

Anne Peat  
Clerk  
Public Petitions Committee  
Scottish Parliament

**28 January 2014**

This report provides an up-date to the report of November 2012 on the Scottish Human Rights Commission InterAction on Historic Abuse of Children in Care.

In February 2012, the Centre of Excellence for Looked After Children in Scotland (CELCIS) was commissioned by the Scottish Human Rights Commission (the Commission) to carry out the preparation for an InterAction on Historic Child Abuse. A human rights InterAction is a forum for independent mediation and resolution which involves all key actors, to find a way forward within a human rights framework. The purpose of the InterAction has been to develop an action plan outlining agreed steps to advance access to justice, a time frame within which steps will be taken and an independent monitoring process.

The project is being managed by Prof. Andrew Kendrick, School of Social Work and Social Policy (SWSP) and Moyra Hawthorn, CELCIS, University of Strathclyde. A Project Team has been set up consisting of staff members from CELCIS, SWSP and external consultants. A Review Group involving representatives of key stakeholders provides an overview of the project and acts in an advisory capacity.

The complexity of the issues and the importance of establishing relationships with stakeholders has meant that the initial timescale of the preparation project has had to be extended.

#### **Project Team**

Prof Andrew Kendrick – SWSP  
Moyra Hawthorn - CELCIS  
Paul Begley - CELCIS  
Martin Henry – Independent Consultant  
Dr Phil Robinson - SWSP  
Roisin McGoldrick - SWSP  
Prof Charlie Irvine – Independent Consultant

#### **Review Group**

Harry Aiken – Survivor  
Chris Daly – Survivor  
Jennifer Davidson – CELCIS, University of Strathclyde  
Paul Gilroy - Educating Through Care Scotland (ETCS)  
Moyra Hawthorn – CELCIS, University of Strathclyde  
Andrew Kendrick – SWSP, University of Strathclyde  
Belinda McEwan – Association of Directors of Social Work (ADSW)  
Sue Moodie – Scottish Government  
David Whelan – Survivor, Former Boys and Girls Abused of Quarriers (FBGA)  
Duncan Wilson – Scottish Human Rights Commission

The preparation for the InterAction on Historic Abuse of Children in Care has involved engagement with the range of stakeholders involved in historical child abuse in order to facilitate involvement and participation in the process. In 2012, preparation for the InterAction involved: setting up an infrastructure for engagement (web page, dedicated email and telephone, admin staff), identification of stakeholders, preparatory meetings with stakeholders, identification of an InterAction chairperson, planning of the InterAction format and content, and identification of venue and event planning. Since the last report at the end of 2012, the following actions have been completed:

**1) 1<sup>st</sup> InterAction Meeting, 28<sup>th</sup> February 2013**

The 1st InterAction meeting was chaired by Prof Monica McWilliams and involved 50 participants, including representatives of victims/survivors, agencies that had historically provided residential care of children, Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback on the day indicates that participants generally found this to be a positive opportunity to progress a very sensitive agenda. Four broad themes emerged which provide the framework for further discussion

- Empowering people to know and claim their rights
- Acknowledgement of victims/survivors experiences
- Ability of public and private bodies to deliver human rights based justice and remedies
- Accountability for historic abuse

A summary of the event is attached (Appendix 1)

**2) Mini-InterActions, 22<sup>nd</sup> May – 13<sup>th</sup> June 2013**

Four Mini-InterActions were held between May and June in order to allow participants in the 1<sup>st</sup> InterAction meeting opportunity to discuss issues in more detail. The mini-InterActions covered the topics of: Acknowledgement and Apology; Reparation; Inquiry; and Access to Justice. The outcomes of the discussions were fed into the 2<sup>nd</sup> InterAction meeting

Notes from the four Mini-InterActions are attached (Appendix 2)

**3) Survivors Open Event, 17<sup>th</sup> June 2013**

An open event was held to allow victims/survivors to discuss the themes raised by the 1<sup>st</sup> InterAction meeting. Twenty victims/survivors took part in the event and discussion took place on the topics of: Acknowledgement and apology; Reparation; Inquiry; and Access to Justice. The outcomes of the discussions were fed into the 2<sup>nd</sup> InterAction meeting.

A summary of the event is attached (Appendix 3)

**4) 2<sup>nd</sup> InterAction Meeting, 20<sup>th</sup> June 2013**

The 2<sup>nd</sup> InterAction meeting was chaired by Prof Monica McWilliams and involved 50 participants including representatives of victims/survivors, agencies that had historically provided residential care for children, the Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback on the day indicates that participants generally found this to be a positive opportunity to work towards further developing the plan to deliver justice for victims/survivors of historic abuse.

A summary of the event is attached (Appendix 4)

### **5) *InterAction Action Plan***

Following the 2<sup>nd</sup> InterAction meeting, a draft Action Plan was drawn up and circulated to participants in the InterAction for comment. The finalized Action Plan has now been circulated with an invitation to consider specific actions which can be taken to deliver the outcomes.

The invitation letter and response form is attached (Appendix 5). The Action Plan is also attached (Appendix 6)

### **6) *Survivors Open Event – 12<sup>th</sup> December 2013***

An open event for survivors/victims was held to discuss the Action Plan. Fifteen victims/survivors took part and discussion took place on the commitments set out in the Action Plan. A report on the meeting is being finalized.

### **7) *Further Work***

Analysis of the response to the Action Plan will be undertaken over the coming weeks and a 3<sup>rd</sup> InterAction meeting is being planned for March 2014 to consider this further.

I hope that this up-date report on the SHRC InterAction on Historic Abuse of Children in Care is helpful. Please get back to me if you require any further information.

Yours sincerely

Prof Andrew Kendrick  
Head of School of Social Work & Social Policy

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## **SHRC InterAction on Historic Child Abuse**

### **Summary of InterAction Event of 28<sup>th</sup> February 2013**

#### **Background**

In 2010 the Scottish Human Rights Commission published a Human Rights Framework for justice and remedies for Historical Child Abuse ('The Framework'). Copies of the Framework are available at the Scottish Human Rights Commission at [www.scottishhumanrights.com](http://www.scottishhumanrights.com). The Commission is using an InterAction process to allow those affected by historical child abuse, institutions, government, civil society and others, a platform to give their views on how the Framework should be implemented. The InterAction process is chaired by Professor Monica McWilliams, an internationally renowned expert in transitional justice and violence against women with extensive experience of peace and post conflict negotiation.

The first InterAction event on 28 February 2013 brought individuals and organisations to the same table in order to start developing a plan to deliver justice for victims/survivors of historical abuse. There were 50 participants including representatives of victims/survivors, agencies that had historically provided residential care of children, Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback on the day indicates that participants generally found this to be a positive opportunity to progress a very sensitive agenda. Four broad themes emerged which provide the framework for further discussion. This paper gives a summary of the process of the event and content of the discussion (for detailed points see Appendix 1).

Underpinning principles were set and participants worked in small groups of between seven and eight with a facilitator to address a series of questions .

