care alongside them and who had died long before the redress scheme was mooted.
539. There was a sense of shared ownership of the scheme with those who had not lived to see it. Victims/survivors spoke of the next-of-kin payment as one way to acknowledge not only the suffering that they and their sibling/s had gone through, but also to recognise that what had happened to them was wrong and that it should never have taken place. Others saw the next-of-kin payment as a way of acknowledging that their siblings existed and that they mattered, something that those siblings may have struggled to believe whilst alive.

540. Dr Susannah Lewis notes that 'life expectancy is known to be shortened by childhood abuse, and some victims will have died before old age', suggesting that the date chosen 'dishonours the deceased victims (who died before this date) who had reported their abuse to the police/authorities.'²⁴¹
541. Kim Leslie of the Association of Personal Injury Lawyers echoes that point, stating that 'the tragedy of all this is that there are a number of people who have just not made it this time', before suggesting that 'it is...a really welcome part of the bill that the next of kin is recognised.'²⁴²
542. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary indicated that he was open to re-examining the 2016 date, noting that 'nothing about that is absolutely set in stone, and I would certainly be happy to consider the issue.'²⁴³

Evidence Required

543. The next-of-kin process set out in the Bill is designed to be relatively straightforward, mirroring the requirements of a fixed-rate payment application for a victim/survivor.
544. Section 22 of the Bill sets out the conditions in which a next-of-kin application can be made, and notes that this is only possible where the deceased person would have been eligible for a payment and 'had not applied for a fixed rate payment or an individually assessment payment' or had made an application but the limited circumstances set out in section 22(3)(b) apply.
545. Iain Nicol of the Law Society of Scotland states that 'my reading of that provision is that the person just has to prove that they are next of kin and that the applicant would have been entitled to a fixed-rate payment', suggesting that 'I am not entirely sure that there would be any requirement to produce any additional evidence beyond those few things', before noting 'to keep it simple, that would be appropriate.'²⁴⁴
546. Lisa McCloy, Bill Team Leader, confirms that the Law Society of Scotland's interpretation of the next of kin evidence requirements is correct, noting that next of kin—
- ” ...would not have to produce anything over and above what a survivor would have to produce. We will have to look carefully at the requirements for evidence for next of kin. We expect that we will need more than simply hearsay evidence from next of kin applicants that the survivor experienced abuse. They may need to access a previous statement or account by the deceased survivor. It is important to note that the next of kin provision entitlement relates to the deceased survivor's inability to access the redress scheme.²⁴⁵

Level of Payments

547. The inclusion of a next of kin payment in the Bill was generally welcomed by stakeholders, although concerns were raised in relation to the payment amount, the date used to assess eligibility for a payment and who would be able to apply for it.
548. Survivors First suggests that the current payment level is too low and 'an insult to everyone who has died especially during the current process,'²⁴⁶ whilst, in contrast, East Lothian Council suggests that the £10,000 limit is appropriate, noting that the redress scheme is 'intended to compensate survivors directly' and that 'this amount is a tangible and not-insubstantial acknowledgement of the impact of abuse on their relative.'²⁴⁷
549. Others pointed out that victims/survivors who had been instrumental in campaigning for redress had died before they had been able to see it become a reality and that for many of those who had died, the evidence to justify a higher, individualised award was already available. This could include, for example, a statement made to the Scottish Child Abuse Inquiry.
550. The Scottish Human Rights Commission also supports this approach, querying 'why next of kin applications should receive a smaller payment if they could provide evidence required to receive an individually assessed payment.'²⁴⁸

Co-habitation

551. The Committee's consideration of the next-of-kin payment also highlighted a potential discrepancy around who would be eligible to apply for the next-of-kin payment in certain circumstances.
552. In his evidence to the Committee, Barry McCaffrey, Lawyer, Scottish Government states that the approach taken in the Bill mirrors next of kin provisions in other Bills such as the Burial and Cremation (Scotland) Act 2016, before noting that 'in every case, the next of kin has to be the spouse, civil partner or cohabitant' and that they 'rank ahead of surviving children because it was felt that the partner of the deceased survivor should have first call on whether to make a next of kin application', with the surviving children only being entitled to apply 'if there was no one in that category.'²⁴⁹
553. The Explanatory Notes accompanying the Bill state that section 26(1) 'provides that the specified next of kin is the person who immediately before the death of the deceased person was the spouse, civil partner or cohabitant of the deceased person', defining a cohabitant as 'a person who was neither married to nor in a civil partnership with the deceased person but who was living with the deceased person as if they were married to each other.'²⁵⁰
554. Section 26(2) 'deals with the circumstances where the deceased person has both a spouse or civil partner, and a different person who they lived with immediately before their death (for example, because they had separated from their spouse and were in a new relationship).' In order to be considered a cohabitant for the purposes

of an application for a next of kin payment, that cohabitant must 'have lived together for at least six months immediately before the death', otherwise the next of kin is defined as 'the spouse or civil partner of the deceased person'.²⁵¹

555. However, where there is no spouse or civil partner, the Bill, as currently drafted, does not specify a minimum period of residence for a cohabitant, meaning that someone who had lived with the person for a short period of time (a matter of days or weeks) before they died would qualify for the next of kin payment before the survivor's children or step-children, leading the Faculty of Advocates to suggest that 'a similar period of 6 months cohabitation should apply before a cohabitant can be the specified next of kin in preference to the deceased's children.'²⁵²

556. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills said that 'he would be prepared to look at that question again', noting that 'we need to ensure that no residual rights are in any way conflicted by any decisions that we make', before stating that 'I am very happy to explore the detail behind the issue and see whether there is a more appropriate way in which things can be constructed.'²⁵³

557. The Committee welcomes the inclusion of the next of kin payment in the Bill as a means of both recognising the abuse experienced by a survivor and the impact this may have had on their family.

