

Agenda Item	5
Report No	HCW/09/20

## THE HIGHLAND COUNCIL

**Committee:** Health, Social Care and Wellbeing

**Date:** 26 August 2020

**Report Title:** Scottish Child Abuse Inquiry and Implications for Local Authorities

**Report By:** Executive Chief Officer – Health and Social Care

### 1. Purpose/Executive Summary

- 1.1 To advise Members generally about the work of the Scottish Child Abuse Inquiry and of the completion of the Section 21 request by Lady Smith, Chair of the Scottish Historical Child Abuse Inquiry. The request focuses on the abuse of children in foster care between 1930 and 2014 and this report offers Members an insight into the work undertaken to respond to the request and the potential risks and implications for the Council going forward.
- 1.2 The report also provides an initial assessment of the recently published Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

### 2. Recommendations

- 2.1 Members are asked to:
  - i. Recognise the work undertaken by Council staff and colleagues in HLH Archive Centre;
  - ii. Acknowledge the future reputational risks to the Council as a consequence of the Inquiry;
  - iii. Note the publication of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill on 13<sup>th</sup> August 2020; and
  - iv. Be aware of the potential unfunded costs to the Council arising from this new legislation and the completion of this and on-going Inquiries.

### 3. Implications

- 3.1 Resource - Any claims of abuse established through the Inquiry are likely to result in significant costs to the Council. The Redress for Survivors (Historical Child Abuse in

Care) (Scotland) Bill lays out the amount to establish and administer the Inquiry. It also predicts the likely cost of individual payments. COSLA and Social Work Scotland are working closely with Scottish ministers to establish how individual payment costs will be met. Section 8 sets this out in greater detail.

The completion of the Section 21 request (Abuse in Foster Care) and other previous and forthcoming inquiries and subsequent requests for records will continue to result in additional staffing costs for the Council. There has been and will continue to be significant additional workload in terms of the search and location of information pertaining to carers and children, assessment of the information as well as copying and transferring securely to the Inquiry. The Council will also need to be represented by social work senior managers as well as the legal team. It is unknown at this time whether current capacity will be sufficient to meet this demand.

There are other areas of Inquiry yet to be launched.

- 3.2 Legal -The Inquiry asked the Council to accept that children in the care of the local authority and/or previous versions of it, were subjected to abuse in foster care between 1930-2014. This recognition may have significant implications. The Scottish Child Abuse Inquiry Bill, published on 13th August 2020, lays out the scheme to compensate survivors of child abuse (while in the care of the local authority). Support can be both financial and/or therapeutic. The Council will engage with COSLA, professional networks and the Scottish Government as the Bill progresses through Parliament, and the Committee will be kept informed of any material changes to the Bill prior to its enactment.
- 3.3 Community (Equality, Poverty, Rural and Island) As information becomes public there is likely to be concern and upset expressed in communities where incidents have come to light and these will need to be handled sensitively.
- 3.4 Climate Change; Gaelic - No issues.
- 3.5 Risk-The Inquiry holds significant and unpredictable reputational and financial risk.

#### **4. Introduction to The Scottish Child Abuse Inquiry**

- 4.1 The Scottish Child Abuse Inquiry was set by the Scottish Government and has power in statute to investigate the abuse of children in care in Scotland at any time from 1930 until December 2014. The Inquiry will look at what happened, why and where abuse took place, the effects of abuse on children and their families and whether the organisations responsible for children in care failed in their duties. The Inquiry will look at whether any failures have been corrected and if changes to the law, policies or procedures are needed.
- 4.2 The overall aim and purpose of The Scottish Child Abuse Inquiry is to raise public awareness of the abuse of children in care, particularly during the period covered by the Inquiry. It will provide an opportunity for public acknowledgement of the suffering of those children and a forum for validation of their experience and testimony.
- 4.3 The Scottish Child Abuse Inquiry is now well underway. The Inquiry Group is chaired by Lady Smith who was appointed a Judge of the Supreme Courts in 2001 and appointed to the Inner House in November 2012. The Inquiry team is populated by a group or relevant people.

4.4 The Inquiry is supported by a Research and Policy Team who identify, gather and review information relating to the abuse of children in care and related topics in order for the Inquiry to meet its terms of reference and to ensure the best use of quality data across the Inquiry. They may carry out research within the Inquiry or commission experts to assist in their work. Research relies on information gathered in the course of the Inquiry, including institutional records and information and statements from applicants. This research will inform the Chair's findings and recommendations.