In the morning session of the InterAction Event, small groups discussed:

#### *Historic Abuse*

- *What are the Issues?*
- *What are the Gaps?*
- *What is Good Practice in Addressing Issues of Historical Abuse*

Responses to these questions were grouped into initial themes in order to facilitate discussion in the afternoon session where the small groups discussed:

- *What are the specific and achievable actions to take forward?*

Participants agreed that future negotiations should focus on actions to advance four key areas:

1. Empowering people to know and claim their rights
2. Acknowledgment of victims/survivors experiences
3. Ability of public and private bodies to deliver human rights based justice and remedies
4. Accountability for historic child abuse

#### **1. Empowerment**

This strand should underpin all aspects of the Action Plan, not only **what** it should contain but also **how** it should be implemented. It was reiterated throughout the day that relationships were important, that implementation of the Framework should not be at the expense of relationships between stakeholders. There was a general sense that the Action Plan should help ensure a comprehensive and coherent national approach which empowers care leavers by offering a choice of remedies set up in a way that avoids people having to repeat their experiences again and again in order to access different remedies. There was interest in exploring a “one-stop shop” which would provide advice and support to victims/survivors to access justice and remedies. It was also recognised that there is a need to respect the rights of all involved, including victims/survivors and those involved historically in the care of children.

#### **2. Acknowledgement**

There was general support for exploring how to ensure and enable effective apologies to be made, including the consideration of an Apology Law. As recognised above (see Empowerment), Acknowledgement needs to be person-centred and may include different forms such as personal/ face to face acknowledgment, cultural acknowledgment, systemic acknowledgment and institutional acknowledgment. The National Confidential Forum

currently being progressed by Scottish Government may be part of this the process of Acknowledgement but the Acknowledgement agenda is broader, including effective apology. Record keeping and care leavers' access to care records were seen as critical to both Acknowledgement and Accountability.

### **3. Ability**

Another recurrent theme was acknowledgement that there has been good practice over the years; high quality of care experienced by many children in public care, also where there has been acknowledgement of malpractice, action has sometimes been taken. There was a willingness to learn from the past and organisations were willing to share good practice in offering remedies.

### **4. Accountability**

While Accountability is a separate process, it links with Acknowledgment and Apology. Barriers to accountability were identified as elements that should be addressed in an Action Plan such as the so-called 'time bar' to accessing civil justice; challenges to accessing legal aid; the possibility of false allegations; difficulties in accessing records. Three strands emerged within Accountability which it was agreed merit further consideration:

- ***Inquiry*** There were wide ranging discussion about the benefits and procedure of an inquiry including purpose, status and how this should be conducted. It was noted that this is seen by many survivors as a significant component of accountability.
- ***Reparation*** There are many potential forms of reparation including satisfaction, rehabilitation, restitution and guarantees of non-repetition. This links closely with empowerment in respect of survivors' needs and wishes and how these are delivered. A key element which was discussed was the possibility of establishing a national reparation fund into which a variety of bodies could contribute and to which victims/survivors could apply for specific forms of support.
- ***Access to Justice*** including addressing barriers in accessing civil justice and criminal justice.

### **Conclusion**

The day concluded with a clear desire and commitment among by participants to continue working together. A high level of mutual respect and constructive discussion was evidenced throughout the day. The opportunity for this to continue will be offered through discussions on themes emerging: Acknowledgement (including Apology), Reparation, Access to Justice, Inquiry. The output from these along with feedback from Questionnaires and meetings for victim survivors and residential workers will inform the next InterAction scheduled for 20<sup>th</sup> June 2013.

## APPENDIX 1

### Specific points raised by participants in InterAction Event, 28 February 2013

#### 1.0 Empowerment

- People should be supported to know and access remedies and justice, a “one stop shop” of support would be useful
- There is a need to respect all rights including residential workers
- More representation of survivors should be evident throughout the process.
- Avoid disempowering participants (e.g. having to repeat experiences in order to access range of service). Information should ‘ follow the person’ to avoid repetition
- There should be one national approach. This should recognize the vulnerability of participants with e.g. a helpline (as in Ireland), an independent ‘one stop shop’ and information available, signposting people to relevant local services and services yet to be developed, including rural and outwith Scotland. Could Survivor Scotland evolve into this or should it be a single dedicated agency that manages the reporting, signposting with staff seconded from existing agencies?
- Co-production- draw on systems existing in other countries for signposting, support, advocacy, information sharing and establishing an Adult Survivors’ Development Fund should be examined
- Ensure a choice/ menu of remedies and counseling, not just one model.
- Possibly use models transferable from other settings e.g. Self-Directed Support; this helps in the promotion of empowerment
- Remedies should not be limited to adversarial routes
- There should be links made to existing strategies e.g. the Victims’ Strategy
- There will need to be out of hours support for services including helpline
- A range of methods should be used to disseminate information; documentaries multi-media advertising campaign etc.
- There should be information about the progress of this agenda for a broad group of survivors both within and outwith Scotland
- Implementation of the Human Rights Framework should not be at the expense of relationships between stakeholders.
- There should be recognition that many children in the past and currently in public care have had good experiences.
- Action is necessary with healing at the centre of all we do
- There is a need to get on with providing practical support and not create an industry which will prolong the process

- Services should be set up in a way that empowers care leavers. Services should be supportive, bringing a human relational approach.
- These processes should be open to all including child migrants who may now live in another jurisdiction
- There should be clarity of Scottish Government's ownership and access to justice supported by this being responsibility of one named minister.
- Any service should be short term in respect of Historical Abuse but merging into ongoing support for care leavers.
- Language is important – moral listening compassion
- A assurance was sought that Scottish Government sanction not just the work of the InterAction but also the findings and do not simply proceed with the Confidential Forum

*It is proposed that these questions are considered across all negotiations*

## 2.0 Acknowledgement

### 2.1 Components of Acknowledgement

#### *Apology*

- There should be further exploration of the value of an 'Apology Law' in removing barriers to effective apologies and consideration of any unintended consequences
- Apology should be rooted in what is recognized as good practice in apology
- There should be exploration of apology; theories of good practice with practical examples
- Apology can also be a remedy
- Apology needs to be genuine
- Apology includes acceptance of responsibility
- Apology should include a commitment to action
- There needs to be a process of identifying individuals and organisations that should make the apology.

#### *Confidential Forum*

- A Confidential Forum can serve a useful purpose
- It was thought that the remit needs to be broader than existing plans under the National Confidential Forum
- It cannot just be a 'Talking Shop'
- It requires to be linked to Apology and Remedies
- There are limits of confidentiality and there needs to be full consideration of when a confidential forum must report allegations to the police for investigation



### *Raising Awareness*

- There is a need for transparency- is the history of children in public care a part of Scotland's History?
- There is a need to raise awareness among all Stakeholders

### *Record Keeping*

Record Keeping was seen as a feature of both Acknowledgement and Accountability, therefore the agenda for record keeping needs to extend across the boundary to encompass both Acknowledgment and Accountability.

- What is good practice?
- Public Records Act –implications for dissemination and future practice
- Memorials
- Support to access records
- Storage of records

### *2.2 Possible Questions for InterAction negotiation on Acknowledgement*

1. How do we ensure that survivors' experiences are acknowledged in a way that is effective for them personally– Forum/ Apologies/ Remedies/ Record Keeping etc?
2. What steps beyond the National Confidential Forum can and should be taken?

## **3.0 Accountability**

While Accountability is a discrete process, it also links with Acknowledgement and Apology (see above). Because Accountability was also a complex process, it is suggested that three working groups be established to carry this agenda forward: one on 'inquiry', a second on reparation and a third on access to justice.