558. The Committee is open to the idea that higher levels of next of kin payments may be justified in certain circumstances and recommends that the Scottish Government revisit the next of kin provisions in the Bill to establish whether individualised payments could also be available to next of kin, where there is sufficient evidence to merit this. Individualised payment levels are discussed in more detail in the 'Draft Assessment Framework' section of this report.

559. The Committee notes the importance of next of kin payments to both victims/survivors and relatives of deceased victims/survivors, and that the current cut-off point of 17 November 2016, appears likely to severely restrict applications. The Committee therefore recommends that the eligibility date for next of kin payments should be aligned with eligibility for the rest of the redress scheme.

560. The Committee is content that the evidential requirements for next of kin payments mirror those in place for victim/survivor applications.

561. The Committee recommends that the same principle should be applied should this section be amended to allow next of kin to make individualised payment applications.

562. The Committee recommends that to ensure consistency with section 26(2)(a), section 26(2)(b) of the Bill should be amended to ensure that where there is no surviving spouse or civil partner, that a cohabitant should be required to have lived with the victim/survivor for a minimum period of 6 months before being able to apply for a next of kin payment ahead of the deceased victim's/survivor's children.

Payments to Victims/Survivors Who Have Committed Serious Offences

563. Sections 58 and 59 of the Bill set out how Redress Scotland will consider an application when the applicant has a conviction or convictions for serious offences.
564. The Policy Memorandum accompanying the Bill states that 'survivors of abuse, or next of kin applicants, with criminal convictions are not excluded from applying for financial redress', noting, however, that 'the Scottish Government considers that it is legitimate in the public interest to be able to restrict the use of public funding in relation to the making of redress payments under the scheme to or in respect of those who have been convicted of serious criminal offences, particularly involving abusive conduct.'²⁵⁴
565. The Policy Memorandum goes on to note that 'there is no automatic exclusion or presumption against the payment of redress where the recipient of the payment or the person to whom the application relates has a previous conviction for serious criminal conduct, rather each application will be assessed on a 'case by case basis.'²⁵⁵
566. Those providing evidence to the Committee were largely in agreement with the process set out in the Bill, which does not prevent an application being made by those with the most serious convictions, however, leaves discretion to the Redress Scotland panel to decide if such a payment is in the public interest. Where the panel believes it is not, then a payment will not be made. The decision to refuse a payment is open to appeal.
567. As the Bill's Explanatory Notes explain, where it is decided that a payment should not be made to an applicant with a serious conviction, there is provision in the Bill to allow the panel 'to determine whether the person would otherwise have been eligible for such a payment', noting that 'this is of importance to survivors of abuse who would, notwithstanding that they are precluded from being offered a redress payment, qualify for elements of non-financial redress offered by the scheme including access to emotional and psychological support' and further noting that where a decision is taken to refuse a payment on these grounds, that the applicant can request a review of that decision.'²⁵⁶
568. The Explanatory Notes accompanying the Bill note that 'a relevant offence is murder, rape, or another sexual or violence offence which resulted in a person being sentenced to a period of imprisonment of five years or more', noting that these provisions 'will only take into account unspent convictions.'²⁵⁷
569. The Bill's Policy Memorandum notes that in making a decision on whether a payment to someone with a serious criminal conviction, section 97 of the Bill sets out the matters that the panel should consider, including 'the nature of the offence, the length of any sentence or imprisonment, the length of time since the offence was first committed, any rehabilitation activity undertaken by the person who committed the offence; and any other matter that the panel considers to be relevant.'²⁵⁸

570. There was an acknowledgement from some victims/survivors that it would be difficult to view this principle in the same light if, for example, the applicant had gone on to abuse other children, but that in general terms, what was set out in the Bill appeared to victims/survivors to be fair.
571. Iain Nicol of the Law Society of Scotland suggests that—
- ” Victims/survivors of abuse often find themselves on the wrong side of the law because of the consequences of what they have been exposed to. It is therefore extremely important that they are not barred from making an application when the conviction has resulted from the abuse that they were subjected to. Taking that to its logical conclusion, it should always be open to a victim/survivor to produce evidence that can effectively link any conviction or wrongdoing to the abuse that they suffered. That should be taken into account by any panel in determining their application.²⁵⁹
572. This is a point echoed by Una Doherty QC of the Faculty of Advocates who notes that 'the Faculty position remains that a criminal conviction should not be a bar to an application', noting that 'a person's character or conduct after the abuse should have no bearing on any redress scheme, and so it should never be in the public interest to preclude an applicant from receiving a redress payment on the basis of a conviction.'²⁶⁰
573. The Scottish Human Rights Commission notes that 'nobody should be disbarred from receiving remedy and access to justice for harm that has been done to them, in this context, when they were a child, as a result of historical abuse,' whilst noting that as the provisions in the Bill allow a decision to be taken on a case by case basis, this ensures that they are compliant with human rights conventions.²⁶¹
574. Janine Rennie of Wellbeing Scotland delivered a service in the Scottish Prisons Service, and suggests that 'more than 50 per cent of the people we worked with in prison had been through the care system and a large proportion of them had been abused in care', noting that '...murder has been mentioned, and some people killed their abuser,' recognising that in her experience 'somebody who had perhaps committed quite a serious crime could go through a period of rehabilitation and not go on to commit any further crimes.'²⁶²
575. Sandra Toyer also acknowledges the impact of adverse childhood experiences on victims/survivors and notes that '...whilst never condoning any act of violence or serious crime, the committee is asked to consider this principle in a trauma-informed way and to remember that they have already served and paid their dues to society...', noting that 'crimes were committed against them as children and therefore they should not be further punished or exempt from their justice.'²⁶³
576. This is a sentiment echoed by Glasgow City Council and Glasgow City Health & Social Care Partnership, who suggest that applications from those with serious convictions should be 'assessed individually, using a trauma-informed framework' and that this should take into account 'the added stress across the life course' as well as 'the potential impact of redress on the survivor (through, for example, addressing poverty).'²⁶⁴
577. Kim Leslie of the Association of Personal Injury Lawyers notes that many with

