

**Scottish Child Abuse Inquiry
Draft (Limitation (Childhood Abuse) (Scotland) Bill****Report by Mary Smith, Director, Education, Communities and Economy****1. Purpose of Report**

- 1.1** The purpose of the report is to provide an update on the progress made by Midlothian Council in preparing for the Scottish Child Abuse Inquiry and to raise awareness of the financial impact of the Proposed Draft (Limitation (Childhood Abuse) (Scotland) Bill.
- 1.2** A previous report was submitted to Council on 11th August 2015.

2. Background

- 2.1** The Inquiry officially began on 01 October 2015 and is estimated to last for at least four years, or such other period specified by Scottish ministers. The overall aim of the Inquiry is to raise awareness of the abuse of children in care and provide an opportunity for public acknowledgement of the suffering of those children who have been abused in care by establishing a national public record and by investigating:
- The nature and extent of abuse;
 - The extent to which responsible institutions failed in their duty of care;
 - How abuse continues to affect victims in the long term.
- 2.2** On 21 October 2015, the Council received a letter from Susan O'Brien QC, Chair of the Inquiry, requesting that the Council take immediate action to preserve records in its care which might be sought by the Inquiry at a later date. It was also recommended that the Council begin setting up a process for 'identifying and organising' these records. As part of the process, Councils were asked to record and evidence steps taken to identify and protect records.
- 2.3** The Inquiry covers the term of 'living memory' and relates to the management of individual children in care or residential settings, the management and operation of homes and residential schools, and the Council's policies and practices for the care of children and young people.
- 2.4** 'Children in care' are defined as children in institutional residential care such as children's homes, secure care units, young offenders' institutions, boarding schools, state funded school hostels, healthcare establishments providing long term care, any other kind of long term residential care, and foster care.
- 2.5** In addition to the Inquiry, the Scottish Government is proposing to remove the 3 year limitation period from civil actions for damages for personal injury for in-care survivors of historical child abuse. The Scottish Government has drafted a Bill [Limitation (Childhood Abuse) (Scotland) Bill 2016] to remove this limitation period and it is anticipated this will be passed by the Scottish Parliament in 2017.

- 2.6** A dedicated Project Team are tasked with identifying children's homes in Midlothian over the last 100 years and researching historic legislation. Other actions include:
1. Record Audit: reviewing the Council's existing paper and electronic recordkeeping systems to identify relevant records and map them to residential establishments. This also includes, where possible, noting the Council's historic recordkeeping policies, such as retention schedules.
 2. Cataloguing/Indexing: checking and updating existing recordkeeping systems for accuracy and consistency, enabling effective information retrieval when requested by the Inquiry.
 3. Ascertaining the succession and insurance position in relation to potential historic child abuse claims.
 4. Ascertaining and agreeing Midlothian Council's legal position/ approach in dealing with the potential historic child abuse claims.
- 2.7** The Project Team regularly reports to the Project Sponsor; Mary Smith, Director of Education, Communities and Economy and the Council Management Team. Council staff are kept informed of progress and any actions required through regular briefings.

3. Inquiry - Potential risks based on findings from the independent Jersey Care Inquiry

- 3.1** In preparation for the Inquiry we explored the learning from the findings of other Inquiries. The recent experience of the Jersey Care Inquiry into Historic Abuse was useful in terms of the challenges they encountered both in relation to preparation and future resource implications.
- 3.2** The Jersey Care Inquiry was expected to take about 1 year and the total costs were estimated at £6m. In fact the Jersey Care Inquiry lasted for 4 years and the budget was eventually increased to £23m in March 2015. As with other Inquiries the direct costs and timescales were significantly more than initially thought.
- 3.3** Another major contributor towards delay was the challenges associated with document volume and document disclosure. The nature of the documents requested was that they contained matters which needed to be redacted before being made public. This is a time consuming and costly process and directly contributed towards the Jersey Care Inquiry timescales and increased costs. While this task can be carried out by Midlothian Council in-house the additional pressure on existing resources cannot be underestimated.
- 3.4** Another important factor was the vulnerability of victim witnesses which made the scheduling of evidence difficult. Equally as important was that staff; past and present, required support.
- 3.6** The Jersey Care Inquiry found that the Media was a constant presence and significantly influenced the process. There were a number on 'unknowns' and issues that emerged from documents, including evidence that were not previously anticipated.
- 3.7** Compensation claims was a running theme throughout the Jersey Care Inquiry. The Jersey approach was to set up a Compensation Scheme (Historic Abuse Redress Scheme). The Scheme deals directly with all the claims for compensation.

