



SCVO and Chartered Institute of Fundraising Scotland

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill Stage one evidence

October 2020

Summary

SCVO and the Chartered Institute of Fundraising Scotland have concerns around the implications of sections 14 and 15 of the Bill for charity law and the potential knock on effects of this on the actions of charity Trustees and on fundraising practice. In particular, SCVO raises concerns that these clauses can be interpreted as Scottish Ministers seeking to control the action of Trustees, and that the inclusion of these clauses in the legislation sets a precedent for Ministers to take similar action in other situations in future. The Chartered Institute of Fundraising Scotland highlight the implications of these changes for fundraising.

About us

The **Scottish Council for Voluntary Organisations (SCVO)** is the national body representing the third sector.

There are over 45,000 voluntary sector organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers, managing an annual income of over £6 billion.

The **Chartered Institute of Fundraising Scotland** is the professional membership body for UK fundraising. We support fundraisers through leadership and representation; best practice and compliance; education and networking; and we champion and promote fundraising as a career choice. We have around individual members and organisational members who across the UK raise more than £9 billion in income for good causes every year.

Response from SCVO

It is our understanding that sections 14 and 15 of the Bill are designed to remove any barriers to charities from making a *voluntary* contribution to the financial redress scheme. We believe, however, that these sections are disproportionate to this policy intention.

Section 14

Charity trustees have a legal duty to make case by case decisions in the best interests of their charities. They are guided in this decision making by the charitable aims of their organisation. We do not believe that Scottish Ministers should be able to alter the charitable aims of groups of charities; rather, any change to charitable aims and objectives should be a matter for the individual charity. Where Trustees wish to make a contribution to the financial redress scheme but face a barrier to doing so through their current charitable aims, they could make an application to the charity regulator to amend those aims to allow them to make a donation. This would be the appropriate course of action for any charity wishing to alter the focus of their work or where they direct their resources, and leaves the decision to do so in the hands of the individual charity.

We do not believe that Scottish Ministers should be able to make changes to the charitable aims of charities, and are concerned that this legislation sets a precedent for other situations in which Ministers may seek to do so.

Section 15

Charity law is clear that those making a donation to a charity are able to place restrictions on the ways in which that donation can be used. We do not believe that Scottish Ministers should be able to make changes which allow or potentially compel these funds to be used in other ways.

We endorse the view of the Chartered Institute below on the potential impact of these regulations on fundraising, and on public trust and confidence in charities.

In addition, we note again that decisions about how to use funds in the best interests of the charity must sit with Trustees and not Ministers. Where Trustees identify restricted funds which they are no longer able to use for the purposes for which they were given, there are already procedures in place for application to OSCR to amend the use of those funds.

We do not believe that Scottish Ministers should be able to make decisions about how charitable funds are spent, and are concerned that this legislation sets a precedent for other situations in which Ministers may seek to do so.

Response from Chartered Institute of Fundraising Scotland

The Chartered Institute of Fundraising Scotland endorses the views expressed by SCVO which we believe would set a precedent for Ministers to amend charitable objectives and change the designation of restricted funds for activity contrary to its purpose. We believe this will have a negative impact on Scotland's fundraising sector.

Public Donations

Scottish donors are amongst the most generous in the UK (CAF UK Giving 2019) and give in full confidence that a charity will ensure their gift is used appropriately, with gifts often donated for a specific (and restricted) need or purpose. These gifts will often be the result of longstanding and trusted relationships between a charity, its fundraisers and the donor who gives to their cause.

Using restricted funds for different objectives to those that attracted the gift in the first place would, in essence, go against the wishes of the donor, and could place the charity at risk of legal action and negative public response.

Trusts and Foundation Fundraising.

Similarly, when funding is granted by a trust or foundation, the conditions of the grant will usually require a charity to use the funds awarded for specific purposes, usually restricted to the ethos and mission of the awarding trust or foundation. This proposal could result in funders choosing to withdraw or limit their support for certain organisations, particularly if they were considered likely to be at risk of losing the ability to direct how their funds were being allocated and used.

Now more than ever organisations are utilising their reserves to survive and continue to meet their objectives in line with the Charities Restricted Funds Reorganisation (Scotland) Regulations 2012. Taking away another lever of control that charities have over their funds brings organisations a step closer to the risk of closure, which – in this bleak financial climate – is an additional risk charities don't need to carry.