14.1.2021

This paper has been commissioned by Former Boys & Girls Abused in Quarriers Homes (FBGA) in response to the Scottish Government paper; Individually Assessed Redress Payments: Draft Assessment Framework

Re: Redress Scotland Bill 2020, Scottish Parliament, Education and Skills Committee

Practitioners (1) details:

I, Dr Susannah Lewis am a Principal Clinical Psychologist, practiced in working with child and adult survivors of childhood abuse and experiences of the care system. I am also the close relative of a survivor who is now elderly and frail, and the relative of another survivor who sadly has died.

Practitioners (2) details:

I, [redacted] am a Psychodynamic Psychotherapist. I work within the Health and Care Professions Council's (HCPC) standards of conduct, performance, and ethics. In my trauma informed practice my clients include adults, young people and children who are survivors of childhood abuse and who have experience of or are currently in the care system. Myself and my siblings were in the care system, in Scotland, for the duration of our childhood. I therefore have lived experience. This has manifested over time into the realms of what is now referred to, as Expert by Experience, whereby, I actively seek to use my lived experience to inform, lead and drive social change, contributing to service delivery improvements and social need.

We are writing to express our professional concerns regarding the proposed Assessment Framework and the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill 2020.

Summary of Concerns:

- Impact, loss of opportunity, and lifelong consequences are not redressed
- Exclusion of corporal punishment
- Lack of survivor focus/trauma informed/individualised assessment
- Risks associated with categorizing survivor experiences into one of three levels
- Financial redress values attached to each level, and monies awarded for the severest of cases
- Overall survivors (including Pre-1964 survivors and Migrant survivors) are inadequately redressed in the current proposed assessment and proposed payment structures.

Impact, Loss of Opportunity, and Lifelong Consequences

The assessment framework proposes that impact of (in care abuse) will be considered solely as a means of evidencing that the abuse occurred. Impact, loss of opportunity, and the lifelong detrimental consequences of abuse are not redressed. The omission of impact, loss of opportunity, and consequences disregards the survivor's unique experience and lacks understanding of the gravity of suffering and lifelong harm caused. It is also inconsistent with other schemes (e.g., Queensland[1], Western Australia[2], Lambeth[3], and IRSSA[4]). The survivors' own lived experiences, and the lifelong harm endured is neither acknowledged nor understood.

The impact of in care childhood abuse (and the inevitable associated trauma) is pervasive, hugely debilitating, and unremittent[5]. The "toxic stress" that abused children suffer is known to disrupt developing brain architecture and functioning, with significant risk of permanent debilitating brain changes, leading to lifelong impairment in controlling emotions, impulse control, and memory[5]. This and the psychological injuries incurred render survivors at extremely high risk of mental illness and substance use disorders, throughout their lives[6].

Survivors suffer significantly higher incidence, duration, and severity of mental illnesses and substance use disorders than community populations[6]. Anxiety, depression, complex Post Traumatic Stress Disorder, psychosis, personality disorder, mood disorders, eating disorders, psychosomatic disorders, disruptive behaviour disorders and self-harm are significantly more prevalent amongst survivors[6]. Many survivors endure lifelong mental illness, which is often less treatment responsive[6].

The physiological disruption of toxic childhood stress also damages immune function, this considerably increases survivors' lifelong risk of diseases such as cancer, cardiovascular disease, and respiratory disease, even when health behaviours are favourable[6]. Much higher incidence of diabetes and numerous other physical health problems are found in survivors[6]. Poorer physical and mental health shortens survivors' life expectancy, with substantial risk of early death[6].

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[1]Australia: Queensland Government National Redress Scheme. https://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/national-redress-scheme
[2]Australia: Redress Western Australia (Wa) Scheme. https://www.nationalredress.gov.au/institutions/joined-scheme/wa
[3]Lambeth Children's Homes Redress Scheme. https://www.lambeth.gov.uk/redress
[4]Canada: Indian Residential Schools Settlement Agreement.https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074
[5]Shonkoff, J.P. et al (2014) Excessive stress disrupts the architecture of the developing brain. Working paper 3: Centre on the Developing Child Harvard University.
[6]Carr, A., Duff, H., and Craddock, F. (2017) Literature Review on the outcomes for survivors. of child maltreatment in residential care of birth families.

