

ABERDEEN CITY COUNCIL

COMMITTEE	Education and Children's Services
DATE	14 September 2017
REPORT TITLE	Scottish Child Abuse Inquiry
REPORT NUMBER	ECS/17/049
DIRECTOR	Gayle Gorman
REPORT AUTHOR	Gaynor Clarke

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise Committee of resource implications arising as a result of responding to statutory notices issued by the Scottish Child Abuse Inquiry and to highlight the potential financial and legal implications for the Council arising from the Limitation (Childhood Abuse) (Scotland) Act 2017.

2. RECOMMENDATION(S)

It is recommended that the Committee:-

- (a) note the resource required to support Aberdeen City's response to the Scottish Child Abuse Inquiry;
- (b) note the financial and legal implications for the Council arising from the Limitation (Childhood Abuse) (Scotland) Act 2017.

3. BACKGROUND/MAIN ISSUES

- 3.1 The Scottish Child Abuse Inquiry (SCAI) was set up in 2015 to look at the abuse of children in care. The overall aim and purpose of this Inquiry is to raise public awareness of the abuse of children in care, particularly during the periods covered by the Inquiry, past period 1930 – 17 December 2014 and present period 18 December 2014 – to present day. The Inquiry will provide an opportunity for public acknowledgement of the suffering of those children and a forum for validation of their experience and testimony.
- 3.2 The SCAI will investigate the nature and extent of abuse of children whilst in care in Scotland, during the relevant time frame. The Inquiry will consider the extent to which institutions and bodies with legal responsibility for the care of children failed in their duty to protect children in care in Scotland (or children whose care was arranged in Scotland) from abuse (regardless of

where that abuse occurred), and in particular, to identify any systemic failures in fulfilling that duty.

3.3 The SCAI will report to Scottish Government Ministers within four years with recommendations for the future to improve the law, policies and practices in Scotland and the report will be presented to Scottish Parliament.

3.4 The SCAI may, by Notice issued under Section 21 of the Inquiries Act 2005, require people and organisations to attend the Inquiry to give evidence or provide written statements or provide documents and records relating to the subject matter contained in the Notice. Aberdeen City Council has so far been served with 3 Notices by the SCAI requiring intensive research of the Council's records.

3.5 **Human resource**

3.6 Human resource required to research and support Aberdeen City's timeous responses to the Section 21 Notices issued by the SCAI cannot be underestimated or undervalued, given the scope of the Inquiry.

3.7 Capacity and resource to proceed with this statutory function is being grown. The project team will support the SCAI Programme Board to provide timeous reply to the Inquiry by ensuring the Authority provides an effectively coordinated response.

3.8 Project streams have increased in terms of volume and pace of work to be complete by specified dates, a project management approach has been implemented to ensure all tasks complete on time.

3.9 Due to the nature of the inquiry, the volume of research and processes, including accessing highly complex, sensitive and confidential data, it is critical the team are resilient, competent and supported to ensure capacity to respond timeously.

3.10 **Limitation (Childhood Abuse) (Scotland) Act 2017**

3.11 The Limitation (Childhood Abuse) (Scotland) Bill became an Act of the Scottish Parliament on 28 July 2017 and is expected to be brought into force in October 2017. The Act removes the normal 3 year statutory time limit for raising personal injury claims where the claim relates to childhood abuse (excluding abuse that happened within families) and the following conditions are met:-

- the damages must be for personal injury;
- the pursuer must have been a child, i.e. under 18, when the circumstances giving rise to the claim took place or began;
- the circumstances giving rise to the court action must be abuse which includes sexual, physical emotional abuse and abuse which takes the form of neglect;
- the pursuer must be the person who sustained the injury – not a third party. This precludes claims on behalf of an abuse victim who has subsequently died.

Abuse includes sexual abuse, physical abuse, emotional abuse and neglect.

- 3.12 The Act has retrospective effect and applies to incidents of abuse which took place on or after 26 September 1964.
- 3.13 The Act makes provision for actions which were previously litigated and disposed of by the Court or by way of settlement, to be re-raised where the Court ruled that the case was time-barred or, in specific circumstances, was settled based on the reasonable belief that it would have been time-barred.
- 3.14 Even although an individual can satisfy all the conditions required for the raising of a personal injury action under the 2017 Act, a Court may not allow a Court action to proceed where the defender satisfies the Court that:
- a fair hearing would not be possible; or
 - the defender would be substantially prejudiced if the action were to proceed. The Court will have regard to the pursuer's interest in the case proceeding in reaching its decision.

The Court's interpretation of "fair hearing" and "substantial prejudice" will be of significant importance to defenders and insurers.

- 3.15 There are likely to be a number of personal injury claims raised against the Council in respect of its Social Work function and as statutory successor as a result of this change in the law.