### **3.1 Components of Accountability**

#### *Inquiry*

There was much discussion about inquiry and several further questions arose:

A number of participants felt that establishing an inquiry would be an important element of accountability. However some participants had a number of questions including its scope, purpose and process. These included:

- Is it about establishing 'the truth'/?
- Is it about establishing what happened
- Is it about establishing a recorded narrative?
- Is it about establishing a basis for accountability?

- Is it about establishing grounds for further investigation?
- Is it a necessary precursor to accessing effective remedies and reparation?
- Is it necessary in order to access proportionate reparation?

How should inquiry be conducted?

1. Should it include investigatory powers?
2. Who, what, where, when?
3. How can inquiry be conducted in a way that recognizes that there may be false allegations about residential workers?

### **3.1.1 Possible questions for InterAction negotiations on Inquiry.**

1. What would be the scope, purpose, and process for an inquiry on historic child abuse?
2. What steps can and should be taken in respect of an inquiry?

### **3.2 Reparation**

A number of suggestions were made including:

- Establish a National Reparations Fund
- This should be contributory
- Need to establish criteria for verification and making awards
- There need to be Timescales 'to draw a line under it'
- The need for reparation to be individualized and not a flat rate
- Who would do this? And which agency is responsible – the placing agency, the care provider, the agency responsible for the staff?

#### **Counseling**

- This should be an approach and by a provider of the survivor's choice. How can this be managed?
- How should this be funded?

#### **Investing in services**

- E.g. Awareness and training, adult services, prisons, mental health

#### **Services to address low educational attainment**

### ***3.2.1 Possible questions for InterAction negotiations on Reparation***

1. Can and should a National Reparations or Adult Survivor Fund be established?
2. What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

### ***3.3 Access to justice***

#### ***Participants noted a series of barriers or concerns in seeking access to justice***

- The way in which this “time bar” operates in civil justice
- The lack of access to legal aid
- Lack of access to records
- Challenges in securing a prosecution or even an investigation

#### ***3.3.1 Possible questions for InterAction negotiations on access to justice***

1. What steps can and should be taken to address barriers to accessing civil justice?
2. What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?

## **4.0 Learning lessons for today and tomorrow**

This was raised as something that is important to and relevant to both survivors of historical abuse as well as children and young people currently ‘looked after ‘ by the state. While these have been separated into two discrete groups, some points are applicable across both. Some can be addressed by existing systems but some require service development; some are about awareness raising while others are about training.

### **4.1 Historical Abuse Survivors and Care Leavers**

- This should be seen as an extension of the corporate parenting role
- Can we learn from steps taken elsewhere e.g. the Irish experience?
- What are the risks and benefits of Restorative Justice?
- The model should sit across boundaries i.e. residential care, foster care and hospital care
- Explore the possibility of networking, approaching agencies through ADSW; encourage all local authorities to sign up; share information, contacts, options and experience across all agencies
- Recognise the role of healing and leadership; there may be individual difficulty in dealing with these issues– this needs to be ongoing
- All agencies need to take responsibility for publicity , link to websites etc

- There is a need for training all universal services
- Is there a possibility of having a GIRFEC type model, based around promoting understanding and strength based services in current universal services and Adult Services?
- (Apart from the National Confidential Forum) ensure that in future care leavers have the opportunity to talk about their experiences in care

#### 4.2 Children and young people currently 'Looked After'

- How organisations are enabled to stay in contact with/track ex-residents?
- Staff and organisations need to think of their responsibilities to looked after children and young people not only in the present but also the short term and long term future
- Need to ensure nurture and not sterile care environments
- Need to empower workers to engage in relational practice
- There is a need to explore the relationship between adults and children
- There is a need for training in respect of false allegations
- There need to be services to address low educational attainment
- Need to ensure that children are not 'Looked After' in isolation. The system that looks after children has to be robust, safe, inquisitive and curious to understand the experience of children, especially those impaired by disability.

#### 4.3 Community

- There is a need for long term education of the population
- This should be linked to notions of citizenship.

*It is proposed that these points should be considered where relevant across all negotiations*

### 5.0 Progressing the InterAction

As outlined above, it is suggested that on each of the themes above should address the questions as laid out in this document and any other issues arising. All should take cognisance of the points raised in section **1. Empowerment** and section **4. learning lessons for today and tomorrow**

Further negotiations will therefore be established on the following themes:

**1. Acknowledgement**

**Questions**

1. How do we ensure that survivors' experiences are acknowledged in a way that is effective for them personally– Forum/ Apologies/ Remedies/ Record Keeping etc?
2. What steps beyond the National Confidential Forum can and should be taken?

**2. Accountability**

**2a) Inquiry**

**Questions**

1. What would be the scope, purpose, and process for an inquiry on historic child abuse?
2. What steps can and should be taken in respect of an inquiry?

**2b) Reparation**

**Questions**

1. Can and should a National Reparations or Adult Survivor Fund be established?
2. What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

**2 c) Access to Justice**

**Questions**

1. What steps can and should be taken to address barriers to accessing civil justice?
2. What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?



## SHRC InterAction on Historic Child Abuse



### Mini-InterAction session on Acknowledgement and Apology

Wednesday 22 May 2013

#### ***Present:***

Prof Andrew Kendrick (Chair), Duncan Wilson (SHRC), Lauren Bruce (SHRC), Paul Begley (CELCCIS), Kathleen Marshall (former Time To Be Heard commissioner), Sandra Toyer (In Care Survivors), Tommy Harley (In Care Survivors), Sr Helen Darragh (Conference of the Religious), Liz Nolan (Arberlour Child Care Trust), Jean Urquhart (Catholic Church), Henry Aitken (independent), Chris Daley (INCAS).

#### ***Apologies:***

Jim Goddard, Anne Black, John Steven, Zachari Duncalf, Martin Crewe, Stephen Findleton, Rosemary Kean, Gerry Wells, David Whelan, Tom Shaw, Helen Holland, Sheila Clingan (*Please note Sheila Clingan submitted a very helpful note in advance of the meeting, which was used as a basis of discussion*).

#### ***Background:***

Professor Kendrick (Andy) reminded the group of the InterAction principles of listening and treating one another with respect.

This session is the first in a series of 4 thematic mini-InterActions which have been set up to explore in more details some of the themes emerging from the InterAction on 28 February 2013.

The four sessions are:

- Acknowledgement and Apology
- Reparation
- Inquiry
- Access to Justice

All themes overlap and are interlinked and therefore cannot be looked at in total isolation, but the mini-InterActions have been set up to allow time and space for a more detailed analysis of the topic with a view to feeding something back to second InterAction on 20 June 2013. As well as the discussion today, we can also identify actions to take away and work on in advance of the June meeting.

#### ***Initial general comments from participants***

- The term 'Survivor Needs' has not been used much in the InterAction process to date and perhaps should be. Currently the care and treatment needs of survivors in Scotland are not being adequately met due to the complexity of conditions e.g. PTSD, Personality disorder. 'Survivor Needs' are pertinent to acknowledgement and apology. Perhaps therefore an overarching theme of the InterAction process should be '**How do we address Survivor Needs?**'
- Any approach going forward should be person-centred- further consideration should be given to the needs of survivors who will not have access to the National Confidential Forum (NCF).
- Observed that there have been no representatives from health services in the InterAction process so far. (This is probably because they not been invited).
- Need for further engagement with Survivors-too many things have been done 'to' survivors but not enough 'for' survivors. Survivors are not being put at centre of events. Therefore the quality of relationships we set up going forward is really critical to success of this process.
- Action point- identifying further agencies we need to engage with as integral part of the Action Plan.
- Also need to consider the needs of survivors who had been in foster care arrangements.

