

## **Education, Children and Young People Committee**

**6<sup>th</sup> Meeting, 2021 (Session 6), Wednesday 27 October**

### **The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 submission pack**

The following submission and correspondence have been received in respect of amendments to the Redress Bill.

- [Former Boys and Girls Abused in Quarriers \(FBGA\)](#)
- [Anonymous Addendum to the Former Boys and Girls Abused in Quarriers submission](#)
- [Letter from Dr Susannah Lewis](#)

**Former Boys and Girls Abused In Quarriers (FBGA)**

20th October 2021; Attention Convenor Stephen Kerr MSP,

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

**Redress Scotland Monetary and Assessment Framework;**

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

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

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

2002-2014) and SCAI findings highlighting the Scottish Civil Servants negative behaviours towards survivors in the past and the negative dealings also with the Scottish Government).

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

- For Survivors and Applicants to the Redress Scotland Scheme and Panel decision making processes to have full Trust and Confidence in all the Redress Scotland processes, but in particular the Redress component part that sits within the Scottish Government, there must be independent and impartial, external inspections, audits and regulation and oversight of all the Redress Scotland processes.
- Redress Scotland and the Redress scheme must, as a whole, produce Independent and Impartial external inspection, regulatory, audit and KPIs reports which are credible and robust.
- That ensures that audit and regulatory systems in place in both parts of the Redress Scotland Scheme and overall will measure Key Performance Indicators (KPIs), external oversight and external regulation providing Confidence and Trust to the primary stakeholders and the Public.
- These regulatory and management KPIs systems must be in place and be independently externally evaluated including audit reports available to the Scottish Parliament, the Public, Survivors and the Survivor Forum, Scottish Parliament Cross Party Group and any other parties of interest for full scrutiny.

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

- This is an issue of the upmost gravity that Stages 1 and 2 of the Redress Scotland Bill did not give consideration to. A number survivors have died since the Redress Bill was enacted earlier this year. Many survivors are in poor health, are elderly, or terminally ill.
- We are aware of a number of such cases where survivors have passed away since the Redress Bill was enacted earlier this year. We are aware that a survivor's family has written personally and directly to the office of Deputy First Minister John Swinney pleading with him personally to intervene on the matter relating to nominating a beneficiary in the intervening months since the Redress Scotland Bill was enacted
- It is our position that where a survivor has a nominated Power of Attorney or had nominated a beneficiary during the intervening months since the Redress Scotland Bill was enacted March 2021 and until the Redress Scotland Scheme actually becomes operational. Then such intervening cases should be fully accepted by the Redress Chair and the Redress Panel members. In a trauma informed and survivor centred process such as this.

- This would be in the best interests of the survivors and their families and uphold the principles of the Bill which are, Compassion, Dignity and Respect. These principles are otherwise “empty words” and “meaningless rhetoric” on paper submitted by a previous committee Convenor, Clare Adamson MSP.
- At the very least the Redress Scotland Chair and the individual Redress Scotland Panel members and collectively, should be given the discretion to decide such survivor death cases on a case by case basis.

### **Applicants Legal Fees**

- It is unfortunate that the Scottish Civil Servants & Scottish Government haven't even taken the time out recently to properly fully engage and discuss this important area and bring survivors up to-date on what was submitted to the committee re; Legal Fees and the Waiver
- To explain this legalistic critical area of work in detail to survivors and the survivor community. Legal Fees and the Actual Waiver have had to be raised by FBGA recently in meetings and as yet no response. As for many survivors they simply cannot understand the legal framework structure, A and B, the layout and wording of the legal fees Scottish Statutory Instruments 2021 No.313.
- Clearly not a trauma informed, nor a survivor centred approach and not explained in layman terms to survivors nor FBGA again creating mistrust of the Scottish Government and its Civil Servants. “The no hidden surprises” comes to mind with this approach by the Scottish Civil Servants.
- FBGA are concerned that currently Solicitors legal fees being proposed £250 as we understand it and the capped fee £1550 capped as we understand it as lay persons and as survivors, from advice we have received – That the legal fees lower limit and capped limit is not “Fit for Purpose” as proposed by the Scottish Government.
- These Legal fees being proposed currently are neither realistic, nor fair or reasonable.
- The current capped fee maximum amount £1550 pounds having consulted with a number of Solicitor Firms dealing with such historical abuse cases in Scotland clearly not sufficient to enable survivors to access proper quality legal advice relating to their own individual applications and circumstances while giving away “Rights” by having to sign a Waiver.
- These survivor cases may be complex in nature and also involve solicitors in assessment and determination while putting together an application on behalf of an applicant to Redress Scotland.
- There is currently no proposal for survivors to access a Queens Counsel (QC) legal advice nor any fees currently being proposed for QC legal advice work which is clearly unacceptable.
- In addition, a good many of the survivors' cases will require a Queens Counsel determination given that survivors are being asked to sign away their