serious convictions cannot access payments via other routes, such as the Criminal Injuries Compensation Authority, and whilst recognising that there is scope for some inconsistency in decision-making, this 'would reflect the reality that there are some individuals who have offended but still ought to receive a payment, provided that it goes through the criteria for a period of rehabilitation.'²⁶⁵

578. Where a decision was taken to refuse a payment on public interest grounds, Iain Nicol of the Law Society of Scotland notes the importance of the Redress Scotland panel noting which factors they took into account, suggesting that 'it must be clear from the record keeping what weight was put on the evidence, what factors were taken into account, and what the basis of the decision was, having regard to those requirements, so that advice can be given about whether the decision is reasonable or should be challenged.'²⁶⁶
579. The Cabinet Secretary, in his evidence to the Committee on 4 November 2020, outlined his thinking in relation to victims/survivors with serious convictions, stating—

” I am against barring individuals from applying because they have had convictions, simply from the point of view that, although individuals who were the victims of abuse might have committed serious offences, none of us has an understanding of the trauma and experience that preceded the actions that led to those convictions. I feel more comfortable with—this is in the bill—those issues being subject to the review panel’s judgment. There is no automatic right to acknowledgement and reparation, nor is there an automatic debarring from acknowledgement and reparation. That feels to me to be the right way in which to handle a difficult situation....I completely understand why people would be concerned by the possibility that someone with a serious conviction might be able to secure compensation, but none of us truly understands the trauma that individuals will have experienced. Sensitive, careful, case-by-case judgment is required.²⁶⁷

580. The Committee believes that a balanced approach has been taken towards the question of whether those with serious convictions are eligible to receive a redress payment.
581. The Committee recognises that there are often patterns to offending behaviour and that some of this behaviour may be rooted in trauma. However, the Committee also recognises that there are some crimes so serious in nature that it may not be in the public interest for an individual to benefit from a redress scheme payment. The Committee believes that the approach taken in the Bill towards applicants with serious convictions is therefore appropriate.
582. The Committee agrees that it is important that such decisions are taken on a case by case basis, as set out in the Bill, rather than all applications automatically being denied. The Committee recommends that any guidance accompanying this section of the Bill should be trauma-informed and reflect the evidence the Committee heard regarding serious offences directly linked to abuse (e.g. the murder or serious assault of an abuser).

Navigation through Redress Scheme

Support Needs of Victims/Survivors

583. Access to counselling, psychological and emotional support was seen by victims/survivors and support organisations as a vital element of the redress scheme, with many observing that making an application or accessing childhood records or case notes without appropriate support posed a particular risk of re-traumatising victims/survivors. Others focused on the need for support to be offered at the right point in the process and for any support to avoid being overly prescriptive, allowing victims/survivors themselves to identify the support they would welcome and from whom.

584. Lisa McCloy, Bill Team Leader outlined the Scottish Government's thinking in relation to support that might be required by victims/survivors, noting that victim/survivor needs would vary—

” We recognise that support is an important aspect of any redress scheme and that some applicants will want it. The support that will be available will vary according to what the applicant needs or wants assistance with. We recognise that there is an obligation to ensure that the scheme is as accessible as possible, and we are working with partners to make sure that information on the scheme is in accessible formats and so on.

We also recognise that applicants might require practical support to apply for redress, such as support to access records. Another important aspect of the scheme is that we recognise that survivors might require emotional support to apply, because, for some, applying for redress could re-trigger difficult aspects of a survivor's past. There will be emotional support to assist survivors who are confronting that. ²⁶⁸

585. Janine Rennie of Wellbeing Scotland suggests that the starting point should be to map out a victim's/survivor's route through the Redress Scheme, including acknowledging that for some victims/survivors talking about the abuse they have experienced simply may not be possible—

” My concern about a lot of the process is that it has not been trauma informed. I have heard a lot of legal arguments about the legislation, but not a lot about what it actually means for individuals. We cannot separate those two aspects. We need to look at what it would mean to a person to go through the process—how it would feel for you. One of the biggest things is having to provide evidence about the scale and duration of abuse. We have survivors who do not want to mention their sexual abuse to anybody—it may have been five years before they even told us—but we are expecting them to tell a panel about the complexity of the abuse that they experienced when they have often not even told family members. A lot more thinking needs to be done to get it fully trauma informed and survivor centred. ²⁶⁹

