SHRC
Scottish
Human Rights
Commission

Sue Webber MSP
Convener
Education, Children and Young People Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: ecyp.committee@parliament.scot

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Dear Convener,

Effectiveness of the operation of financial redress scheme

The Scottish Human Rights Commission (the "Commission") has been working since its inception in 2008 to promote effective access to justice and remedies for survivors of historical child abuse. Ensuring the full and effective participation of survivors in decisions around how best to realise their rights has been central to the Commission's work in this area.

Survivors advocated for the establishment of a redress scheme for many years, and the Commission strongly supported the establishment of such a scheme when legislation was brought before Parliament in 2020/2021. We are writing to highlight to the Committee that access to an effective remedy is as yet not available to some groups of survivors via the redress scheme and to suggest that this is something which the Committee may wish to explore.

The Commission has been contacted by survivors who were abused at Fornethy House Residential School in Angus, who are seeking justice

for the human rights violations they experienced there. Survivors of Fornethy House have been told that there is nothing to preclude them from making applications to the redress scheme; however, we understand that their practical experience of the scheme is that applications have been deemed ineligible.

We note that this is likely to be as a consequence of the decision of Scottish Ministers to make regulations under section 23 of the Act excluding short-term respite or holiday care from eligibility (Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021/413).

In our evidence to the Education and Skills Committee to assist in its Stage 1 consideration of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, we set out the relevant human rights framework to deliver justice for survivors, highlighting the importance of the right to an effective remedy, which includes:

- Access to relevant information concerning violations and reparation mechanisms;
- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered.

At Stage 1, we raised concerns that the definition of “relevant care setting”, now found at Section 20 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 may have the unintended effect of ruling out specific groups of survivors. We stated:

“The Commission believes an assessment of whether this definition has the effect of ruling out specific groups of survivors is required. There were situations where there was no clear process of transferring legal responsibility for parenting, nevertheless the institution effectively had complete control over the liberty, and the moral, physical, social and spiritual well-being of a child.”

We recommended that the definitions governing eligibility should be kept under review to avoid the type of unintended consequences outlined above, and called for an obligation to review the definitions at regular intervals.

As you are aware, the Commission cannot represent or advise individuals and we therefore cannot comment on the detail of individual applications; however, we would like to bring this issue to the Committee's attention.

We are concerned that the unintended effects we highlighted in our Stage 1 evidence could now be impacting on survivors' abilities to obtain the redress they are entitled to. We understand that some survivors have recently highlighted similar concerns to the Committee. We would therefore suggest that it could be helpful for the Committee to hear from survivors who have applied for redress in an attempt to assess the scale of the issue. If barriers are being encountered, the Commission notes that the definitions in the Act may be modified by regulations should that be deemed appropriate.

The Commission would be happy to discuss any of the above in more detail. We hope this contribution is helpful.

Yours sincerely

Jan Savage
Executive Director
Scottish Human Rights Commission