‘RIGHTS’ and to ABANDON any future Civil Action (paragraph 3 proposed Wavier wording) by the imposition of the Wavier.

- The legal fees in the Republic of Ireland Redress Scheme were circa; 6000 Euros and in Northern Ireland Circa; 4000 pounds. In cases in NI that had considerably less legal fees survivors were disadvantaged and up in arms and lodging complaints.
- It is not acceptable in any circumstances that Survivors sign away their RIGHTS without having access to independent and impartial full quality legal advice and legal fees which are fair and reasonable, which is applicable to their own individualised case and circumstances of being abused in the previous Scottish in care system. Including Queens Counsel advice.
- We have serious reservations that the Redress Scheme will only consider exceptional and unexpected circumstances (section 4 of the payment of legal fees section). However, it simply is not acceptable that such crucial and important decisions affecting survivors “RIGHTS” is decided by a Scottish Government state body that is asking the very same Survivors to give up their Rights by signing a Waiver.
- There definitely needs and must be an independent and impartial arbitrator body appointed when it comes to legal fees and any such Redress Scotland Review payment challenges.
- We draw the committee’s attention to the serious concerns and disputes raised by survivors relating to the Northern Ireland Redress Scheme (HIA).

### **Unintended Consequences**

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

### **Waiver**

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

will not even consider IMPACT or whole life circumstances of the Survivor while seeking to take away their individual RIGHTS!

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

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

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

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

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

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

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

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

### **Eligibility Criteria**

- FBGA’s position remains the same as we stated at the previous committee Redress Hearing stage 2 when asked a question on eligibility by Beatrice Wishaw MSP.
- Where the STATE had a “Duty of Care” and failed in its duty of care and responsibilities including any inspection and regulatory failures including systemic failures. The STATE must ultimately be held accountable.

- Then FBGA's position is that all survivors in any such establishments being investigated by the Scottish Child Abuse Inquiry in addition to what the Scottish Government have labelled as "Relevant Settings" under eligibility should have "fully the right" to access the Redress Scotland Scheme.

### **FBGA Assessment Framework Feedback and purported engagement with Scottish Civil Servants**

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

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

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

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

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

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

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

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

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

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

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

1, FBGA commissioned Assessment Framework by lived experienced clinician’s, and former residents, submitted by FBGA, comments & feedback marked in RED to the Scottish Government on the 10th September 2021  
[\[https://www.fbga.co.uk/fbgaCommissionedResponse2ProposedAssessmentFramework10\\_09\\_21redacted.pdf\]](https://www.fbga.co.uk/fbgaCommissionedResponse2ProposedAssessmentFramework10_09_21redacted.pdf);

2, FBGA Survivor Forum Framework Document submitted to the Scottish Human Rights Commission, Interaction Review Group and Scottish Government on the 10th May 2021  
[\[https://www.fbga.co.uk/fbgaSurvivorForumSubmitted2ReviewGroup4ApprovalMay2021.pdf\]](https://www.fbga.co.uk/fbgaSurvivorForumSubmitted2ReviewGroup4ApprovalMay2021.pdf).

**Addendum:**

Further correspondence was received on 21st October 2021 from the Former Boys and Girls Abused In Quarriers (FBGA) regarding a response from the Scottish Government.

*Scottish Government response to FBGA Re: unintended consequences 20th October 2021*

‘Yes. We have very recently received agreement from DWP that the redress payments made under Scotland’s Redress Scheme will be disregarded when calculating entitlement to means-tested benefits. We are now working to draft the necessary amendments to the relevant social security legislation and will be able to give a more detailed update on this in the near future.’