It is not the objective or within the realistic scope of this paper to look at all of the workings of the brain (neuroscience), however highlighting what childhood trauma can do to *three specific brain networks* (regions) will demonstrate the detrimental impact that trauma (abuse) can have on a developing brain and the lifelong implications of what it means to be, in effect, 'primed' or 'hardwired' as a child, to not cope in life.[8]

The three brain networks:

(1) The Default Mode Network (DMN)[7] helps us to be conscious of what we are feeling inside, facilitates processing memory, enables us to develop our sense of self (identity) and instils in us a capacity to self-reflect. It enables us to consider others and helps us to successfully interact at a social level. It determines the efficacy of judgement and decision making and assists with recalling events that happened in the past. For a child who is being abused (traumatised) and who will eventually become an adult, damage to the DMN (experience of excessive fear) can lead to over-activation (hyper-connectivity) and is associated with rumination and anxiety. This means the mind can replay experiences repeatedly (or dissociate depending on the individual's response to the trauma) and this in turn contributes to a lifetime of self-doubt and self-blame[8]. Studies have shown that the over-activation of the neurological pathway, DMN, has been associated with clinical depression and other mental illnesses in adulthood[9].

(2) The Salience Network[10] is concerned with communication, social behaviour, and the integration of emotional, cognitive, and sensory information. For a child who is being abused (traumatised) damage to the salience network can result in perpetual hypervigilance, confusion, fear, chronic mistrust, and exhaustion. The negative impact this has on the relationship with oneself and with that of others, is profound.

(3) The Central Executive Network[11] is instrumental in helping us to plan, think, concentrate, and focus. An abused child can lose the ability to consistently engage, problem solve and be 'present'. This makes them, by default, vulnerable to further abuse and victimisation. This can also leave a child with the propensity to zone out (dissociate). There is scientific evidence suggesting that peritraumatic dissociation (dissociation at the time of the trauma) is the most significant risk.

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[7]Van Der Kolk, B. (2020) The Neurobiology of Trauma [National Institute for Clinical Application of Behavioral Medicine]. Accessed 05-12-20.8.

[8]Siegel et al. (2020) The Neurobiology of Trauma [National Institute for Clinical Application of Behavioral Medicine]. Accessed 12-12-20.

[9]Zhou et al. (2019) Rumination and the Default Mode Network: Meta-analysis of brain imaging studies and implications for depression. Neuroimage Journal. 206.

[10]Yu et al. (2019) Childhood Trauma History is linked to Abnormal Brain Connectivity in Major Depression. PNAS Journal.

[11]Akiki et al (2019) Network-Based Neurobiological Model of PTSD: Evidence from Structural and Functional Neuroimaging Studies. Current Psychiatry Reports Journal.

Damage (over-activation) of these networks can have extremely serious implications. We also know that abuse is relative, in terms of an individual's response to abuse and that regardless of a particular response, it invariably, impacts on the quality of life for a lifetime, irrespective of whether psychological intervention is accessed in adulthood. Former *looked after children* applying for redress via the scheme will have endured significant trauma and adverse childhood experiences in relation to poverty, unfavourable domestic situations, and are likely to have resided in multiple foster and residential care homes. Collectively this adds to what may be referred to as the *complexity of adversity* experienced by the child.

Highlighting what happens to a child when specific regions in the brain are overstimulated, shows us how abuse can affect every facet of a person's being, including the pervasive effect on physical health[12]. Exploring abuse and the implications for an overstimulated brain clearly shows the complexity, delicacy, danger, and precariousness of life for an abused child in the care system and how the ability to reach their full potential is severely compromised. This gives us scope to question what it might mean for a person who has endured childhood abuse and who has not had the opportunity to process the affiliated complex trauma, and to what this leads in adult life.

Survivors' psychological injuries create lifelong problems forming and sustaining healthy relationships across settings, and vulnerability to further abuse and exploitation[6]. Survivors' own psychological injuries make effective parenting difficult[6]. The lifelong impact of childhood abuse is not always limited to the individual, and there are often harmful intergenerational consequences, threatening the physical health, mental health, and prospects of survivors' children and other family members.

