

The background of the slide features the coat of arms of the Government of Nunavut. It is a shield divided into four quadrants. The top-left quadrant shows a yellow diagonal band with a black cross. The top-right quadrant depicts a white caribou head with large antlers. The bottom-left quadrant shows a white sailing ship on blue wavy lines representing water. The bottom-right quadrant features a white eagle with spread wings. Above the shield is a crown with four white maple leaves. A white banner at the bottom contains the text "ANE FOR A'".

## **Agenda Item 7**

# **Establishment of Information Rights Team**

Falkirk Council

**Title:** Establishment of Information Rights Team  
**Meeting:** Education, Children and Young People Executive  
**Date:** 29 March 2022  
**Submitted By:** Acting Director of Transformation, Communities and Corporate Services

**1. Purpose of Report**

- 1.1 The Council is seeing an increase in requests from individuals to access their childhood social work records as a result of the Scottish Child Abuse Inquiry (**Inquiry**) and the new statutory redress scheme for survivors of child abuse. This is putting pressure on an already stretched service, which has been struggling for some time to deal with requests for access to records under data protection legislation – known as subject access requests (**SARs**).
- 1.2 This report updates the Executive on work done in this area recently and seeks approval for the creation of 2 new permanent posts of Information Rights Officer (based in the Information Governance Unit) to assist with this work. It is Council policy that the creation of any new permanent posts must be approved at Executive level.

**2. Recommendations**

**2.1 The Executive is asked:**

- (1) to note recent development and challenges in this area, in particular the pressures facing Children's Services, Social Work, in dealing with SARs; and
- (2) to agree to the creation of 2 new permanent posts of Information Rights Officers within the Information Governance Unit.

**3. Climate Change Impact**

- 3.1 The recommendations have no impact on climate change.

**4. Background**

- 4.1 As well as the backlog of SAR requests with Children's Services, Social Work, there are 3 main drivers for improvements to be made in this area.

- (i) *Scottish Child Abuse Inquiry*

- 4.2 The Inquiry was set up in October 2015 to investigate the nature and extent of abuse of children in care in Scotland within the period of living memory of any person who suffered abuse up until 17<sup>th</sup> December 2014. The Inquiry will report on its investigations to Scottish Ministers and make recommendations as to any changes to practice, policies and/or the law that it considers are required for the protection of children in the future. There is no official indication of when the Inquiry will report to Scottish Ministers, but the Scottish Government recently issued a £4.5 million tender notice for the transcription of the Inquiry's hearings until February 2025, with a possible extension to February 2026.
- 4.3 The Council has received several notices from the Inquiry requiring the production of records and other documentary evidence, the most extensive being in relation to the Council's foster care practices. The response to this notice required a substantial amount of work from the Council's Foster Care Services Manager and the Information Governance Manager. At the end of last year, the Council's Corporate Management Team received a presentation on lessons learned from that work. One of the issues discussed was the need for care-experienced individuals to have access to their social work records and, ideally, to be supported throughout that process, particularly when presented with their records. The outcome of that discussion is a proposal to establish a new Information Rights team.

***(ii) Financial redress for historic child abuse***

- 4.4 The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 received Royal Assent in April 2021 and opened for applications in December 2021. The Redress Scheme (**Scheme**) is open for applications for a period of 5 years, although this period may be extended.
- 4.5 The Scheme is run by the Scottish Government along with an independent organisation, Redress Scotland, and will provide tangible recognition of the harm caused to survivors abused in relevant care settings in Scotland before December 2004. It offers a faster, more survivor-focused route to redress than court action. Survivors can apply for financial redress payments of up to £100,000. Survivors have the choice to apply for a fixed rate redress payment of £10,000 or an individually assessed redress payment, set at 3 levels. Redress Scotland panel members will consider applications and make decision on eligibility and levels of redress payments based on available evidence. Some survivors may choose to take court action instead, due to potentially higher levels of compensation payment (see, for example, a recent [Glasgow City Council foster care case](#) valued at £1.3 million).
- 4.6 Applicants for both fixed rate redress payments and individually assessed redress payments will be asked to provide documentary evidence to satisfy the decision-making panel that they lived in an eligible care setting prior to their 18<sup>th</sup> birthday. Applicants are encouraged to make requests to access documentary evidence by way of SARs. An estimated 10,000 redress claims are expected across Scotland and the Council therefore anticipates a considerable increase in SAR requests due to the introduction of the Scheme.
- 4.7 A new Redress Support Service will be provided by the In-Care Survivors Alliance. This service will initially focus on help to access records and supporting documentation and, for those who need it, some emotional support.

### **(iii) The Promise**

- 4.8 In February 2020, the Care Review published “the Promise” narrating a vision for Scotland. The findings of the Care Review included the following:

*Individuals accessing their care records must be properly supported through that process, in the knowledge that records may contain distressing material.*

- 4.9 The Council aims to uphold the commitments given in the Promise.