4. FINANCIAL IMPLICATIONS

- 4.1 Human resource costs resulting from the SCAI are to be funded internally in year 1: 2017/2018 - £84,000; and year 2: 2018/2019 - £130,000. The Council financial performance report to Committee on 23 August recommended that £130,000 be allocated from the contingency budget to fund additional resources to respond to the SCAI.
- 4.2 Financial implication resulting from the introduction of the Limitation (Childhood Abuse) (Scotland) Act 2017 are not quantifiable at this time. The Scottish Government has estimated that approximately 2200 cases could emerge as a result of the change in the law Scotland wide. This risk has been escalated to the corporate risk register.

5. LEGAL IMPLICATIONS

5.1 The Inquiries Act 2005

- 5.2 It is a criminal offence to fail without reasonable excuse to comply with the terms of a Section 21 Notice issued by the SCAI. A person who is guilty of such an offence is liable on summary conviction to a fine not exceeding £1000 or to imprisonment for a term not exceeding six months, or to both. It is therefore essential that sufficient resource is allocated to provide response to such Notices in the timescales set by the SCAI.

5.3 Limitation (Childhood Abuse) (Scotland) Act 2017

5.4 The introduction of the 2017 Act will, in all likelihood, result in a number of personal injury claims being raised against the Council which would have previously been time-barred under the pre-existing legislation.

6. MANAGEMENT OF RISK

6.1 Financial

6.2 The Limitation (Childhood Abuse) (Scotland) Act removes the usual three year limitation period for personal injury claims. Whilst the number of claims which might be raised against the Council is unknown, there is recognition of this as a contingent liability in the 2016/17 accounts.

6.3 Employee

6.4 Recruitment and retention of foster carers and residential child care workers may be challenging due to the high profile of the Inquiry and consideration will be given to the support needed by carers and residential workforce. The level of risk cannot be quantified at this time.

6.5 Care experienced employees may require additional support. It is considered that the risk is low, mitigating actions to support the risk include professional supervision for social work employees and counselling support services are available to all staff. Staff briefings have already highlighted what support is available and how to access it.

6.6 Citizen

6.7 Current Policy, Guidance and Legislation offers a level of protection that has been developed over many years and this will continue to be the case, the Education and Children's Service Plan makes a commitment to ensuring children and young people's voices are heard and listened to, to support service development.

6.8 Environmental

6.9 There are no environmental risks associated with this report.

6.10 Technological

6.11 There are no technological risks associated with this report.

6.12 Legal

6.13 Whilst cognisant of the potential criminal sanctions if failing to respond to the Section 21 Notices issued by SCAI timeously, it is considered that the risk is low. Mitigating actions to ensure the risk remains low is reliant on the human

resource being in place to support the SCAI Programme Board's response to the Notices.

6.14 Reputational

- 6.15 Members should be aware that the Inquiry is investigating historic systemic failings across Scotland; we are responding fully to Section 21 Notices and being active, open and transparent in our responses.

7. IMPACT SECTION

7.1 Economy

- 7.2 We aim to ensure continued quality of care provision for children and young people and deliver workforce development and expansion within childcare services, and ensure that the Authority shows how the impact on children has been considered in all strategic planning and decision making.

7.3 People

- 7.4 Our response to the Inquiry supports our 'Children are Our Future' page 26 – 34 and 'People are Resilient, Included and Supported When In Need' page 35 – 41 primary drivers within the Local Outcome Improvement Plan (LOIP) 2016-26 <http://communityplanningaberdeen.org.uk/wp-content/uploads/2016/08/FINAL-LOIP-22-AUG-16.pdf>

- 7.5 The Inquiry will report to Scottish Government Ministers within 4 years with recommendations for the future to improve the law, policies and practices in Scotland. The report must also be presented to the Scottish Parliament. By learning from historic systemic failings and using lessons learned should ensure children experience positive care.

- 7.6 Equality and Human Rights Impact Assessment (EHRIA)
An EHRIA has been carried out and will enhance EHRIA positive outcomes.

7.7 Place

- 7.8 Our response to the Inquiry supports our 'Empowered, Resilient and Sustainable Communities' page 42 – 50 primary driver within the Local Outcome Improvement Plan (LOIP) 2016-26
<http://communityplanningaberdeen.org.uk/wp-content/uploads/2016/08/FINAL-LOIP-22-AUG-16.pdf>

7.9 Technology

- 7.10 Our use of technology to response to the Inquiry and the development of a dedicated resource to support stakeholder inquiries has been developed to exploit digital connectivity and technologies, and supports our 'Creating a Digital Place' page 51 – 56 primary drivers within the Local Outcome Improvement Plan (LOIP) 2016-26
<http://communityplanningaberdeen.org.uk/wp-content/uploads/2016/08/FINAL-LOIP-22-AUG-16.pdf>

8. BACKGROUND PAPERS

N/A

9. APPENDICES (if applicable)

N/A

10. REPORT AUTHOR DETAILS

Gaynor Clarke
Planning and Development Officer
GClarke@aberdeencity.gov.uk
01224 522504

HEAD OF SERVICE DETAILS

Bernadette Oxley
Head of Children's Social Work
Education and Children's Services
Children's Social Work
boxley@aberdeencity.gov.uk
01224 522110