Impact components which are not included in the Scottish Government assessment paper include the loss of opportunities, such as access to education. In addition, there are difficulties accessing and sustaining learning and training in adulthood (due to the psychological/cognitive injuries incurred in care). These have lifelong detrimental consequences, with many survivors being unable to gain or sustain employment or fulfil their potential at work[6]. Many survivors consequently suffer lifelong underachievement, long-term unemployment, poverty, and homelessness[6] . Difficulties with chronic mental illness and relating to others will almost inevitably lead to social exclusion[6]. Unable to contribute to family life and to society as a whole, this loss of opportunity will have persistent, pervasive, and lifelong detrimental consequences upon survivors and their families.

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[6].Carr, A., Duff, H., and Craddock, F. (2017) Literature Review on the outcomes for survivors. of child maltreatment in residential care of birth families.

[12].Mock, S. E., Arai, S. M. (2011) Childhood Trauma and Chronic Illness in Adulthood: Mental Health and Socioeconomic Status as Explanatory Factors and Buffers. *Frontiers in Psychology Journal*.

It is clear, for or all the reasons outlined above, that *in care* abuse and its impact upon victims throughout their lives should be considered by the redress scheme. Individual assessments would allow the redress scheme to consider the complexity of an individual's application, each with their own unique experience (response), to the abuse endured.[13] In doing this the scheme will be able to provide financial and emotional reparation and crucially help to prevent the reactivation of the trauma during the application process. Safeguarding victims should be at the heart of what the redress scheme is all about. There is scope to make amends for what was not addressed in the first place; keeping individuals safe and considering their complex trauma. The very thing that neglected children needed when they originally entered the care system i.e. compassion and sensitivity, is essential if survivors are to receive true redress.

Whilst there are challenges in establishing direct or indirect causation, this can be managed by assessors skilled and experienced in trauma and childhood abuse, and by a unique survivor assessment that permits a greater depth of individuality. Individualised assessments based on the unique individual experiences of the individual (as proposed by the majority of survivors and survivor groups in their responses to the Consultation in 2019)[14] would also mitigate against the risk that survivors who have appeared to 'cope' better would be disadvantaged by the inclusion of impact.

This does not mean the provision of endless individual counselling sessions or a drawn-out application process, but that the proposed non-departmental body (Redress Scotland) assessment process should be carefully managed. It should be delivered by trauma informed professionals and designed to minimise any risk of reactivating trauma or any other negative impact on applicants, such as *stereotyping, pathologizing and victimising*.

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[13].https://www.celcis.org/files/9515/3622/6806/Report_2_Survivor_consulation_analysis_and_findings_06.08.09.pdf
[14]. Public pre- Legislative consultation 2019https://www.gov.scot/publications/financial-redress-historical-child-abuse-care-analysis-consultation-responses/

The Assessment Frameworks Definition of Child Abuse

The definition of abuse currently in the Bill is comprehensive, and fittingly includes emotional, physical, and sexual abuse, and peer abuse, and neglect. Examples of such abuse are thorough, with due thought been given to the complexities of abuse within institutional settings. However, some forms of abuse such as corporal punishment are considered only when it is deemed as beyond what the law permitted at the time. Survivors have persistently reported that the delivery of all corporal punishment (administered in various forms) by staff caused them substantial trauma, and lifelong harm. Children in the care system were (and remain) the most vulnerable children in society. Care staff and care organisations were fully aware of the impact of abusive corporal punishment on the children in their care, and yet they were complicit in failing in their duty of care, failing to report the illegal and abusive actions they witnessed or were party to[15].

Acts, Legislation and Statutes were in place throughout the decades to protect children, and specifically children in institutional in care settings. The State and organisations with a duty of care for such persons were required to be fully aware of their legal duties to protect and care for children[15] The management and staff members within the institutions have been referring to legislation, policy and guidance to inform their practice for many decades now. Legislation to prosecute people accused of child cruelty has also been in force since the late 1880's. Specifically, the Prevention of Cruelty to, and Protection of, Children Act 1889.

Corporal punishment (legal or not) was not and never will be acceptable, particularly in a residential child care setting whereby children were extremely vulnerable and invariably already traumatised. It is a form of cruelty in itself to use corporal punishment against a 'child' who is 'already' traumatised, even where there is no legal protection to stop such. This is simply not comparable to typical situations, with children who were not 'in care', where corporal punishment was considered, at the time, 'acceptable'. The carers were 'informed professionals' who had the responsibility to care for children in need, and were guided by legislation and policy. FBGA have referred the Scottish Government to Professor Constantine's evidence to the Scottish Child Abuse Inquiry[16].