4 Financial impact of the Limitation (Childhood Abuse) (Scotland) Bill

- 4.1** The Financial impact of the Limitation (Childhood Abuse) (Scotland) Bill is currently being drafted by Scottish Government. It is anticipated that the Bill will only contain provision to lift the current time bar for compensation claims by survivors of child abuse.
- 4.2** Scottish Government officials have been unable to confirm an exact timescale for the Bill, but have indicated that there is a Ministerial Commitment for it to go before the Scottish Parliament in this Parliamentary year and most likely this would be at the start of 2017.
- 4.3** The draft Bill will apply to all civil action cases of historical childhood abuse. Given the role of local authorities in providing and placing children in care, this will apply to local authorities in Scotland.
- 4.4** A briefing note on the Bill submitted to the CoSLA on 19 August 2016 concluded that it was impossible to assess the scale of claims which may come forward as a result of the removal of the time bar. It suggested more Victims will come forward as the legislation is rolled out and will submit claims for compensation ("Claimants"). The briefing note concluded it may not be unreasonable to expect 5,000 Claimants who will be entitled to compensation as a result of this legislation.
- 4.5** Based on a pro rata calculation of 5,000 claims, the Council could be liable for approximately £2m in compensation costs. This figure does not take into account further costs to the Council in terms of the legal expenses of the Claimants and the Council's own legal expenses in dealing with the claims.
- 4.6** A particularly sensitive issue is that of liability. Local Government has gone through a number of reforms since 1964 and how liability flows through those reforms is a complex legal issue. It is very possible that cases could emerge where there is a dispute about which council is liable dependant on geographical boundary changes. Other aspects of liability could include decisions made by one council to place a child or young person in a care setting or family in another council area. The question of joint liability might arise here.
- 4.7** There could be other unintended financial consequences from the Bill. In particular, councils may find that their insurance premiums increase to account for the change in legislation.

5. Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- ☒ Community safety
- ☒ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☒ Improving opportunities in Midlothian
- ☒ Sustainable growth
- ☒ Business transformation and Best Value

5.1 Impact on Performance and Outcomes

The outcome of the Inquiry could mean Residential Care homes and Foster Care could become a focus within this Inquiry if there are reported incidents of abuse within these settings. Given that Local Authorities have difficulties in recruiting foster carers the findings from this Inquiry could have a negative impact upon future recruitment campaigns. Equally, residential staff may feel an enhanced scrutiny if

historical stories of abuse within old residential establishments are reported in the press.

5.2 Adopting a Preventative Approach

The Council's Project Team is tasked with the managing of the overall project to ensure the Council is ready to assist the Inquiry, ready to deal with future claims in an efficient manner, and as far as possible, minimise legal costs and expenses.

The Inquiry is progressing and is fully supported by Midlothian Council. We will endeavour to reassure our service users that our foster carers and residential staff strive to offer a safe, nurturing and caring environment for our children and young people to live in. The level of scrutiny of these areas of practice is already extensive and this will continue as we move forward to mitigate the risk as much as possible of future incidents of abuse occurring in such settings.

5.3 Involving Communities and Other Stakeholders

The Inquiry team will continue to meet and appropriately signpost those who make a report of Abuse. Midlothian Council has a link on its website so that agencies can support those who have suffered abuse and their families.

5.4 Ensuring Equalities

As this Inquiry centres on people, EqlAs/Integrated Impact Assessments will be carried out at each point of reporting and major stages in the project'. Accordingly, there is a completed EqlA that accompanies this report.

5.5 Supporting Sustainable Development

The Inquiry will consider whether further changes in practice, policy or legislation are necessary in order to protect children in care in Scotland from such abuse in the future.

5.6 IT Issues

Ensuring our website is up to date with relevant support agencies to support those who may have suffered abuse and their families. We may need to identify whether we have sufficient software to support the redaction task.

6. Summary

6.1 Midlothian Council prepared for the Scottish Child Abuse Inquiry at an early stage and because of this has made significant progress. Members of the Project Team are key drivers in the national discussion and in sharing findings from a Scottish perspective. We are at the forefront of much of the work in relation to meeting the requirements for documentation; redaction, file mapping, service services and importantly identifying gaps and militating against these.

6.2 Midlothian recently committed supplementary expenditure to the 16/17 budget and increase to the 2017/18 budget to meet the increasing demands of the Inquiry at this stage.

- 6.3** Midlothian Council fully supports any actions to remove the barrier to seeking justice for survivors of historical childhood abuse. However, the impact the proposed legislation will have cannot be underestimated.
- 6.4** Although this is very difficult to quantify, particularly due to the sensitive nature of the claims. It is also difficult to estimate the value of any claims that could be brought. . However we are able to gauge some of these costs based on the experience of other inquiries and the projections made by a range of professional groups.
- 6.5** Recent estimates based on the information provided by Directors of Finance would suggest Midlothian Council may be liable for £2 million in compensation claims although legal cost could be considerably more. Given the fiscal challenges Midlothian Council is currently experiencing, the financial burden is a significant issue.

7. Recommendations

Council is asked to note

- a. the significant work already carried out in Midlothian,
- b. the future need for additional resources; legal advice; administrative duties; compensation claims; media management; victim witnesses supports, all of which are unknown at this stage,
- c. members of the Project Team will continue to engage with the appropriate national and local forums.

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