586. This is a point echoed by Joanne McMeeking of CELCIS, who notes that—

- ” Emotional support is absolutely critical, particularly for survivors who are considering or making a claim. Each survivor is an individual. They may have existing support, they may need additional support or they may need to access advocacy and legal support—that has to be carried out in a way that is specific and bespoke, and it involves an understanding of the trauma that survivors have experienced. The construction of any scheme needs to pay attention to that, because each survivor is unique in their needs. ²⁷⁰
587. Aberdeen City Council and Social Work Scotland both suggest that services should be available at the 'point of entry to the scheme,' ^{271 272} with Dr Susannah Lewis suggesting that the practical process of making an application is also likely to lead to emotional distress, noting that—
- ” A number of applicants will be elderly, many will have mental health difficulties. Some will not have access to technology. Making an application is likely to be very anxiety provoking. I request that independent support staff are available to guide applicants through the process (with each applicant having a named support person), and give telephone or face to face support at agreed intervals. ²⁷³
588. Janine Rennie of Wellbeing Scotland also suggests that thought should be put into who will provide support, noting that—
- ” Aspects of the bill mention that people would have support from members of the Scottish Government or the panel to access records. I have serious concerns about that, because one of the important things when someone is accessing their records is access to emotional support. If they access their records and read really judgemental things that were said about them as a child or they find out that they have a sibling they did not realise existed, it is absolutely key that a survivor has appropriate emotional support to go through that process. Just having support for the practical and advocacy side of it does not take into account the severe trauma that somebody might experience from accessing their records and what is within them. ²⁷⁴
589. Another key theme was the need to ensure that any support provided was tailored to the individual with choices built into the system, with Former Boys and Girls Abused in Quarriers Homes observing that 'support and choice should be at the heart of the processes such as practical support, emotional, counselling support', noting the importance of 'independent financial advice, advocacy and independent impartial legal advice' and that 'all applicants should be treated fairly and with respect.' ²⁷⁵
590. Thompsons Solicitors, in its written submission to the Committee, note that whilst there are existing support mechanisms in place, victims/survivors themselves may prefer to choose alternative options and that the Bill must provide for '....survivors to have access to survivor support services of their choosing, without the need to go through Future Pathways and that trusted support is paid for by the Redress Fund.' ²⁷⁶
591. Angus Council also notes that many victims/survivors will already have their own support mechanisms in place and that in designing the new scheme 'more

cognisance needs to be taken of the support needs of some individuals and the link to already established supportive and therapeutic relationships.²⁷⁷ Others noted the need to provide support, such as online therapy, that could be accessible to those victims/survivors no longer living in Scotland.²⁷⁸

592. Taking a trauma-informed approach was also considered vital, with Glasgow City Council and Glasgow City Health and Social Care Partnership suggesting that mental health support for victims/survivors accessing the scheme should be 'procured from organisations applying a trauma-informed approach, so that all aspects of the Scheme are working in close alignment, and that survivors experience consistently high quality, trauma-informed support from all individuals supporting the implementation of the Scheme.'²⁷⁹

593. Some victims/survivors referred to the support they had received in accessing the Scottish Child Abuse Inquiry (SCAI), with Simon Collins of In Care Abuse Survivors (INCAS) observing that—

” ...although the child abuse inquiry and the redress scheme are totally independent of each other, there are such similarities not only in the people they are dealing with—the survivors—and their needs but in the work that they are looking at. There is the opportunity to learn from the experiences of the SCA Inquiry.

For what it is worth, my observation is that the Inquiry has put together a strong and effective support package. That may not be everyone's experience, but that has been given to me throughout the Inquiry. If you are looking for a model on how to provide support, that is a good example.²⁸⁰

594. The need to offer wider family support was raised by Dr Maeve O'Rourke of National University of Ireland Galway, who states that—

” It is important to mention second-generation survivors—the children of survivors. I would advise you to consider that, as the scheme's payment terms will not always apply to a child, even if their parent is deceased. There is a real need to consider the needs of the second generation. In the consultation, survivors said that there was a need for counselling and psychiatric services for children and grandchildren. Information is very important for both survivors and their family members.²⁸¹

595. Failure to provide appropriate support was seen as having the potential to lead to significant consequences for victims/survivors, with Angus Council noting that without the right support in place '...there is a concern that those most traumatised and disadvantaged people will either fail to access the scheme or will take the path of least resistance and make the minimum application.'²⁸²

596. Others noted the need to continue to involve victims/survivors throughout the design of support services for those applying for redress, with David Whelan of Former Boys and Girls Abused in Quarriers Homes, suggesting that 'there has to be meaningful participation [of victims-survivors] in the design and delivery of the Scheme'²⁸³ with the Scottish Human Rights Commission noting the potential role of the Survivor Forum in encouraging the Scottish Government to ensure that '...a degree of flexibility should be built into the process to allow survivors to shape their

own application process and access the support most suitable and helpful to them.'

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597. The Committee recommends that the Scottish Government takes a trauma-informed approach towards the provision of support to victims/survivors and next of kin. Support should be available to those who are considering accessing the scheme, are in the process of making an application or who require after-care, having already made an application. Specific note should be taken of the potential impact on victims/survivors when accessing their care records.
598. Providers of such support should be carefully vetted to ensure that victims/survivors are safeguarded throughout the whole process.
599. The Committee recommends that victim/survivor choice should be at the heart of any support mechanisms created by the Bill, tailoring support to what victims/survivors themselves would find most helpful. This should offer the flexibility to allow victims/survivors to access existing support networks, where they would find this beneficial.
600. The Committee welcomes the Scottish Government's commitment to create a Survivor Forum to inform the development of many processes set out in the Bill. The Committee suggests that the Survivor Forum should play a key role in developing the support mechanisms victims/survivors will require to access the redress scheme.
601. Victims/survivors generally spoke very highly of the support provided to them by the Scottish Child Abuse Inquiry (SCAI). The Committee recommends that the Scottish Government should engage with the SCAI team in order to understand their approach towards support.