### ***Quick Recap from 28 February InterAction***

Duncan Wilson gave a brief overview of the process leading to the InterAction and what its first meeting agreed. The Scottish Human Rights Commission has been in existence since 2008. In 2009 we developed a human rights framework for the design and implementation of the proposed 'acknowledgement and accountability forum' and other remedies for historic child abuse in Scotland which contained 15 recommendations. Around the same time, a 'Time To Be Heard' was getting underway. After this concluded, we revisited the human rights framework to discuss with government how to take forward recommendations.

The current InterAction is a process of negotiation to implement some of these recommendations by bringing different stakeholders to table. 50 people attended the first InterAction on 28 Feb, including government, local authorities, representatives of religious institutions, care worker representatives and survivors to address some broad questions.

#### *Historic Abuse*

- What are the Issues?
- What are the Gaps?
- What is Good Practice in Addressing Issues of Historical Abuse
- What are the specific and achievable actions to take forward?

PURPOSE of the InterAction: To agree what should be done next-the creation of an ACTION PLAN. Trust building and relationship building between different actors was key outcome from the day. As well as this, four broad themes were distilled- the first of which will be explored today. Questions for today are:

1. How do we ensure that survivors' experiences are acknowledged in a way that is effective for them personally- Forum/ Apologies/ Remedies/ Record Keeping etc?
2. What steps beyond the National Confidential Forum can and should be taken?

## Effective Apologies

- Other countries such as Australia and Canada have adopted Apology Laws (there is an Apology Bill being discussed at present in Scottish Parliament) - these laws remove the risk that a full apology can be used as a basis for civil litigation or to void an insurance contract. They appear to have led to real reductions in civil litigation. Should an Apology Law be adopted here? A number of participants indicated support for pursuing an Apology Law in Scotland.
- A Full apology means government or institutions accepting responsibility for what has happened in the past. A partial apology can be harming rather than healing.
- Example of good practice in reference to apology is the case of Dumfries and Galloway Council who made both public and personal apologies to survivors, as well as providing ex gratia payments of £20,000. Process of sharing their experience was important to survivors.
- Worth noting that D&G spent a lot of time in discussion with former residents before arriving at decision to take action they did- was a long process of mutual dialogue. Survivors were happy with outcome.
- Bravery- Dumfries and Galloway what they did was a bold step- were there insurance implications for them? It was felt that an Apology Law would make such a move less risky for institutions - which might e.g. face a risk of insurance premiums increasing if they apologise, which in turn might have a (financial) impact on ongoing services.
- Group wanted to know whether there were any negative consequences for D&G- what were the implications?
- **Action Point: Check with Sheila Clingan of D&G whether there were any insurance implications**
- *[Additional Note of response from Sheila Clingan to the above question:-*  
"Time bar was the issue and because we had already tried to get individual ex residents to pursue a legal action, the risk was limited as there was no desire by the legal profession to pursue, despite many attempts by us that they should. When we first wished to go with an apology, we could not because our insurers were clearly saying no, but as time passed and time bar kicked in the risks became minimal. When we did apologise latterly we had already agreed we could do this with our insurance agent. The ex gratia payment was on behalf of the Council, not the Council insurers."
- Is a badly worded apology worse than no apology at all? Yes, it is important that the tone and timing of an apology is right. It needs to be heart felt and believable for ex residents.
- Question of fear is relevant to Apology. An apology can allay fears of victim and help suppress anger. Evidence in Australia to suggest that a settlement was arrived at more smoothly following an official apology.
- However, environment for making apologies in Australia is more secure due to existence of an apology law. Question of institutional negligence is taken out of hands of institution- it is for the courts to decide. Apology law can therefore take away that fear of negligence or other civil litigation.
- A challenge with an apology is who should give it? If someone has been in 13 different institutions and only one apology given, is that an effective remedy? In this situation, who should give the apology? What about where institutions no longer exist? Would suggest it is the local authority director in which they were Looked After or who placed them - doesn't matter that this person will have changed over the years, the principle is that this is done on behalf of them and their council if it was a council. Voluntary organisations directors should also publicly and personally apologise.



## ***Reparation as a form of Acknowledgement***

- Discussed the provision of ex gratia (no fault) payment by Dumfries and Galloway Council, which brings together themes on reparation and acknowledgement. Did this 'one size fits all' approach fail to reflect difference in the scale or severity of abuse between different survivors? On the other hand, a tariff system can muddy the water.
- Reparation should not exclude people from courts/seeking access to justice.
- Example given of Redress Board in Ireland where evidence that compensation awarded left people feeling dejected in absence of other remedies and did not result in effective closure.
- National Reparations Fund in Scotland- proposal that it would support a range of needs, rather than simply offering compensation- about supporting survivors to gain access to opportunities/things that had lost out on e.g. education, employment opportunities or healthcare.
- Example given of good practice-agency in Ireland call 'Towards Healing' where 92% of money was spent on survivors, and only 8% on administration. Fund was totally needs-lead and based on individual circumstances. Whole approach was survivor centred and was a success as a result.

## ***Different forms of acknowledgement***

Andy asked the group to identify different forms that acknowledgement/apology might take. The NCF is one way, but there are also commemorations/memorials (Ireland/ Canada) and other possible forums.

### **Memorials/commemoration**

- One participant highlighted an example of makeshift memorial he had seen for child migrants, which he had found to be upsetting. To do justice, a memorial needs to be something substantial and permanent.
- Another example was given of the memorial set up to commemorate the children from Smyllum Orphanage, Lanark, who were buried in unmarked graves. Anyone attending the yearly memorial service is struck by the beauty, value/importance of it.
- Two different levels about what will be effective personally for survivors- memorials are about remembering as a group. But what would be effective for individual? There could be a number of different options available to individuals- Personalisation approach.

### **Different forms of Acknowledgement:**

- Need for increased education/ public awareness raising at a societal level about reasons young people go into care, the scale of historic child abuse and why it can take time for someone to make a disclosure about historic abuse.
- We need to reject the notion that we shouldn't judge previous decades by the care standards of today- this attitude minimises the experience of victims. Punishment and treatment of young people in care still contravened standards of the time/ Children Acts of the day. The acts were criminal, even if standards have changed.
- We have never had a high profile figure in Scotland to champion this issue. Remit of the Children's Commissioner in Scotland does not extend to adult survivors, as it does in Wales. Having a champion would be helpful. The Champion could be a minister in government or top

legal figure- someone to highlight the seriousness of the issue. Choosing the right person is a question of who you are trying to influence.