## **5. The Powers Available to the Inquiry**

5.1 The Chair of the Inquiry has a wide range of powers that she can use to help the Inquiry get its work done as efficiently and effectively as possible. The Chair has the power to:

- Request individuals or organisations give evidence or produce records and other documents. Giving evidence could be at a public hearing or in a written witness statement. If the person fails to do what is required, it may be a criminal offence.
- Issue instructions, called "directions" and "orders" about how the Inquiry should operate. For example, an order might set a deadline by which something must be done, such as producing a document to the Inquiry.
- Refer a failure of a public body to do what is required by a direction or order, to the Court of Session. That Court will decide what action to take.
- Decide who should be a core participant to the Inquiry. A core participant is expected to have a significant role in the Inquiry. It could be a person, group, or an organisation.
- Decide what evidence should be kept private. This can mean deciding that some information must not be shared, published or disclosed by anyone.

5.2 The Chair has made a 'restriction order' to keep private the names of people (applicants) who tell the Inquiry they were abused. A further order has been made to protect the identities of family members of applicants and the family members of people who are now deceased but who were, or could have been, applicants.

5.3 The Chair of the Inquiry must act fairly when she makes any decision about the conduct of the Inquiry and how it should proceed; she must also have regard to the need to avoid unnecessary cost.

5.4 There is an expectation that everyone adopts a co-operative, constructive and sensitive approach to the work of the Inquiry. Good and efficient working relationships are essential to ensure that the Inquiry is completed to the best of their ability and as efficiently as possible.

## **6. Financial Redress – Advance Payment Scheme**

6.1 On Thursday 25 April 2019, Scottish Government announced an Advanced Payment Scheme. The scheme will be open to anyone who was in care as a child and was abused in care in Scotland before December 2004. Payments will be made on a discretionary basis to those who have a terminal illness or who are age 65 or over.

6.2 The Advance Payment Scheme has been introduced ahead of the planned legislation for a statutory redress scheme, which the Scottish Government intends will pass its final Parliamentary stages before March 2021.

6.3 The payments have been set at a flat rate of £10,000 and will be ex gratia and discretionary.

6.4 Deputy First Minister John Swinney told Parliament:

*“We wholeheartedly accept the need to provide acknowledgement and tangible recognition of the harm done to children who were abused in care in Scotland, while acknowledging that such recognition cannot in any way take away the pain that individuals have suffered.*

*We are all too aware that, because of their age or health, some survivors may not live long enough to apply to the statutory scheme.*

*Survivors asked us to develop an application process which is as straightforward as possible, whilst making the scheme robust and credible. This is what we have designed.*

*The Advance Payment level has been set at £10,000, which is broadly in line with interim payments made by redress schemes in other parts of the world.*

*It will be an equal flat rate payment to all those who meet the eligibility criteria and submit a complete application.*

*The costs of the Advance Payment Scheme are being met in whole by the Scottish Government, and we intend it will remain open for applications until the statutory redress scheme is established.”*

6.5 To be eligible for the Advance Payment Scheme applicants must either have a terminal illness or be age 65 or over, and experienced abuse whilst in care in Scotland before December 2004.

6.6 Applicants will not be required to submit evidence of having been abused but will require documentary evidence that shows they were in care. Terminal illness will need to be certified by a registered healthcare professional, through a process which the Inquiry believe is as sensitive as possible to the circumstances of the applicant.

6.7 For the purpose of Advance Payments, the following settings will be eligible:

- children’s homes
- foster care
- secure care units including List D schools
- Young Offenders’ Institutions and Borstals
- places provided for Boarded Out children in the Highlands and Islands
- state, private and independent boarding schools (in some circumstances, see below)
- state-funded school hostels
- healthcare establishments providing long-term care
- any similar establishments intended to provide children with long-term residential care (see clarification below)

6.8 There are two key clarifications to note:

1. In relation to boarding schools, residential pupils at boarding schools will not be eligible if their parents chose that place for their children's education.
2. In relation to long-term healthcare establishments, children who spent time in establishments whose primary purpose was medical or surgical treatment – primarily general or local hospitals – will not be eligible. Children who stayed in all other healthcare establishments, where the function was primarily long-term care and not treatment, are eligible.

## **7. Section 21 Notices (Children in Foster Care)**

7.1 In order to assist the Inquiry gather the information they require, a number of Section 21 notices have been issued to both Local Authorities and private providers. The Section 21 notice requires the recipient to provide all the information requested within the stipulated timescales. The Council has received a number of notices to date and with the assistance of staff from the Archive Service all have been responded too. However, the most significant Notice was received in August 2019. Due to the amount of work required to complete this most Scottish Local Authorities requested two extensions to the original timescales set by the Inquiry. Most had a final submission date of 31<sup>st</sup> July 2020. Some Local Authorities requested an extension beyond this date due to the impact Covid-19 had on their ability to access records and work on the Inquiry. None were granted. Covid-19 did have an impact on The Highland Council's ability to complete the Inquiry in the depth it may otherwise have done. It was however submitted by 31<sup>st</sup> July and amounted to 145 pages.