Apologies & Non-financial Redress

602. Alongside the emotional and practical support requirements of victims/survivors, the Committee also explored which other non-financial redress elements would accompany the proposed Redress Scheme, including the provision of a meaningful apology to those who had experienced abuse.
603. In his evidence to the Committee on 4 November 2020, the Cabinet Secretary for Education and Skills stressed the Scottish Government's commitment to listening to victims/survivors in designing support and non-financial redress measures to accompany the Bill—

” We know how important it is that a redress scheme offers more than a financial payment. Survivors will have their own views on what would make a difference in relation to acknowledgement, apology and support, and the redress scheme will offer access to those non-financial elements....it has always been a priority for me that survivors' views be at the heart of designing measures that are introduced to support them. Consultation and engagement with survivors has been key in developing the bill, and survivor voices continue to be at the core of the bill as it progresses through Parliament.

I am well aware that not all survivors have the same views on every element of the redress scheme. It is crucial that we hear as many views as possible, and I am pleased that the committee has read and heard evidence from so many.²⁸⁵

604. Similar to evidence received about practical support, views varied on what would constitute non-financial redress and a meaningful apology.
605. The Committee recognises that the Scottish Government's work to develop provision for non-financial redress and apologies is ongoing and that reference to non-financial redress is currently limited to section 86 of the Bill (which refers to emotional and psychological support) and reporting requirements for contributors to the scheme, set out in section 91, with the Church of Scotland Social Care Council (CrossReach) noting that at present the Scheme 'fails to make sufficient provision for any form of reparation other than financial compensation'²⁸⁶.
606. However, the Committee also notes the views of the many stakeholders who spoke about the importance of these measures, in many circumstances being described as equally important, or some cases more important, than financial redress, with Harry Aitken of Former Boys and Girls Abused in Quarriers Homes noting that 'in some cases, if there were no redress scheme, the apology would be sufficient', before going on to state that an apology 'means a great deal to the survivor and to the family.'²⁸⁷
607. Helen Holland of In Care Abuse Survivors (INCAS) suggests that for some victims/survivors 'an apology is far too little, far too late', whilst for others 'an apology is the most sacred thing that could come out of this, because it would acknowledge the abuse that took place and because it would be an apology not only from the Government but also - in some respects, even more so - from the care providers themselves.'²⁸⁸
608. A common theme throughout the evidence heard by the Committee was the need for non-financial redress and apologies to take into account victims'/survivors' own wishes, with the Scottish Human Rights Commission stressing that 'survivors are best placed to identify and shape the support and wider reparations that should be made to them'²⁸⁹ and with Kim Leslie of the Association of Personal Injury Lawyers noting—

” An apology or an acknowledgement is important, but what form it takes will depend on what a survivor says would be meaningful to them. I know from experience that a letter of apology has been mentioned, and we have brokered meetings with chief executives and safeguarding officers. It is difficult to imagine something that will cover every individual’s particular needs. The bill’s inclusion of non-financial redress for everyone is to be commended. For some, that will be a progressive step.²⁹⁰

609. Who Cares? Scotland, in its written submission to the Committee, highlights another potential advantage to offering non-financial redress and apologies, suggesting that 'non-financial redress is also potentially powerful in creating a reversal of blame for survivors about the abuse they have experienced', suggesting 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.'²⁹¹

610. Who Cares? Scotland goes on to note that '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 accountable', observing that '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.'²⁹²

611. Social Work Scotland notes that 'the Bill says very little about apology' other than referring to it in section 91 (reporting requirements), before stating that 'public apology is without doubt a key aspect of non-financial redress and Scottish Ministers should continue to publicly acknowledge survivors' experiences.'²⁹³

612. In relation to who should provide the apology, Helen Holland of In Care Abuse Survivors (INCAS) suggests that—

” For me, an apology needs to come from the Government in relation to why legislation was not followed, why all that abuse was allowed to take place in those institutions, why nobody followed it through, why social workers were not following up with the children and why children were locked up and forgotten about. To me as a survivor, that is what it felt like. The doors to those institutions were locked. We were not prisoners, but we had absolutely no rights and nobody bothered to ask us what was happening in those places. If anybody tried to tell somebody what was happening, they were accused of lying....The apology is a difficult issue, because it very much comes down to the individual. The whole redress scheme is about individuals, their experience and what is meaningful for them. The only person who can say what is meaningful for them is the individual survivor.²⁹⁴

613. In reflecting on the experience in Ireland, Dr Maeve O'Rourke, National University of Ireland Galway, noted the need for a political apology to be accompanied by accountability, observing that 'even though there can be great intention in an apology, it absolutely needs to be followed through', otherwise there was a risk it would be perceived as 'hollow.'²⁹⁵

614. David Whelan from Former Boys and Girls Abused in Quarriers Homes suggested

that whatever form non-financial redress takes, that this should be 'person-centred', noting that 'we have an apology law...which enables the organisations to make an apology without fear of liability'²⁹⁶ and suggesting that 'some survivors may require independent advocacy and support throughout.'²⁹⁷