- SNP Manifesto commits to a Fair Scotland and a Just Society where everyone prospers. Survivors have a right to prosper too, but they do not at present. What kind of nation are we? Someone needs to champion the rights of people who are abused in Scotland. Historic abuse is part of history of people in Scotland and should be written into history as such.
- England has an Association of Child Abuse Lawyers- Scotland is behind in this respect.
- We need to help people realise what child abuse does to people's lives and the legacy of it into adulthood- e.g. prospect of going into care home can cause traumatic memories to resurface- fear of going into an institution. General public does not understand the knock-on effect- there is an assumption that people move on. A champion should play this educator role.
- Suffering can in fact increase with time/age. Historic child abuse can affect survivor's ability to parent themselves later in life. Support needs to be put in place to break cycle of children being put in care. Difficulties with disciplining own children- rejection of physical/emotional punishment that they were themselves subjected to.
- The word "historic" suggests this is in the past but the effects are in the present for survivors. Plus abuse will continue and we need to be sure in messaging and in remedies that we don't suggest everything is "historic". Also why should remedies only be available to adult survivors? (e.g. NCF and discussion of whether it should be open to under 18s).
- Education/ Barriers. Big barrier for general public is total lack of understanding about why there is a right time for people to come forward. They don't understand as they have not been through it. We should have commissioned education to break down that barrier in addition to a Champion. Lawyers don't get it either.
- The way society looks at kids who get put in homes needs to be changed- assumption that there is something inherently bad about them because they are in a home- that they are "misfits and delinquents of society" (this was a quote). We need to re-educate society about different circumstances that lead to children being taken into care. And nothing excuses abuse.
- The public in Scotland have never really been given the opportunity to talk about how they feel about child abuse. In Australia they were- helped purge some of the public psyche.
- It is reported in the Process Review of Time To Be Heard (available on the Survivor Scotland website) that the Chair and Commissioners of the TTBH Panel experienced distress and upset in about 22% of the hearings due to the harrowing nature of some of the participants' experiences. Wider society too needs to bear witness to that distress in order to feel empathy and understand its impact.
- It is interesting that Westminster government has responded so quickly to recent high profile cases by setting up public inquiries. Scotland hasn't followed suit. But Westminster government have missed the opportunity to look at historic abuse as a wider issue.
- The time is right to address ongoing issues of child abuse highlighting the shifting arenas where people in power have access to vulnerable children- the recent celebrity cases highlight this. Abuse will continue to shift into other areas if we don't keep on top of it.  
**ACTION: One element for the Action Plan going forward is a proposition of how we protect current group of children in care.**
- Children in care continue to be discredited and seen as 'bad children' - which means they are not listened to- recent case/ruling in Oxford highlights this.

- Important to include those who have been in foster care in scope of this work, as increasing numbers of children going into foster care these days.
- Only people who are 18 or over will be able to access the NCF- would 16 be a more logical cut off point? How do we hear experiences of younger survivors?
- Time Bar continues to be an obstacle-preventing people accessing legal avenues 3 years after age of majority- assumes that people are informed of their rights and know how to access them and are ready to talk about their experiences
- Going forward, how will people be prioritised for NCF and whatever comes after? Concerns around aging and poor health of survivors who are more vulnerable.

### *Link with empowerment and a “one stop shop”*

- To have a person-centred approach, there needs to be services in place to help survivors access resources and support them through the process. Support services critical in helping survivors accessing justice. Continuity of care is important as it allows trust to be built and barriers broken down- avoids survivors having to tell stories numerous times. Element of knowing someone that you are familiar with is critical, but external expertise is also important. But, there were concerns about the level of funding to In Care Survivors Service Scotland (INCSSS), both in terms of the number of support workers available, and the duration of funding (two more years).
- Concerns voiced that the NCF has potential to open significant wounds- support services are therefore vital for survivors going through this process and during the period after (some survivors reporting experience of Time to Be Heard as positive at time, but later feeling disillusioned and unhappy with the process).
- All the above relates to the issue of RESILIENCE- some survivors have much more resilience than others.

### *General points on remedies*

- If you are presented with someone who is very fragile and has low resilience, do we allow them to proceed with a process that may be potentially damaging to them? At what point is it acceptable to move away from a survivor-lead approach, because we deem to proposed course of action to be more harmful than helpful?
- Many survivors are very vulnerable should not have to represent themselves in negotiation processes. Appropriate counselling needs to be available for people like this.
- ‘A Day in court’ is not right for everyone, can be incredibly damaging if the outcome is not what was hoped for. However it was accepted that access to justice through the courts should be available - it is about providing survivors with real choice in remedies and support to understanding and access them.
- The Idea of survivors having a real and effective CHOICE of remedies is critical.
- Restorative justice model was not seen as a suitable remedy for survivors of historic child abuse- there was real concern that the model cannot be effectively translated for this purpose.
- Is there really at the moment the right choice of remedies that is appropriate to individual?
- Many remedies which may be available - such as Criminal Injuries Compensation or civil justice in the courts - have barriers such as time-bar and also are adversarial. There was

suggestion that there should be separate routes available for survivors which are more appropriate - with a more constructive rather than adversarial approach.

- Potential separate Issue for consideration relating to 16/17 year olds. What pathways are available for those young people who cannot currently access the NCF? More to be discussed/ teased out on this issue.

## ***Reflections on the NCF***

Are there other models of acknowledgement forums that might address survivors' needs in a better way?

- NCF- Does a confidential forum risk keeping it behind closed doors- mirroring fact that abuse takes place behind closed doors. Should it be out in open? But at the same time we need to respect individual's right to confidentiality and protect people from false allegations.
- Need to minimise the number of times people have to give testimony- repeated disappointment.
- So many people excluded from Scottish Government process- those who were in foster carer or adopted, 16-18 yr olds etc. Some felt their views in earlier consultations had not been heard.
- NCF going to run for 5 years- people want to know what else is going to happen. There should be other things happening in parallel- need to get people to sign up/ buy into it. Series of negotiations.
- Confidential Forum has been proposed in isolation here, which is different from other countries. Its success may depend on other remedies that accompany it.
- A Reparations Fund running in parallel may be an option-Would need to negotiate who would contribute to it. But this would rely on having records to prove that care leavers have been in certain establishments. Problems accessing records for a number of clients.
- Coping skills- fear of not being believed- it takes such a long time to be ready to talk- got to be at the right place in own life to come forward and acknowledge abuse and need to be supported in this process.
- Should the NCF go forward in the absence of other remedies? Time running out for people- need to document/ record- we should therefore speed up action in other areas, rather than slowing down activity in the one area where there has been some progress made?

## ***Scottish Government engagement***

SG need to be constantly reminded that NCF isn't the only remedy. Will the SG look at/ consider/ commit to other remedies? SG needs to be honest, transparent and upfront about what it is willing to commit to. Need to increase the collective awareness by SG across this whole issue-it should be a high profile situation in their mindset. If there is a change in government, would it still be carried forward? Need for buy in. We need to know. Clear need to report this back to SG- expectation that there will be commitments from them at the end of the process. This is a question for different parts of the SG- Justice and Health- need to bring different departments together.

## **SUMMARY**

Key themes distilled from today's discussion:

- Number of concerns raised around the NCF- Should it go ahead? Who should be able to access it? Discussion focussed on what should happen around it, and the potential for other aspects to be sped up to ensure NCF is not in isolation.
- **Public Awareness-** Idea of a **Champion**. Educating general public, professions about lifelong implications of historic child abuse. Need to break down the stigma around being in care and child abuse.
- **Reparation** is one form of Acknowledgement, but also more broadly there is a need for services which recognise the seriousness and scale of the problem.
- **Commemorations/ Memorials** are important for the collective memory and acknowledgement of society that this is part of our history- but there is a need to focus on individual too. Individual need support with building memory/ identity/ accessing records. Building identity and making sense of past. Process through life of creating and recreating who you are from your past.
- **Apology-** needs to be authentic and meaningful; otherwise it can be more damaging. Apology law should be pursued. What are the implications where apology has taken place?