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15. https://www.childabuseinquiry.scot/media/2347/qab-case-study-findings.pdf
16. Constantine, Professor (2020) Scottish Child Abuse Inquiry. Testimony day188, 2nd September 2020

Issues regarding corporal punishment in the context of abuse of children in care have been referenced by the Scottish Child Abuse Inquiry, for example, Professor Constantine noted early legislation in place for the prevention of cruelty towards children, including wilful ill treatment (p127 – p 128)[16] and highlighted that when corporal punishment was protected by law it was permitted within certain contexts often outlined in regulations of various institutions (Scottish Child Abuse Inquiry; Case Study 3 finding Quarriers, Aberlour and Barnardo's)[15] Reference was made to what was described as 'educational' purposes and that certain acts carried out in anger would have been unacceptable at the time (128 –p131)[16] Testimony, day 188, 22nd September 2020. Given these issues, we would ask the committee to consider categorizing all abusive forms of corporal punishment as abuse.

Aggravated circumstances are also not referred to in the assessment framework. These are particularly important in reflecting the survivors lived experience of abuse. We would ask that aggravated circumstances are included as they are in equivalent schemes[4].

Payment Structure

The challenges of creating an assessment structure that is fair and robust are understood. As is the hugely emotive task of scaling or quantifying childhood abuse, recognizing that all abuse is abhorrent. However, we have substantial concerns regarding the proposed categorisation of the severity of abuse into three distinct levels, as opposed to five levels or more. The proposed structure of a flat rate payment, or assessment and allocation to one of three levels does not meet the majority survivor's responses to the pre-legislative 2019 consultation[14].

The survivor's unique individual experience is simply not captured in the current structure and the proposed allocation to one of three levels of severity. Survivors whose experience falls between two levels will be disadvantaged. Those whose abuse is assessed as greater than one level, but less than another (e.g., between levels two and three) will be assigned to the lower level. The risk of causing significant psychological injury to survivors is unacceptable, and is not in line with the executive summary of the Bill, in which it, 'seeks to put in place a scheme which treats survivors with dignity and respect and which faces up to the wrongs of the past with compassion.

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[14]. Public pre- Legislative consultation 2019https://www.gov.scot/publications/financial-redress-historical-child-abuse-care-analysis-consultation-responses/

[15]. https://www.childabuseinquiry.scot/media/2347/qab-case-study-findings.pdf

[16]. Constantine, Professor (2020) Scottish Child Abuse Inquiry. Testimony day188, 2nd September 2020

This categorically undermines the severity of the abuse suffered, leaving survivors feeling potentially unbelieved, with a high risk of reactivating significant trauma. In the pre-legislative 2019 consultation survivor consultation it was reported that a thorough assessment would be necessary to decide the level of compensation, and that whatever payment levels arrived at should reflect a survivor's *unique individualised experience.* [14]

The use of three levels for assessments is also inconsistent with other schemes, which use four or more (Lambeth[3], Jersey[18], Ireland[19]). The payments attached to each level do not adequately reflect the abuse suffered, and are significantly lower than equivalent schemes. Survivor groups have expressed the injustice and emotional harm imposed by this discrepancy.

The level one payment (£20,000) is half that of the starting payment of 50,000 euros in the Irish scheme[19], and the upper level of £80,000 payment levels less than a third of the upper level of 300,000 euros in the Irish scheme[19]. The payment levels in the Irish scheme are 50,000, 100,000, 150,000, 200,000 and 300,000 euros. It is unjustifiable that survivors abused in Scotland by members of the same organization in Ireland, receive significantly less than those abused by the members of the same organization in Ireland.

This highest award is also considerably lower than those in other United Kingdom schemes (e.g., Lambeth[3] have awarded £125,000 to survivors of severe abuse). The highest award proposed by the Bill, of £80,000 does not adequately reflect the degree of harm inflicted in severest of cases[17].