615. The Church of Scotland Social Care Council (CrossReach) note that whilst recognising that financial redress is 'of critical importance to many survivors in terms of remedy,' that in addition to emotional or therapeutic help 'there are other ways in which organisations can provide redress which include apology; supportive access to records; provision of work experience or volunteering opportunities to learn new skills', suggesting that 'understanding redress in its wider context allow for a more individually tailored approach to be taken and is consistent with the overall notion of remedy.'²⁹⁸
616. Those anticipating providing apologies to victims/survivors also stressed that further guidance on this would be appreciated, with Angus Council noting that 'an agreed approach to making a genuine apology to help the victim in their recovery is important and requires some guidance and planning'²⁹⁹ and East Lothian Council noting that the usefulness of the Scottish Public Services Ombudsman guide to apologies.³⁰⁰
617. Josephine Duthie also suggests that the next of kin of victims/survivors who have died should be included in any apologies offered, noting that 'many tried in vain to draw attention to their abuse and were never listened to', noting that 'an apology for this abuse would give some meaning to their quiet and unheard cry for justice and give some comfort to the family they have left behind with that memory.'³⁰¹

618. The Committee recognises that non-financial redress often extends far beyond the provision of emotional support and a meaningful apology and is something that should be tailored to victims'/survivors' individual needs. The Committee recommends that the Scottish Government reflects on the type of support that has been offered to victims/survivors by other redress schemes with a view to replicating examples of good practice in a Scottish context.
619. The Committee recognises that any apology offered to a victim/survivor should be meaningful and offered at an appropriately senior level of an organisation. The language of that apology should be both dignified and respectful. It should demonstrate accountability for the abuse experienced by the victim/survivor and where possible, it should reflect the victim's/survivor's own needs, in terms of what would help them find closure.
620. The Committee recommends that training and guidance on meaningful apologies should be provided by the Scottish Government to care providers to ensure that all victims/survivors of historical child abuse in care receive a meaningful apology that is tailored to their personal circumstances and needs. The provision of this training and guidance should not be conditional on organisations making a 'fair and meaningful' contribution to the redress scheme.

Impact of Redress Payments on Benefits

621. The Scottish Human Rights Commission advocates for any payments received via the redress scheme to be disregarded for benefits purposes, noting that 'it is vital that redress payments do not impact a person's social security entitlement', suggesting that 'redress payments are an essential part of effective reparations for human rights abuses and should not be regarded as additional income.'³⁰²

622. Noting the Scottish Human Rights Commission's request that any redress payments should be disregarded as income for the purposes of benefits payments, the Committee recommends that the Scottish Government should continue its dialogue with the UK Government to ensure suitable arrangements are in place, prior to the redress scheme being open for applications.

623. The Committee further notes that redress payments should be disregarded as income for a range of other purposes, including for care home fees and any benefits payable via Social Security Scotland, and recommends that the Scottish Government should consider the circumstances to which this disregard could most usefully be applied.

Duration of Redress Scheme

624. Section 95 of the Bill makes provision for the dissolution of Redress Scotland via a regulation-making power. This power is subject to the affirmative procedure.
625. The Explanatory Notes accompanying the Bill state, however, 'that this may only be done at such point as the redress scheme has closed for new applications, there are no ongoing applications or ongoing requests for fee payments from solicitors, and Redress Scotland no longer has (or as a result of these regulations will no longer have) the functions detailed in section 7' and that 'before making the regulations the Scottish Ministers have a duty to consult Redress Scotland and any other persons they consider appropriate.'³⁰³
626. Several stakeholders raised concerns that 5 years was too short a period for a redress scheme to run, with Dr Maeve O'Rourke, National University of Ireland Galway, noting that in relation to the Irish redress scheme, many people 'did not realise that the procedure applied to the kind of abuse that they had suffered' and that 'there were people, particularly in the diaspora, who did not find out about the procedure.'³⁰⁴
627. Nicky McKinstrey suggests that 'from the information provided I feel the scheme will take a lot more than five years to complete' noting that 'if the scheme is not funded properly it will just cause more upset for all involved in the scheme.'³⁰⁵
628. The Association of Personal Injury Lawyers suggests that 'a period of five years is too restrictive, and it will give the mistaken impression that once the scheme has been closed historical child abuse is no longer an issue which needs to be addressed,' recommending instead that the scheme 'should remain unrestrictive in time....and continue to provide redress payments for as long as applications to the scheme are submitted', noting that 'survivors should never find themselves in a position where it is too late to make an application to the scheme.'³⁰⁶
629. The Cabinet Secretary also noted that 'there is provision in the Bill for ministers to extend that five-year period by regulation', whilst suggesting that there would also be the option to 'formally extend that timescale.'³⁰⁷
630. In his evidence to the Committee on 7 October, Iain Nicol of the Law Society of Scotland suggests that—
- ” One way around that would be for the bill to provide for a review of the redress scheme after a set period, such as three or four years, in order to determine whether it was appropriate to continue the scheme beyond five years. That option has been taken in other areas of law. That would give everyone the opportunity to see how effective the scheme is, to establish whether it is working and, if appropriate, to continue it.³⁰⁸

631. The Committee recommends that in order to allow victims/survivors sufficient time to access the redress scheme, the Scottish Government should consider

extending the scheme beyond its initial 5 year duration.

632. Section 29(2) provides for a regulation making power to allow the Scottish Government to extend the period during which Redress Scotland can consider applications. The Committee recommends that this should be amended at Stage 2 to place a statutory obligation on the face of the Bill which would require the Scottish Government to review whether the scheme should be extended.
633. The Committee recommends that this review should take place no later than 4 years after commencement of the scheme, and the Bill should specify which factors will be considered in reaching a decision whether to extend or end the redress scheme and that this should be subject to Parliamentary scrutiny via the affirmative procedure.