Mini-InterAction session on Reparations

Tuesday 22 May 2013

***Present:***

Jennifer Davidson (CELCCIS-Chair), Henry Aitken (independent), Zachari Duncalf (CELCCIS, Care Leavers Association), Barbara O Shea (Renfrewshire Council-also representing ADSW), Paul Begley (CELCCIS), Moyra Hawthorn (CELCCIS), Chris Daley (INCAS), Sr Helen Darragh (Conference of the Religious), Jean McLellan (Scottish Government), Sister Nora Ambrose (Nazareth House), Sr Patricia Clarke (representing Sister Anna Maria Doolan, Sisters of Nazareth), Lauren Bruce (SHRC)

***Apologies:***

Anne Black, Jim Goddard, Martin Crewe (Barnardos), Sheila Clingan (*Sheila submitted note to inform discussion in first two mini-InterActions*), Stephen Findleton, Rosemary Kean, David Whelan, Helen Holland.

*Written comments from Martin Crewe have been taken into account in the note of the meeting.*

***Overarching Aim of Session:***

To help inform the identification of potential steps on reparations which might be included in the Action Plan. The content of today's discussion will feed into the InterAction on 20 June. We will be looking at the following two questions:

1. Can and should a National Reparations or Adult Survivor Fund be established?
2. What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

***Context for today's Session:***

Duncan Wilson provided a brief background to the InterAction process to date and the specific objectives of today's session.

- The Scottish Human Rights Commission (SHRC) was asked by the Scottish Government in 2009 to develop a human rights framework for the design and implementation of the proposed 'acknowledgement and accountability forum' and other remedies for historic child abuse in Scotland. This framework drew on international human rights law and good practice distilled from development of similar frameworks in other countries e.g. Ireland, Canada. It was also informed by research undertaken by SIRCC (now CELCCIS) on the views and expectations of survivors.
- The framework was launched in 2010- at same time as a 'Time to be Heard' was launched. Once Time to Be Heard completed the Commission approached Scottish Ministers to agree to

take part in an “InterAction” process to negotiate steps which could be taken to implement the recommendations on justice and remedies in the Human Rights Framework.

- The Scottish Government agreed to engage with InterAction process, which is essentially a series of negotiations leading up to the development of an Action Plan. The process is designed to take into account the rights of everyone involved. The first InterAction on 28 February 2013 brought together around 50 people representing a wide range of interests and created a platform upon which to work together positively to develop the action plan.
- The purpose the thematic mini-InterActions is to ‘drill down’ on the key questions that emerged from discussions on 28 February 2013.
- The first mini-InterAction on 22 May 2013 looked at **Acknowledgement and Apology**. Key messages/highlights from the discussion include:
  - Any remedies developed should focus on survivor needs and adopt a person-centred/individualised approach
  - There is interest/enthusiasm for looking at how effective apology could be progressed - consideration given to Apology Laws in other countries.
  - Potential for no-fault/ ex gratia compensation being a form of acknowledgement as well as reparation.
  - Other forms of acknowledgement merit consideration e.g. memorials
  - There was recognition that the Confidential Forum may provide one form of remedy for some people but there was also discussion on the challenges in Scotland of pursuing that in isolation - no other country seems to have offered only a confidential forum. This suggests that other forms of remedies should be advanced at the same time, so that they can be available to survivors alongside the confidential forum, so that they have choice and so that the state fulfils its human rights obligations.
- Today’s discussion will focus on **Reparation**. Reparation is a very broad concept which can take a number of forms:
  - Satisfaction and acknowledgement (addressed in first session)
  - Restitution and rehabilitation - that is helping survivors to get access to opportunities they missed and helping them to overcome the continuing effects of abuse.
  - Adequate compensation, particularly where restitution and rehabilitation are not possible.
  - Guarantees of non-repetition, i.e. learning lessons as to why abuse happened and taking steps to avoid it happening again.
- In the first InterAction on 28 February there was a lot of discussion on the possibilities around a form of National Reparations Fund or Survivor Support Fund and how it could help the process of restitution and rehabilitation.
- As with previous meeting, the minutes will be circulated to all those in attendance today for accuracy, before being circulated to the wider InterAction participant list.

## ***Background:***

Jennifer Davidson reminded the group of the core principles of the InterAction process, namely:

- Do no Harm
- Everyone's voice counts
- Being Heard
- Respectful treatment
- Constructive Engagement.

## ***Initial general comments from participants***

Jennifer invited participants to raise any burning issues or comments on the agenda/Duncan's introduction.

- Broad question raised- What is this whole process feeding into? What is the desired end point/ the goal? How will these discussions feed into recent recommendations published by the Health and Sports committee (on the National Confidential Forum)? What will happen with the action plan at the end of the process?
- Participants voiced the need to know whether the Scottish Government continues to subscribe to the human rights framework. Some noted that discussions have been going on since 2002 and the many of the issues have already been visited, but it was felt that little has actually happened in terms of developing remedies that survivors can access.
- It was pointed out that reparations are referenced in the recent recommendations published by the Health and Sport Committee on 27 May 2013.
- In response to the above questions: Duncan explained that discussions from the mini-InterActions together with an open event for survivors will feed into the larger InterAction on 20 June, which will in turn be used as a basis for developing a draft Action Plan. The Action Plan will be a series of negotiations between different agencies to make concrete commitments. The aim is to have a finalised action plan by the end of the year which clearly spells out what different bodies are willing to commit to deliver within a specified timeframe.
- The work of the Health and Sport Committee is important to this process. But purpose of InterAction process is to look more broadly at what could be done in addition to the governments' existing commitment on the NCF.
- Some participants expressed fear that lack of resources will restrain/ inhibit agencies from making effective commitments. If initiatives are not effectively resourced, it may be damaging not just for individual survivors but also for the relationships that we have worked so hard to build as part of this process.
- Does the development of NCF create expectations that additional resources will be available? Development of any new initiatives would need to fit in with the Scottish Government Funding review cycles in relation to the relevant departments of health, childcare and justice (there is a spending review coming up over the summer).
- How can we support/ encourage the engagement of organisations that are no longer providing child care services? It is important that they are part of the process but if there is no longer a management structure with which to negotiate, who/how is a decision made to offer an apology or contribute to a reparation fund?



- It was clearly voiced by a number of parties on 28 February that a survivor's access to remedies should not be contingent on the continued existence of a particular organisation - that is why a national fund with State leadership is so important.
- Some noted that an adversarial civil litigation route may not be beneficial to survivors- acknowledgment/meaningful apology from institutions may provide a more appropriate environment. However it was noted that resilience varies and ultimately what is important is that survivors have real and effective choice of remedies, not theoretical and inaccessible remedies. We need to be careful about deciding what is in the "best interests" of people. We should ensure a range of options are available and that people are supported to decide what they want to do. Survivors need access to information about possible difficulties/ negative outcomes of going down the legal route.
- There was some discussion also what the survivor gives to the process - some felt forgiveness is important for moving forward, however it was clarified that forgiveness should never be a requirement for accessing remedies.
- It was also clarified that people would not have to give evidence at the NCF in order to gain access to any other remedies.