**Anonymous Addendum to the Former Boys and Girls Abused in Quarriers submission**

19<sup>th</sup> October 2021

Mr Stephen Kerr MSP - Convener

Education, Children and Young People  
Committee

Dear Mr Stephen Kerr

An Addendum to FBGA's submission to the Education, Children and Young People Committee who are reviewing several pieces of Subordinate Legislation re: Redress for Survivors (Historical Child Abuse in Care (Scotland Act 2021) Bill.

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

As FBGA have already stated, the above is an issue of the utmost gravity that Stages 1 and 2 of the Redress Scotland Bill did not give consideration to. A number of survivors have died since the Redress Bill was enacted. Many survivors are vulnerable (susceptible) to poor physical and mental ill health because of abuse endured, some are elderly, or terminally ill, as stated in FBGA's original submission and one particular survivor who had a life time of struggle with mental illness, passed away weeks ago, in his early 50s.

FBGA, independent campaigners and proactive mental health clinical practitioners are aware of a number of such cases where survivors are vulnerable to potentially passing soon and of those who have already passed since the Redress Bill was enacted in March 2021, and I would reiterate that someone has passed as recently as a few weeks ago, paradoxically, just weeks before the redress scheme is due to open.

I am a relative, friend and mental health clinical practitioner, advocating for 'John' (a pseudonym used to give anonymity to 'John'), who died recently, in his early 50s. This is John's life experience.

John gave me consent to write about his experience if anything were to happen to him. It is important to mention that he unfortunately appeared to be anxious, ashamed and embarrassed by his experience. However, he was 'brave' enough to speak his truth 'infrequently' to ensure he expressed his desire to share his experience, if he were to pass prematurely. I also agreed with John to advocate on his behalf when the time came for him to apply for apology and financial reparation.

John instinctually thought he did not have much time left on this earth. However, he also thought, that he might live for maximum of 5 years. The abuse John endured as a child had already taken its toll, years before as a young adult. John evidently had no respite from his traumatic experiences and his living conditions (his reality), which only grew in complexity and made life increasingly difficult for him to manage.

John's anxiety and fear (locked in a perpetual state of the fight, flight and freeze response: involuntary physiological changes based on perception, that happen in the body and mind when a person feels threatened) only exacerbated over the years, as he obviously struggled with every facet of his life. These sensations (perceived threats based on historical abusive experiences/actual threats in childhood) increased in intensity, especially latterly, when he started disclosing his experiences.

John's life became increasingly worse as he tried to manage the physical disability and the accumulation of the psychologic comorbidity of the aftermath of the fundamental abuse he endured. John was essentially left alone to manage the serious consequences of abuse and he lived in chronic poverty and isolation. These complications invariably did not stand John in good stead and his quality of life was so poor, it left him feeling no real hope for his future and very alone.

John was in multiple children's homes and foster care placements for most of his childhood. This year the demise of his mental and physical health took its toll and he became so unwell that he had to be hospitalised and from there, he endured several invasive painful life-threatening operations that left him extremely vulnerable, disabled and in chronic pain. Pain that was, in the main, not possible to manage with orthodox medicine. In the end, John's life was so unbearable, and his mental health inevitably demised further. He became so unwell he created imaginary people based on family members (company) to help him cope with his chronic isolation. John was estranged (ostracised by his family), lived in chronic poverty and was in general, socially excluded and marginalised. John was found dead, slouched up against his couch, alone with his TV on. There was no sign of illegal substances in his flat and a toxicology report will take several months to determine cause of death.

John was weeks away from applying for redress. John recognised the importance of having his experience validated (certified) and the apology attached to the redress scheme was the element he highlighted to me when he was able to talk about his life. A quote from John, 'I would like an apology, hen'.

If the redress scheme opened when the Redress Bill was lawfully enacted, it is possible that John might still be alive today, and if not, his children, who are estranged, could have received the financial reparation (I assured John of this) and the apology that could explain so much to them.

Children and young people who endure childhood abuse while in care are more likely to experience trauma, face difficulties with concentration, learning, struggle to control their physical and emotional responses to stress, struggle to develop interpersonal skills and form trusting relationships. Studies have repeatedly shown us, that experiencing childhood abuse while in care increases the risk of living in poverty and isolation and that adults who were abused as children often develop mental health issues and obsessive-compulsive behaviors/functioning as coping mechanisms for dealing with childhood trauma. John was no different in this respect. John's life ticks every box above, evidencing, yet again, what can often happen to adults that have been abused while in the care system.

