Response on behalf of INCAS to ECYP Committee regarding the operation of Redress Scotland

I write with reference to the letter, addressed to Helen Holland as Chair of INCAS, seeking the views of INCAS with regard to the operation of Redress Scotland, and more specifically the measures that have been put in place by the Scottish Government and Redress Scotland to improve the operation of the scheme. Helen has asked that I respond in my capacity as the solicitor representing INCAS in connection with matters relating to Survivor Redress.

As a result of my position representing INCAS I have been involved in the process for Survivor Redress since prior to the inception of the scheme. I initially lobbied, alongside the INCAS committee and other individual survivors and survivor groups, for a scheme to be put in place to compensate survivors, especially those who could not be granted access to the Civil Courts as a result of the Limitation (Childhood Abuse) (Scotland) Act 2017 (the “pre 64 survivors”). To date I have been instructed by over 150 survivors to assist them in connection with the Survivor Redress process. I have been in communication with both the Scottish Government Redress team and with Redress Scotland, and have had regular meetings with both to discuss experiences encountered in the running of the Scheme, and to provide feedback from those who have engaged in the scheme.

It is fair to say that the initial response to the scheme coming into operation was disappointing. It is clear to me, through meetings that I had at that time with the Government team and Redress Scotland, that those preparing the Scheme had not anticipated the volume of communication from the outset. I was surprised that that was the case, given the fact that survivors had waited so long for any form or acknowledgement and redress. The number of survivors should have been clear from the numbers engaging in the SCAI. I imagine that the Committee will be keen to know how that experience has altered in response to the measures taken.

The appointment of further case workers was a necessary step to deal with the volume of work being undertaken by the Scheme. I had not appreciated just how long it would take to recruit and train further case workers, and so perhaps had an unrealistic expectation that the decision to increase the number of case workers would see a relatively immediate improvement in turn-around times. Again through meetings with the Government team it was explained to me the efforts and time that were required to get the new work force operational. That was unavoidable, and understandable and I passed on to survivors the efforts that were being made. The result, now, seems to be that there has been a significant increase in the volume of cases being referred to Redress Scotland.

Perhaps unfortunately that has led to, in my experience, an increase in the time being required for Redress Scotland to consider and decide upon cases. That may have been inevitable, but I would ask whether it was predictable that the flow of cases would

increase, and whether steps could have been taken in anticipation of that increase to mitigate the effects?

Alongside the issue of appointing case workers, I had become concerned earlier on in the process, that there was no “triage” of cases being presented. I understand, from my interactions with the Government team, that there were many cases that were presented with little or no information, whereas others, including survivors I represented, presented their forms when the information was complete. I am pleased to say that the issues that were discussed at our meetings were understood and acted upon, and survivors now have contact with a case worker (albeit not necessarily one that will be appointed to the case) to acknowledge the case, and provide a “next steps” response. That has been helpful.

The prioritising of cases has, to an extent, been welcomed. I have, at times, struggled with a feeling that some priority cases seem to be missed, and have questioned how robust and organised the process of identifying cases and allocating a priority has been. I am sure the Committee can receive assurances from the Government team that proper consideration is being given to each individual case.

There are still issues that frustrate me in dealing with the Redress Scheme, which I feel can be readily rectified. In particular, I find the method of communicating by email to be hugely inefficient and frustrating. The practice adopted by the Government team is to refer to the survivor only by initials in the headings for emails. That is understandable if there is a desire to avoid naming them in the heading (although I am somewhat at a loss as to why that would be an issue in correspondence with the individual’s solicitor, given I know their details already). The problem that is created is that it is impossible to identify that email chain at a later date by way of a search. In my experience, to search on an email carrier for two letters will return any email that contains those two letters. In short it renders the emails invisible to search engines. I am aware that a case reference is allocated to each matter from the time of its reception, and I would, again, ask that that number is used in the subject heading of the email.

In addition, survivors have reported to me that they experience long periods, between submission of their applications and the appointment of a case worker, where there is no correspondence at all from the Scheme. That causes anxiety and concern. Survivors have to re-open the experiences of their abusive childhoods, and are left vulnerable and anxious. They explain to me that they require more correspondence to keep them advised as to the progress, or lack of progress if they are in a queue for attention.