### ***Referring to questions on the Agenda:***

1. Can and should a National Reparations or Adult Survivor Fund be established?
2. What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

Participants' views included:

- There was broad support for a National Reparations Fund and some felt that there are positive examples of good practice we can refer to for guidance E.g. 'Towards Healing' in Ireland. A participant suggested that in Towards Healing, number of agencies committed to this project and supported it by giving major contributions (including government and religious organisations) and survivors access it by sharing their experience, which is graded according to a set of criteria.
- It was suggested that it would be useful to make some connections with Ireland to find out how contracts were negotiated with organisations, conditions applied, criteria used for assessment etc.?
- Mental and physical health care and treatment is a high priority for many survivors. Many survivors have been diagnosed with personality disorder and consequently cannot access appropriate care or counselling. Some reported experiences of being told there is no help available in Scotland for personality disorder. Specialised trauma counselling is possibly needed. Survivors should have choice of where they go to access counselling and be able to access funds to pay for it.
- Ideally there should be no time limit imposed on accessing the fund.
- There is a tension between the assessment of abusive experience and the assessment of need (relates back to question of resilience). We have a tendency to want to victimise people and push them into proving their level of need by highlighting the severity of abuse. Adult survivors who have made achievements in life should not be excluded from a reparations fund on the basis that their need appears to be less than others.

- It was suggested that the Irish situation is not directly transferable to Scotland. In Ireland, there were effective structures in place through the Conference of the Religious and some religious organisations contributed funds despite never having had responsibility for care of children. In Scotland the same structures do not exist.
- Further consideration is needed on the practicalities of setting up a fund of this nature.
- International recommendations on reparations are for as effective as possible an approach to reparations in the context. Potential contributions therefore have to be balanced against other factors such as an ongoing commitment to fund current child care provision.
- The Samson Committee report from Holland also came out in October 2012.<sup>1</sup> In Holland, they reportedly set up a national agency and helpline drawing on the expertise of existing groups. However, it is not clear which agencies funded it. There are a number of models out there representing examples of good practice- but the challenge is to make it work for the Scottish context.
- What true sense do we have around access to counselling at present? Many organisations currently providing counselling through the Survivor Fund- some of which has been channelled to rural/geographically remote areas.
- ICSSS provides some counselling and advocacy, but it doesn't have psychotherapists trained in Trauma counselling.
- Homeopathic remedies and alternative approaches to counselling (e.g. core processing) are not currently available through NHS or ICSSS. It should be about real and effective choice.
- Need a survey to find out where real and effective choices are not being met.
- The **Care Leavers Association** did a broad scoping study of the whole of the UK and could not identify a single practitioner who had received specialist training on the needs of young people in care or care leavers. They then contacted universities to find out whether they ran modules addressing needs of Looked After young people- The Tavistock Institute is just starting their first module on emotional needs of young people in care, but to their awareness this is the only one.
- Care leavers can be damaged by the experience of accessing counsellors who do not effectively understand their needs. Deficit in knowledge/ experience/ expertise in counselling this particular client group.
- In the last session, ICSSS shared information about range of services it was providing in the form of a 'one-stop-shop' -helping people to navigate different options/ possibilities available to them.
- Reservations raised about the existence of a 'One-Stop-shop' in the form of a building which may reduce anonymity- sometimes people don't want their families/ colleagues to know they were even in care, let alone abused.
- A one-stop shop doesn't necessarily need to be located in one building but rather a service that helps people navigate through the system.
- Time limitations to accessing such a service was raised as a concern. Different issues can surface at different points in a person's life - will that service still be available a number of

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<sup>1</sup> NB. The Samson Ctee was an investigation led by the former public prosecutor for the Netherlands. It did not offer reparations but made a series of recommendations for changes to law, policy and practice as well as on reparations, and it referred 42 cases (of 800 heard) to the police for criminal investigation:  
[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&ved=0CF8QFjAF&url=http%3A%2F%2Fwww.onderzoek-seksueel-kindermisbruik.nl%2Fimages%2Fsummary\\_tcm109-467283.pdf&ei=dWOwUcCrDoPYOZOPgeAP&usg=AFQjCNFvG2e616d2YTGSVIRH7AAX\\_yv1XA&sig2=gVz4RyskIS2TSvb-Hrit8A&bvm=bv.47534661,d.ZWU](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&ved=0CF8QFjAF&url=http%3A%2F%2Fwww.onderzoek-seksueel-kindermisbruik.nl%2Fimages%2Fsummary_tcm109-467283.pdf&ei=dWOwUcCrDoPYOZOPgeAP&usg=AFQjCNFvG2e616d2YTGSVIRH7AAX_yv1XA&sig2=gVz4RyskIS2TSvb-Hrit8A&bvm=bv.47534661,d.ZWU); <http://www.rnw.nl/english/article/final-report-care-system-failed-protect-dutch-children-0>

years down the line? Given the short term nature of most funded projects, it is difficult to know how to ensure consistency of service.

### ***Is it feasible to establish a National Reparations Fund?***

Mixed reactions to this question, for example:

- Can't see how it would be possible given the number of organisations involved.
- Yes, it can be and should be. The InterAction is the start of this process as we are bringing agencies together- it is the impetus/ drive to move forward.
- Is it possible to draw on the risk management/ reserve finances of organisations? (E.g. Quarriers had an allocated fund).
- Catholic Church is already involved more broadly in setting up a service for survivors of abuse, not just those who were formerly in care.
- Further scoping is needed to understand scale of abuse.
- Could we draw on contributions from all agencies involved in the InterAction (this should be voluntary). However, the overarching responsibility should lie with the Scottish Government. The state should make up the difference needed after contributions from all other agencies have been committed.
- What is the scale of contributions needed? The current economic climate makes it a very concerning prospect for organisations.
- Any contributions would be made on a voluntary basis and would not necessarily need to be a financial contribution e.g. acknowledgement, contribution in kind (leaving with just a cheque can be damaging if that is the conclusion).
- This whole process has moved on from activism/ campaigning in the beginning to constructive dialogue. Careful consideration needed about the language we use for the next stage e.g. rather than being about adult survivors, it could be an Adult Care Leavers fund? Broadening it out might invite greater contributions. We perhaps need to think more creatively about how we frame the discussion and development of the service to make it economically viable.
- The fund could be framed as an extension of corporate parenting which would tie in well with current debates on the need to improve support services for care leavers.
- Some felt on the other hand that broadening it out may risk a loss of focus on those most in need. Some advocated the fund being limited and specific- restricted to those abused in Scottish Institutions and set up on a fixed-term basis.
- Would be helpful to have a working model to inform appropriate level of financial contribution from any given agency i.e. a suggested commitment based on for example, length of years of service and how many young people they looked after. Providing a formulae/ parameter would help organisations consider whether it would be feasible for them.
- Many organisations are keen to do the right thing and want to see a constructive way forward in keeping with the spirit of the first InterAction. However, concerned that if the parameters for reparation are set too wide then this will force them into an unhelpful process of seeking legal advice to ensure that liability is managed. Expression of desire to avoid making the reparation process over-complicated and legalistic.

After the break, Duncan Wilson refocused the discussion, asking participants to consider what type of reparations is most feasible in the Scottish context in relation to the following questions:

1. What Form should such a forum take?
2. How would it operate?
3. What outcomes are we looking to achieve from it?
4. What criteria would be used to ensure a person-centred approach?
5. Who could and should be able to access it?
6. Who should contribute to such a fund and what are the ways in which they might support it?