7.2 The Notice related to the practice and procedures adopted by the Council and its predecessor authorities from 1930 until 2014 in respect of children who were boarded out or placed in the care of foster carers. The Notice was divided into four parts. The information sought was far reaching and comprehensive and covered every aspect of what was going on at any given point over the period. In Part B the Local Authority was asked to acknowledge that children were abused in their care during the period in question. The four parts were: -

- A. Background
- B. Current Statement
- C. Prevention and Identification (Policy and Procedure)
- D. Abuse and Response

7.3 The requirement was for Local Authorities to:

- Review information held in any format from 1930 until 2014, a span of 84 years.
- Produce all the legislation that applied at any given time and how policy and procedure were influenced accordingly throughout and across the 84 years.
- Provide information as to how carers were assessed, selected and approved throughout the period.
- Show what policies and procedures influenced children being taken into care and if the Local Authority used its own policies consistently throughout the period.
- Review the individual foster carer files for the whole period and apply the policies to the time they were approved to illustrate the point above.
- Identify and present any instances of allegations being made about the carers by children.
- Look at individual case files of children who were 'in care' during the 84 years and identify any allegations they (or someone acting on their behalf) may have made.

- The Local Authority was then asked to cross reference with foster carer files and seek information from other agencies about what they might know, e.g. the Police, the crown and the courts to build as complete a picture as possible which also required to be submitted to the Inquiry.

- 7.4 The information required was situated in several locations throughout the Highland area. Much of the older information was held by the archivist and contained in old books and ledgers rather than in individual child and foster carers files. Many of these old log books were hand written and faded making them difficult to read and understand. They were based around old county parishes.
- 7.5 It was also noted that much may have been lost over time, but this cannot not be quantified. Regional boundaries have also varied over time therefore files of carers and children that will be required going forward may now be stored in an adjacent Local Authority.
- 7.6 The task was therefore extremely challenging for everyone involved. Inevitably it was very labour intensive and involved significant financial resource due to the vast amount of work required. There was no method other than human scrutiny that could complete this work and it could only be undertaken by those who were able to navigate, understand, interpret and assimilate the information, drawing it together to answer the questions posed by the Inquiry but also to judge the effectiveness of the Council in caring for children in the past.
- 7.7 Many Local Authorities set up a task force whose only job was to complete this task. Others had employed known individuals to assist. Within the Highland Council and the Archive Centre, staff did this alongside their day job with a previous fostering and adoption social worker being employed to read the files of carers and children.
- 7.8 Social Work Scotland set up a national meeting to allow the 32 local authorities to converse and share their learning. This will continue as the Inquiry provides feedback, requests more information or expands the remit of their work.
- 7.9 The Highland Council will require to continue to respond within timescales to any new Inquires made by the Inquiry chair. We will require to respond and represent ourselves at any individual hearings raised and accept liability if illustrated in evidence to the claims of former children in care or their families.
- 7.10 It is understood that the final statutory guidance will come into effect as planned in the Spring of 2021. This will lay out who will have responsibility for compensating victims of abuse or their families. This may have significant implications for the Council.

## **8. Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill 2020**

- 8.1 The Scottish Child Abuse Inquiry Bill was published on 13<sup>th</sup> August 2020. It lays out the scheme to compensate survivors of child abuse (while in the care of the local authority). Support can be both financial and/or therapeutic.
- 8.2 The Bill describes in detail the process that will be put in place to administer the scheme and to award compensation to survivors. The Bill will require to go through a staged consultation with the anticipated passing of the Bill to Act scheduled to take place in April 2021. The Bill notes that the scheme will stay open for five years from the day the Act is passed. Although the Bill notes that ministers will have the power to extend this under certain circumstances.

- 8.3 The Bill also notes the establishment of a 'Contributor List' which will name all of those who will be expected to make a contribution to the scheme. All Local Authorities and private providers of care will be included on this list.
- 8.4 The Financial Memorandum which accompanies the Bill notes that the Advanced Payments Scheme is already in place for those over 65 (amended) or suffering from a terminal illness. The enhanced scheme laid out in the Bill outlines the substantive scheme to be enacted when the Bill becomes an Act with awards to be made to those who have suffered abuse. The amounts are as follows:-
- Fixed Payment £10K (NOK payment also £10K)  
Individually Assessed Payment (IAP)  
Level 1 £20K  
Level 2 £40K  
Level 3 £80K
- 8.5 The Financial Memorandum notes the research that has been undertaken to reasonably predict the cost of the administration of the scheme and the cost of payments to individuals. It seeks to offer approximate costs to local authorities and private providers to both conduct searches and assessment of information. It highlights the quantifiable cost to the Scottish administration and others as around £408.32M.
- 8.6 This **does not** include the cost of awards to individuals. This is likely to be in the region of £330M (based on 11,000 applications at an average of £30,000 award per individual).
- 8.7 This is the part that remains under negotiation as outlined previously and will be updated to Committee as the Bill progresses through the consultation and Parliamentary process.

Designation: Executive Chief Officer – Health and Social Care

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