John's trauma does not stop now that he has gone. His trauma is inevitably passed down to those who have directly experienced any incident/s, with him, (including witnessing him living in squalor and chronic poverty), from an intergenerational perspective. Generation after generation. Unfortunately, family members have

already suffered because of John's traumatic experiences, and the chances are very high in deed that because of John's experience, more will suffer in the years to come.

John deserved to be treated with love, respect, kindness and dignity throughout his childhood and again throughout his obvious troubled adulthood, but unfortunately, this was not the case. I hold Scottish Government to account, unapologetically and unashamedly, in honor of John. He was of value as a child and he is of value now.

John not being in a position to access applying for reparation, post the Redress Bill being enacted, or at least registering his application to enable applying, whether he passes away or not, is shameful and only confirms the dehumanising nature of the scheme, inadvertently repeating the abuse of a psychological kind, that is unfathomable after everything endured by John (and this also applies to other survivors). This is a profoundly obvious emotionally immature, apathetic and non-trauma informed approach, demonstrating extremely poor judgement on the government's part. Cost should not be a factor here. It defies all that is written in the legislation, in terms of the Scottish Government holding themselves to account, a trauma informed approach and treating survivors with dignity compassion and respect.

As it stands there is no justice for John and his family and I would ask that John's case is looked at thoroughly with a view to opening up his case now and allowing me to advocate for him as planned, to enable John's children to receive redress on their father's behalf.

Yours Sincerely

Mental Health  
Practitioner  
Psychotherapist

Specialisms: Trauma, ACEs, Comorbidity in Mental Health, LAC, Care Leavers

**Letter from Dr Susannah Lewis**

Mr Stephen Kerr MSP, Convenor,  
Education, Children and Young People's Committee,

Dear Mr Kerr,

**The *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill*: survivor nomination of beneficiary**

I am aware that the Education, Children and Young People's Committee have received a written submission from Former Boys and Girls Abused Quarriers Homes (FBGA). FBGA have raised the issue of survivors being permitted to nominate a beneficiary from the date that the Redress Bill received Royal Assent (April 2021) has been highlighted.

I am the family member of an in-care abuse survivor who is elderly and terminally ill. I would ask that the committee considers this very serious issue for reasons which I will outline. I have previously written to Daniel Johnson MSP regarding this matter. Mr Johnson wrote to Mr John Swinney Deputy First Minister on my behalf. In his response Mr Swinney stated that survivors could not nominate a beneficiary until the scheme opens in December (please find Mr Swinney's reply appended).

My family member may die before the Redress scheme opens in December. They and other survivors are not permitted to nominate a beneficiary until the day the Redress scheme is in operation. Many survivors are elderly, in poor physical health, and poor mental health, having waited several years to achieve justice in the form of Redress and the In-care Abuse Inquiry.

The serious and enduring impact of in-care childhood abuse on survivors' health is well documented, with life expectancy significantly shortened (by an average of 20 years). Childhood "toxic stress" inflicted by abuse damages the developing cardiovascular, endocrine and auto-immune systems. Survivors are therefore left with markedly elevated risk of serious illnesses such as heart disease, cancer, and type 2 diabetes. The psychological harm inflicted by childhood trauma and subsequent damage to the developing brain leads to high rates of mental illness and addictions in survivor populations. Survivors are at significant risk of premature death from suicide and drug/alcohol addiction.

My family member has never recovered from the heinous neglect and abuse inflicted on them as a child in-care in Scotland. In keeping with many survivors their suffering has been lifelong, with their adult life blighted by enduring mental illness. As they are nearing the end of life I feel it is unjust and lacking in humanity for them (and all survivors) to be obstructed from nominating a beneficiary. The need for survivors to be treated with "Compassion, dignity, and respect" which was added to the Bill by Ms Claire Adamson MSP is not being upheld.

Sadly many survivors have died in this interim period, having not received justice in the form of Redress. Their grieving families being left with the additional distress that

their loved one did not receive justice for the abuse endured as a child, and that they are unable to receive Redress on the deceased persons' behalf.

I respectfully ask therefore that survivors are permitted to nominate a beneficiary before the scheme opens.

Yours sincerely,

**Dr Susannah Lewis (relative of a survivor)**