In general I would like to stress to the committee that those working within the Government team, be they case workers, or those overseeing the scheme, have been extremely helpful on a one to one basis, and their hard work is appreciated by survivors. As with any scheme, there will be initial difficulties, and it will take time for the consequent adjustments to bear fruit.

In terms of the perception of survivors of Redress Scotland, I can say that I has been, in general, extremely positive. I have had the experience of attending with a survivor when he gave evidence face to face with a representative of Redress Scotland. He was extremely nervous but found the experience to be fulfilling and rewarding, telling

me that he felt that he had really been listened to. The reaction of survivors to the receipt of a determination and award of redress is humbling. There is a very real sense of recognition and acknowledgement of the abuse suffered. I became aware, through speaking to a member of the Redress Scotland panel, that that feedback may not often be heard by those making the decisions, so am anxious that they are aware of the hugely significant and beneficial work that they undertake for survivors.

I would like to take the opportunity, whilst addressing the Committee, to raise two areas of real concern regarding the operation of the scheme which, if not addressed, threaten to prevent the Scheme achieving its aim of providing redress and recognition to survivors. These concerns have arisen in connection with Redress claims being presented by survivors who fall into two particular categories. The first is in connection with those who, whilst under the care of a local authority and social work department within Scotland, found themselves transferred, without their consent or consultation, to homes out-with that area and out-with Scotland. As an example, there were children in the care of a Scottish Local Authority, and allocated to a social worker from that Scottish Local Authority, who were cared for by the Sisters of Nazareth in one of their Scottish Houses. They found themselves, through no desire of their own and without any say in the matter, being transferred to Nazareth House in Newcastle. The abuse they suffered in Scotland is covered by the scheme, but, as presently interpreted, the abuse carried out when they were placed in Newcastle, is not covered. If the intention of the Scheme is to reflect the failings of the Scottish Government, whether at local or national level, and those charged with the care of these Scottish children, for abuse they suffered, it seems artificial, arbitrary and unfair to tell those Scottish Children who were failed by the relevant Scottish organisations, that the abuse they suffered will not be acknowledged nor Redress provided because they were transferred to the North of England. The relevant Scottish authorities had responsibility for their care, which was not passed over to English equivalents, and they remained responsible for the abuse. If this matter is not addressed I have a real concern that many survivors will feel that they have been excluded from a right to seek Redress from those ultimately responsible for their abuse.

The second area of real concern relates to what I consider to be an arbitrary and prejudicial distinction that has been drawn in the legislation relating to those who were in foster care placements with someone to whom they were related. I have had the difficult task of trying to explain to a number of survivors why it is that the foster care placement that was arranged and supervised by the Local Authority and local Social Work department is not covered by the Scheme simply because the person the Local Authority appointed as foster carer was related to them. In one example two survivors were fostered by someone who, it transpired, was the sister of their mother. That person had never met the children, and they did not know her. The responsibilities and failings of those charged with supervising that placement were the same as for any other foster placement. In each case that I have dealt with, those same survivors have given evidence to the SCAI within their foster care setting, and have not been distinguished in any way from those in foster care with other people. They have been thanked by Lady Smith for their contribution to the foster care case study. It seems grossly unfair to then tell them that they are to be excluded from the Scheme because of a blood relationship to their abuser. I have written to the Government tean, to the previous Deputy First Minister, and to the current Deputy First Minister on this subject. I have requested that consideration be given to amending the legislation in this regard,

but to date have had nothing other than a response that this is being considered. I attach the paper that I attached to my previous correspondence, which made reference to and named the survivor. For the purpose of the Committee I have anonymised him to the letter “A” and the foster carers’ surname to “T”. I hope that the Committee will agree that the intention of Parliament in legislating on this matter was to exclude informal kinship arrangements. That would be reasonable because there was no involvement or oversight from Local Government or Social Work in those cases. To draw the distinction that has been made in the legislation has achieved a very different outcome, and if not addressed will result in Survivors being told by the SCAI that they were abused in foster care, whilst the responsibility of the Scottish Government, and within the terms of reference of the SCAI, but at the same time being told that their abuse does not qualify for Redress.

I applaud all those involved in delivering this scheme for the careful patient and sensitive way that they work with survivors. I recognise that improvements have been made, with practical results being seen. There is still room for improvement, and there is still an opportunity to address the two issues which, if not addressed, will mar the legacy of this scheme, and prevent it from achieving its aims for certain survivors.