Pre 1964 Survivors and Migrant Survivors

The Scottish government has previously acknowledged that pre-1964 survivors are disadvantaged by their exclusion from seeking compensation through the civil justice system (Public pre- Legislative consultation 2019)[14]. It is recorded that Angela Constance who was a Government Minister at the time had previously met with survivor groups including FBGA and INCAS regarding this matter, and gave a commitment at that meeting that an equitable solution would be found as the Time Bar legislation recently enacted in Scottish

[3].Lambeth Children's Homes Redress Scheme. https://www.lambeth.gov.uk/redress

[14].Public pre-Legislative consultation 2019
https://www.gov.scot/publications/financial-redress-historical-child-abuse-care-analysis-consultation-responses/

[17]. FBGA written submission to Scottish Education and Skills Committee August/September 2020
https://www.parliament.scot/S5_Education/General%20Documents/20200827FBGA.pdf

[18].States of Jersey: Historic abuse redress scheme. https://www.gov.je/Caring/Pages/RedressScheme.aspx

[19].Republic of Ireland: Residential Institutions Redress. https://www.rirb.ie/

Parliament would not be accessible for pre-1964 survivors. However, the "legal disadvantage" of the pre 1964 survivors is clearly not recognized in the current Assessment Framework. £80,000 would be at the lower end of an average payment through any civil court processes (with many such civil court awards being substantially higher) we would ask the Scottish Government honours its commitments to ALL survivors including the pre-1964 and migrant survivors in recognition that Pre-1964 they cannot seek civil justice and the unique circumstances of a migrant child being deported to another country.

Summary

If the current Scottish Government fails to implement a fair and reasonable redress Scotland Scheme that does not benefit the primary stakeholders (victims-survivors of institutional in care abuse) and upholds their Rights to a fair remedy, then the message to Scottish society today and the wider survivor community is that in care abuse, and the lifelong traumatic and harmful consequences of such abuse in Scotland is of questionable importance. This places little or no value on the victims-survivors.

If passed in its current form, there is a danger that the Bill imposes upon survivors the *ascribed inferiority* meted out by the care system when they were children Survivors Rights will also be further diminished in international law.[20] Best practice should be adhered too and the Scottish Human Rights Commission Framework and Action Plan on historical abuse of children in care in its entirety should be available to all survivors[21]. The financial costs saved by the current Bill are likely to be lost with survivors requiring further service provision in response to the reawakening of traumatizing nature of such childhood abuse which the Bill seeks to address as part of a number of remedies.

If the Scottish government models an indifferent attitude towards survivors there is a risk of ascribed subordination being inflicted on present and future generations of Looked After Children. The cycle of abuse and disadvantage, and substantial human and financial costs associated with such will therefore continue.

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[20]. Dr Maeve O'Rourke letter to Committee 2nd October 2020 re: Waiver
https://www.parliament.scot/S5_Education/General%20Documents/20201001Dr_ORourke_ltr_to_convener-additional_evidence_with_appendix.pdf
[21].https://www.scottishhumanrights.com/media/2055/3-action-plan-on-historic-abuse-of-children-in-care-nov-2013_final.pdf

The proposed Bill provides an important opportunity to inform the wider approach to the delivery of services for Looked After Children. Advancement of all aspects of the practical and emotional needs of Looked After Children is imperative, in order to maximise the efficacy of future safeguarding provision. If the areas for improvement to the Bill discussed in this paper are not given full consideration, we fear a great and crucial opportunity will be lost to address past wrongs and the full objectives and rights of survivors will not have been met. Consequently, the issues will remain a *running sore* in the wider survivor community and in society as a whole.

We respectfully request sight of the initial transcripts (as have FBGA in the Interaction Review Group) of the dialogue that has taken place with clinical psychologists from Edinburgh University, The Rivers Centre, NHS Lothian's specialist service for people affected by psychological trauma, and NHS GGC - Glasgow Psychological Trauma Service. This will help to understand the rationale behind the elements of the proposed Bill that are of greatest concern.

This is an initial response to the draft proposal, however, there is substantial scope for further discussion around the points mentioned above. We feel it would be of benefit to the development of the redress scheme to further discuss many of the points raised throughout this paper.

We ask that, as commissioned practitioners who authored this paper, we meet with the relevant members of the committee to discuss our concerns,

Thank you for your consideration,

Yours sincerely,

Dr Susannah Lewis, Principal clinical Psychologist (DClinPsy)
[redacted], Psychotherapist (MA HCPC/BAAT)