Advance Payment Scheme

634. The Advance Payment Scheme was set up in April 2019 to provide interim payments of £10,000 to victims/survivors of childhood abuse who either had a terminal illness or were aged over 70 years old. This qualifying age was later revised downwards to 68.³⁰⁹
635. The Committee did not seek views on the Advance Payment Scheme as part of its consideration of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, largely because once the new redress scheme is in place, the Advance Payment Scheme will cease to exist.
636. However, two stakeholders did mention the Advance Payment Scheme in their evidence, requesting that the eligibility age be reduced in advance of the Bill being passed. This would take into account the current financial pressures on older victims/survivors as a result of COVID-19, with Peter Paton suggesting in his submission that this should be reduced to 65.³¹⁰
637. The Committee acknowledges the Scottish Government's intention for the new redress scheme to be functioning as soon as possible. The Committee recommends that, as an interim measure, the Scottish Government should consider reducing the qualifying age for the Advance Payment Scheme with immediate effect.

Overall Conclusions on the General Principles of the Bill

638. The Committee welcomes the general principles of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill and in particular its commitment to ensuring effective redress and remedy to abuse victims/survivors.

639. The Committee acknowledges that victims/survivors have been fighting for redress for many years and this scheme is designed to provide an accessible alternative to civil litigation. For victims/survivors who were abused prior to 1964, the scheme will provide a way of accessing reparation for their abuse, where previously there was none.

640. The Committee welcomes the efforts that have been made by the Scottish Government to work with victim/survivor communities to shape many aspects of this Bill and hopes that this engagement will continue as the Bill progresses.

641. However, the Committee also recognises that this redress scheme will not provide the solution all victims/survivors are seeking and that some victims/survivors may still wish to pursue a different route.

642. The Committee also acknowledges that some survivors will be unable to benefit from this scheme, due to the way in which they found themselves in care.

643. The Committee believes that, whilst there are some fundamental issues with the Bill's waiver provisions and the way in which 'fair and meaningful' contributions to the scheme are calculated, the Bill provides a straightforward, easy to access scheme and that will play a vital role in helping victims/survivors obtain the redress and remedy to which they are entitled.

644. The Committee commends the general principles of the Bill to the Scottish Parliament and recommends that they be agreed.

645. The Committee looks forward to considering the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill at Stage 2.

Annexe A - Minutes of Meetings

[25th Meeting 2020 \(Session 5\), Wednesday 4 November 2020](#)

2. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

- Viv Dickinson, Chief Executive Officer, Social Care Council, Church of Scotland;
- Derek Yule, Advisor, Local Government Finance, COSLA;
- Dr Judith Turbyne, Senior Manager, Policy and Improvement, OSCR;
- Dr Ron Culley, Chief Executive Officer, Quarriers; and then from
- John Swinney MSP, Cabinet Secretary for Education and Skills, Scottish Government

Iain Gray MSP declared that he had a relevant interest as he is an elder in the Church of Scotland.

[24th Meeting 2020 \(Session 5\), Wednesday 28 October 2020](#)

5. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

- David Whelan, and Harry Aitken, Former Boys and Girls Abused in Quarriers Homes;
- Flora Henderson, Future Pathways;
- Helen Holland, and Simon Collins, In Care Abuse Survivors (INCAS).

[23rd Meeting 2020 \(Session 5\), Wednesday 7 October 2020](#)

2. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

- Kim Leslie, Representative of the Association of Personal Injury Lawyers (APIL) and a partner at, Digby Brown LLP;
- Una Doherty QC, Faculty of Advocates; and
- Iain Nicol, Solicitor and Convenor of Civil Justice Committee, Law Society of Scotland; and then from
- Joanne McMeeking, Head of Improving Care Experiences, CELCIS;
- Judith Robertson, Chair of the Commission, Scottish Human Rights Commission (SHRC);
- Gaynor Clarke, Chair of Historical Abuse Practice Network, Social Work Scotland (SWS) and Programme Manager at, Aberdeen City Council; and ES/S5/20/23/M
- Janine Rennie, Chief Executive, Wellbeing Scotland.

[22nd Meeting 2020 \(Session 5\), Wednesday 30 September 2020](#)

2. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

- Donald Henderson, Deputy Director, Redress Relations and Response Division,
- Paul Beaton, Unit Head, Redress Relations and Response Division,
- Lisa McCloy, Bill Team Leader, Redress Relations and Response Division, and
- Barry McCaffrey, Lawyer, Scottish Government Legal Directorate, Scottish Government; and then from
- Dr Maeve O'Rourke, Lecturer in Human Rights Law and Programme Director, BCL Law and Human Rights, National University of Ireland Galway.

