

## AGENDA ITEM NO 12

REPORT NO 91/22

### ANGUS COUNCIL

#### POLICY & RESOURCES COMMITTEE – 8 MARCH 2022

#### REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) ACT 2021

#### REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

#### ABSTRACT

The purpose of this report is to inform Members of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act in 2021, the financial implications for the Council and the potential implications for the Council of parties not using the scheme and raising a court action against the Council instead.

#### 1. RECOMMENDATION(S)

It is recommended that the Council:

- (i) Notes the contents of this report, including the financial implications associated with the contributory provisions of the legislation and the potential implications of parties not using the scheme and raising a court action against the Council.

#### 2. ALIGNMENT TO THE COUNCIL PLAN

- 2.1 This report contributes as a whole to the Council Plan as it supports the Council's aim to be efficient and effective by ensuring corporate planning.

#### 3. BACKGROUND

- 3.1 The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 ("The Act") became law on 23 April 2021. The Act establishes a financial redress scheme for survivors of historical child abuse in relevant care settings in Scotland and in some circumstances where the survivor has died, their next of kin.
- 3.2 The scheme covers physical, sexual and emotional abuse and neglect and is available where an individual was abused as a child (17 years old or younger) before 1 December 2004 in Scotland in a relevant care setting. Those eligible can apply to request an apology and/or redress payments ranging from £10,000 up to £100,000. There are two different redress payments available to survivors under the scheme:
  - 1) fixed rate payments of £10,000; or
  - 2) individually assessed redress payments which can range from £20,000 to £100,000 depending on the nature, severity, frequency and duration of abuse experienced, and other relevant factors.
- 3.3 The scheme is designed as an alternative to the civil court process. It is intended to offer a route to justice which is not available to some survivors and to offer choice to those who may not wish to pursue an action in court. The choice of whether to seek redress through the scheme, or to pursue action in court, will always sit with survivors unless and until they choose to accept a redress payment, and each individual will make that choice based on their own individual circumstances. The scheme opened for applications on 8 December 2021.

## **4. CURRENT POSITION**

- 4.1 The Act sets up an independent body, 'Redress Scotland' to assess applications and administer a tariff-based scheme to survivors. The Scheme is funded by the Scottish Government, but "fair and meaningful contributions" were sought from relevant organisations. The Act requires Scottish Ministers to take into account the affordability of a fair and meaningful contribution for each organisation. Scottish Ministers are also required to take into account the sustainability of current and future services provided by the organisation, and the impact that making a fair and meaningful contribution may have on these services.
- 4.2 Financial contributions were sought by the Scottish Government from those involved in the care of children at the time of the abuse. Local authorities in Scotland have held responsibilities for the care of children throughout the period covered by the redress scheme. The Scottish Government's approach was to seek to agree a collective contribution from Scottish local authorities, to reflect the legacy of local government responsibility for historical child abuse in relevant care settings and COSLA, on behalf of local authorities, put forward proposals to the Scottish Government. It has been agreed between COSLA and the Scottish Government that the collective local government contribution to the Redress Scheme will be top sliced from the total local government grant settlement over a 10 year period with the first tranche of this (£5m) applying being taken in financial year 2022/23. As the top slicing arrangement applies at a national level there is no separate contribution identifiable for Angus Council nor any specific liability attributable to Angus Council under the Scheme.
- 4.3 The Act provides for Ministers to establish a list of contributors to the scheme, made up of public authorities, voluntary organisations and others, who exercise or have exercised functions in relation to the safeguarding or promotion of the welfare of children or protection/furthering of their interests. A list of financial contributors can be found here: - <https://www.gov.scot/publications/scotlands-redress-scheme-contributor-list/>
- 4.4 The Act includes a waiver mechanism advocated for by COSLA which removes the financial risk of civil litigation. Survivors who benefit from the redress scheme are required to give up their right to pursue civil justice. Therefore, if they choose to accept payment from the scheme after independent legal advice (to be funded by the scheme), they will be required to sign a waiver. The waiver is a legal document. The waiver asks the survivor to agree that they will not start or continue any civil court action about abuse that is a) eligible under Scotland's Redress Scheme, and b) directed at the Scottish Government and organisations that financially contribute to the scheme and are on the contributor list. Scotland's Redress Scheme will pay for a solicitor to help a survivor to complete the application form and also provide legal advice on whether the survivor should sign a waiver to receive a payment.
- 4.5 The waiver will only apply to the organisations that are on the contributors list, so survivors will still be able to raise legal action against organisations that are not contributors. The purpose of the contributor list is to show which organisations are subject to the waiver scheme, being those making a fair and meaningful contribution to the redress scheme.
- 4.6 Although the Act provides the choice of accepting payment through the redress scheme, survivors who currently have the right to raise a civil action in respect of their abuse will continue to have that option. This means that if a survivor decides not to seek redress through the scheme, they may alternatively raise a court action which can result in a sum being awarded out with the parameters of the scheme. Presently where a survivor opts to apply for an 'individually assessed payment' within the scheme, the maximum award is up to £100,000. If a survivor pursues a civil action potentially an award could exceed the £100,000 limit of the scheme.

## **5. FINANCIAL AND OTHER IMPLICATIONS**

- 5.1 There are financial and other possible service implications associated with the contributory provisions of the Act:

- Amounts top sliced from the Local Government funding for 2022/23 and subsequent years for the Redress Scheme Financial Contribution reduce the funds which would otherwise be available for service provision. However the Scheme also manages the financial risk to the Council which might otherwise arise from civil proceedings which although not removed may be fewer in number if survivors choose to use the Scheme.
- There remains the risk of claims from people who do not wish to use the Redress Scotland route but may choose to litigate instead, but this is an unknown financial risk at this point.
- Access to information (evidence) will be required for applicants in support of their applications and will also be needed by the Redress Scotland in the administration of the scheme. These will have to be accessed from various services within the council, leading to the potential for a significant impact on staff resources for the council.

## **6. EQUALITY IMPACT ASSESSMENT**

6.1 An equality impact assessment is not required.

## **7. CONSULTATION (IF APPLICABLE)**

7.1 Consultation has taken place with the Corporate Leadership Team.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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