## **5. SAR process and challenges**

- 5.1 Data protection legislation gives individuals a right to access information from the Council that relates to them by making a SAR, with very tight timeframes for responses. The Council does not have a central team which deals with SARs, with these being dealt with by the Service most involved with the individual’s request.
- 5.2 The Council struggles to meet statutory timescales for many of our SARs. This is understandable given the complexities of many of the requests and, anecdotally, many Councils are in a similar position. As part of an appeal to the Information Commissioner in August 2021, we were asked to provide statistics on late SARs. At that point, we had 52 SARs past the statutory timescale, and all but one was within Children’s Services, with most delayed responses sitting with our Children & Families team, many of which were months overdue.
- 5.3 In many cases, there are challenges as individuals often make requests for all historic information held about their childhood. These complex and often extensive records may relate to adverse childhood experiences and measures taken to safeguard and protect them as children. Records can relate to involvement in child protection processes or a person’s care history including foster care, residential care or adoption. This information is highly sensitive and can be upsetting for people to read about, often finding out details about their family history and life experiences that they did not know about until receiving the information. It is therefore essential that such requests are dealt with sensitively and that appropriate support is provided to the person before, during and after receiving the information.
- 5.4 The lack of dedicated support to assist with the preparation of files, leads to long delays in requests being processed. These tasks are often completed by individual officers such as social workers, and operational business has taken priority over these. This has been particularly challenging during the pandemic, which has resulted in large backlog of requests pending allocation and processing. The critical issue therefore lies in addressing the backlog in that team, and planning for the additional burden on that team which is likely to result from the financial redress scheme.
- 5.5 We are not alone with these challenges. Some Councils have set up bespoke Inquiry Teams which also deal with SARs from care-experienced requesters, or which relate to potential claims. Their teams include officers with a range of experience in social work, records management, archival research and business support. It is not considered we need the same level of resource. However, we should be aiming to meet the national gold standard for best practice in access to care records, which is currently under development. This

requires investment in proactive contact with requesters (for example, first call/contact within 2 days, with second meeting scheduled for a more detailed discussion about what is being sought; support throughout the process; quality assurance process for information provided; meaningful redaction process; support for staff dealing with complex/distressing cases).

## **6 Proposal**

6.1 It is proposed that an Information Rights Team is established within the Information Governance Unit, comprising 2 FTE posts of Information Rights Officer. These posts will be line managed by one of the existing team leaders within the Unit, with professional advice and support available from the Information Governance Manager. This small team would:

- act as a single point of contact for SARs for Children's Social Work;
- take a proactive approach to dealing with SARs (both those in the backlog and future SARs) including those relating to financial redress;
- liaise closely with requesters as to their needs and the anticipated timescales for dealing with their request;
- in-gather records from Children's Social Work (paper and electronic), including sourcing these from the Social Work File Store (which already falls under the remit of the Information Governance Unit);
- seek third party consent to release information where appropriate;
- ensure records are properly redacted (blanked out), and those redactions documented and justified (with advice from social workers where required); and
- ensure that requesters are provided with appropriate support if required when information is provided to them.

6.2 In relation to the last point, it is not anticipated that support to individuals could be provided by the Information Rights Officers, but via Children's Services social workers, or by signposting to third sector organisations. Some form of supervisory/wellbeing support would also be available to the Information Rights Officers from managers within Children's Services.

6.3 The proposal is for permanent posts on the basis that there will be sufficient ongoing work for such a team. Once the backlog is cleared, it is likely the team will be occupied with ongoing, business-as-usual work. If there is any spare capacity, the team could potentially widen its remit to support other areas of the Council with SARs. Recruiting to permanent posts will be more likely to attract good candidates for these demanding roles.

## **7. Consultation**

- 7.1 Discussions with other Councils have informed the proposal in this report. There has also been consultation with the Corporate Management Team, along with detailed discussions between the Chief Social Work Officer, Service Manager and the Information Governance Manager.

## **8. Implications**

### **Financial**

- 8.1 The annual cost to the Council is likely to be in the region of £70,000. A budget is already in place. The posts are in the process of being graded.

### **Resources**

- 8.2 As well as the financial implications, there will be time commitment required from the Information Governance Manager to set up and support the new team. Social workers from Children's Services will also need to commit time to support the SAR process and, where necessary, requesters.

### **Legal**

- 8.3 We have a legal duty to respond to SARs. Failure to respond timeously to SARs contravenes data protection legislation and can result in complaints to the Information Commissioner's Office. We expect financial redress claims under the new scheme to result in an increase in SARs.

### **Risk**

- 8.4 As noted above, a failure to meet statutory timescales contravenes data protection legislation. Failure to provide records to individuals will impact on their ability to pursue financial redress or compensation, and may result in reputational damage to the Council, as well as cause anxiety and distress to survivors.

### **Equalities**

- 8.5 An equality and poverty impact assessment has been carried out and supports the recommendations.

### **Sustainability/Environmental Impact**

- 8.6 No sustainability assessment has been completed.

### **Council of the Future**

- 8.7 This is "business as usual" rather than a Council of the Future project. However, the establishment of the new team demonstrates our responsive, innovative, trusted and ambitious values, in delivering a better service to those seeking access to their records.

## **9. Conclusions**

- 9.1 We are not currently meeting our statutory obligations in relation to SARs, and we are failing individuals for whom access to records is critical. The establishment of an Information Rights Team would address these issues.

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Date: 16<sup>th</sup> March 2022

## **Appendices**

None

## **List of Background Papers:**

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

- None