[18th Meeting 2020 \(Session 5\), Wednesday 19 August 2020](#)

3. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill- consideration of approach (in private):

- The Committee considered its approach to the scrutiny of the Bill at Stage 1.
- The Committee agreed its approach to the Bill, and agreed to appoint an advisor

Annexe B - Evidence

The Committee received the following written submissions on the Bill—

Individuals

- [Bruno Bernacchi](#)
- [Shirley Caffell](#)
- [William Connelly](#)
- [Fred Crainer](#)
- [Josephine Duthie](#)
- [Iahan Ivory](#)
- [Dr Susannah Lewis](#)
- [Anne Macdonald](#)
- [Lynne Marshall](#)
- [John McCall](#)
- [George McClung](#)
- [Nicky McKinstrey](#)
- [William Murphy](#)
- [Pauline Omond](#)
- [Peter Paton](#)
- [Joanne Peacher](#)
- [Jacqui O'Prey](#)
- [Janine Rennie](#)
- [Andy Tait](#)
- [Arthur Thornton](#)
- [Sandra Toyer](#)
- [Richard Tracey](#)
- [Mark Wodrow](#)

Anonymous Submissions

- [Anonymous individual submission 1](#)

- [Anonymous individual submission 2](#)
- [Anonymous Organisation 1](#)

Organisations

- [Aberdeen City Council](#)
- [Aberlour](#)
- [Association of British Insurers](#)
- [Association of Child Abuse lawyers \(ACAL\)](#)
- [Association of Personal Injury Lawyers \(APIL\)](#)
- [Church of Scotland Social Care Council \(CrossReach\)](#)
- [Congregation of the Sisters of Nazareth](#)
- [COSLA](#)
- [Digby Brown LLP](#)
- [East Ayrshire Council](#)
- [East Lothian Council](#)
- [Faculty of Advocates](#)
- [Former Boys and Girls Abused in Quarriers Homes](#)
- [Glasgow City Council Glasgow City Health & Social Care Partnership](#)
- [In Care Abuse Survivors \(INCAS\)](#)
- [North Ayrshire Health and Social Care Partnership](#)
- [OSCR](#)
- [Police Scotland](#)
- [Quarriers](#)
- [Scottish Council of Independent Schools \(SCIS\)](#)
- [Scottish Human Rights Commission \(SHRC\)](#)
- [SCVO and Chartered Institute of Fundraising Scotland](#)
- [Social Work Scotland \(SWS\)](#)
- [South Lanarkshire Council](#)
- [Society of Local Authority Lawyers & Administrators in Scotland \(SOLAR\)](#)
- [Stirling Council](#)

- [Survivors First](#)
- [Thompsons Solicitors](#)
- [Wellbeing Scotland](#)
- [Who Cares? Scotland](#)

Annexe C - Payment Levels of Other Redress Schemes

Scheme ⁱⁱ	Standard Payment	Individually Assessed Payment	In GBP
Tasmania	-	Individually assessed payment:Rounds 1–3: Aus\$5,000–\$60k (with scope for payment above maximum in exceptional circumstances;Round 4: Aus\$5,000–\$35,000 (reduced for sustainability reasons)	£2755-£33,000 (Rounds 1-3) and £2755-£19,280 (Round 4)
Queensland (Australia)	Flat rate 'Level 1' payment AUS\$7,000	Individually assessed payment:AUS\$ 6,000 – \$33,000	Flat rate 'Level 1 payment' - £3855Individually assessed payment: £3300-£18,180
WA (Australia)	-	Individually assessed payment:AUS\$5,000–\$45,000 (original Aus\$80,000 - maximum reduced for sustainability reasons)	Individually assessed payment:£2755-£24,790 (original £44,075)
CHSH (Australia)	-	Individually assessed payment:AUS\$5,000 – \$45,000	Individually assessed payment:£2755-£24,790
ROI	-	Individually assessed payment:up to €300,000 +additional redress (max 20 per cent of award)in exceptional cases+medical expenses not exceeding 10 per cent of award	Individually assessed payment:up to £268,340
Jersey	-	Individually assessed payment:up to £60,000+medical expenses up to £3000 (other than in exceptional cases)	
IRSSA (Canada)	Common experience payment: C\$10,000 for first school year (or part year) +C\$3,000 for each year (or part) thereafter.	Individually assessed payment:C\$5,000 - \$275,000+ payment for proven loss of income up to C\$250,000+ contribution for other costs up to 15 per cent of award	Common experience payment: £5770 for first school year (or part year) + £1730 for each year (or part year) thereafter.Individually assessed payment:£2885-£158,700+ payment for proven loss of income up to £144,280
Nova Scotia Compensation Program (Canada)		Individually assessed payment:up to C\$120,000+ counselling payment C\$5,000, C\$7,500 or C\$10,000	Individually assessed payment:up to £69255+ counselling payment £2885, £4328 or £5770.
Grandview Agreement (Canada)	-	Individually assessed payment: C\$3,000–\$60,000 +payment for other expenses up to \$3,000	Individually assessed payment:£1730-£34,627+ payment for other expenses up to £1730.
Sweden	Flat rate payment:SEK250,000	-	Flat rate payment:£21,870

ii This table is sourced from Kendrick et al, Consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care, Report 3: International perspectives - a descriptive summary, published September 2018, see table 6.1, p.36. Please note that a column has been added by the Committee to illustrate payments in GBP, with conversion rates correct as of 20 November 2020.

Education and Skills Committee

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill - Stage 1 Report, 5th Report, 2020 (Session 5)

- 1 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Explanatory Notes, pp.1-2
- 2 Draft Assessment Framework, Scottish Government, 2 November 2020, p.4
- 3 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Explanatory Notes, p.8, para 33
- 4 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Explanatory Notes, p.8, para 33
- 5 Draft Assessment Framework, Scottish Government, 2 November 2020, p.8
- 6 Education and Skills Committee, Official Report, 4 November 2020, John Swinney MSP, Cabinet Secretary for Education and Skills
- 7 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Policy Memorandum, p.22, para 69
- 8 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, Policy Memorandum, pp.17-18, paras 51-52
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