### **Who Should Contribute?**

Participants' views included:

- A database is being developed of all current and former children's homes in Scotland, run by the state, big organisations and religious orders. A researcher has now been taken on to develop this work. This database may eventually contribute to our understanding of who should contribute to this fund.
- The Scottish Government should provide initial funding to the Reparation Fund at a level based on some assessment of likely response rates (perhaps around £10m). The assessment of each case should include the option of allocating all, some or none of the costs to the institution concerned. In this way the Scottish Government initial funding would be augmented by relevant institutions but on a case by case basis.
- The state should take responsibility for pulling this together- looking for government taking a lead on making it happen.
- But how does this marry up with the need for it to be independent? People who have been in care may not trust the state.
- What is it like for organisations considering this question in a vacuum- there is tremendous will and desire to engage but we need a strong lead to measure how it works and clear parameters. Need to unpack further what we mean by leadership. Can that leadership be shared?
- Could operate through a gradual inclusion process i.e. start the process and encourage others to join through incremental inclusion and contribution.
- There should be a Steering Group for the Reparation Fund which includes both survivor groups and institutions

### **Who should be able to access it?**

There were mixed views in response to this question:

- Reparation should be expanded to include those under foster care, kinship care and possibly even adoption arrangements i.e. anyone who has been in the care of someone approved by the state as a corporate carer.
- If the fund was to be broadened out, it is really important that you contain it. 'Looked After' is a recent term. It could include anyone who was placed outwith their family due to social work involvement- made decision to remove from home and place them with 'appropriate adult'.

- If we are to include anyone who has been in a formalised care setting outside of the home, how should we move in that direction? Incremental steps?
- Preference to have a clearly defined group who could access it readily and then extend it incrementally?
- The fund should be restricted to those individuals abused in Scottish institutions. It should not be open to relatives or to child migrants who were abused outside of the country.
- The Reparation Fund should be set up on a fixed term basis even though there could then be some flexibility. As with the mis-selling of financial services, the basis should be that we are putting right a historical wrong not putting in place permanent structures.

### **What forms of reparation?**

- 2 potential purposes: 'Rehabilitation and Restitution' and/or compensation. We may want to do both or emphasis one.
- Compensation is important for some. But choice is the essential element.
- If compensation is to be considered, some felt it should be a flat rate sum (e.g. £20k per person) in line with the arrangements implemented recently by Dumfries & Galloway Council. If payments are individualised then there will inevitably be a legal process, appeal mechanisms etc.
- We should consider different forms of contribution and the ways in which institutions which are not in a position to contribute financially can demonstrate commitments and acknowledgement to the process.
- At the heart of the process, we should be considering what are needs of individual to enhance their life and reduce ongoing suffering? If this approach is acceptable to survivors, then all we need then is buy in from organisations. Need to find a resolution acceptable to all parties involved.
- Should consider the statutory pre-requisites for setting up a new entity- practical risk assessment. Do you need a law? (to protect everyone involved). Do you need an entity to make this run? It is not possible to create a new non-departmental public body under current administration. Will everyone cooperate? It has taken a long time already to make small steps e.g. 4 years to get a few sections of a bill through Parliament.
- In a practical sense, we may need to weight conclusions in action plan according to what is practical and feasible (in relation to rehabilitation and compensation). Reparation also covers acknowledgement and apology. People should still be able to test their right to compensation legally. Care/ treatment/ access to educational opportunities. National Fund is a very positive way of supporting people to access opportunities.

### ***Final Comments:***

- We've come a really long way- we shouldn't underplay the value of people sitting around the table together- could never imagine this happening before.
- The fact that SG has funded so many of agencies contributing to this process indicates there is a will to support this process going forward. Now we just need to focus on the negotiation part.
- Possible outcome- continuation of this dialogue at a much higher level- e.g. high level task force to take forward action plan e.g. first minister, heads of organisations. This could be embedded in the action plan.



## SHRC InterAction on Historic Child Abuse



### Mini-InterAction session on Inquiry

Wednesday 5 June 2013

#### *Present:*

Professor Alan Miller (SHRC, Chair), Duncan Wilsons (SHRC), Henry Aitken (independent), David Baird (Social Care Association), Chris Daley (INCAS), Paul Gilroy (EtCS), Kathleen Mulvey (Scottish Residential Childcare WA), Sue Moody (Scottish Government- had to leave early), Belinda McEwan (ADSW), Roisin McGoldrick (University of Strathclyde), Moyra Hawthorn (CELCCIS- Moyra had to leave early), Lauren Bruce (SHRC-minutes), Mark Smith (Social work Edinburgh university).

#### *Apologies:*

Anne Black (The Fostering Network), Martin Crewe (Barnardos), Jenifer Davidson (CELCCIS), Stephen Findleton (independent), Rosemary Kean (Good Shepherd Sisters), David Whelan (FGBA), Jim Goddard (Care Leavers Association), Zachari Duncalf (CELCCIS, Care Leavers Association), Helen Holland (independent).

#### *Overarching Aim of Session:*

The focus of today's session is on **Inquiry** and we will be attempting to address the following two questions:

1. What would be the scope, purpose, and process for an inquiry on historic child abuse?
2. What steps can and should be taken in respect of an inquiry?

#### *Context for today's Session:*

Professor Alan Miller (Alan) began by thanking everyone for continued involvement with the InterAction process and acknowledging the bravery of all participants.

He reminded the group of the key principles:

- Do no Harm
- Recognising the voice of everyone as part of the process
- Ensuring that everyone is heard
- Respectful treatment
- Constructive Engagement.

#### *Context for today's session:*

- The Scottish Human Rights Commission (SHRC) was asked by the Scottish Government in 2009 to develop a human rights framework for the design and implementation of the proposed

'Acknowledgement and Accountability Forum' and other remedies for historic child abuse in Scotland. This Human Rights Framework drew on international human rights law and good practice in other countries e.g. Ireland, Canada. It was also informed by research undertaken by SIRCC (now CELCIS) on the views and expectations of survivors.

- The Human Rights Framework was launched in 2010- at same time as a 'Time to be Heard' was launched. Once Time to Be Heard completed the Commission approached Scottish Ministers to agree to take part in an "InterAction" process to negotiate steps which could be taken to implement the recommendations on justice and remedies in the Human Rights Framework.
- The Scottish Government agreed to engage with the InterAction process, which is essentially a series of negotiations leading up to the development of an Action Plan. The process is designed to take into account the rights of everyone involved. The first InterAction on 28 February 2013 brought together around 50 people representing a wide range of interests and created a platform upon which to work together positively to develop the action plan.
- The aim of the mini-InterActions is to bring forward proposed actions to the second InterAction on 20 June to inform the discussion on the creation of an Action Plan.

### **Headlines from first two mini-InterActions**

As with the larger InterAction, all mini-InterActions have been informed by a cross section of views from different constituencies.

### **Acknowledgement and Apology (22 May):**

- There was strong recognition that an effective apology can be an important part of a remedy
- Discussion focused on what form an effective apology should take (i.e. acknowledging responsibility) and what barriers exist and should be removed to achieve effective apology (e.g. fear of civil litigation).
- The role of apology laws in avoiding civil litigation was discussed. A private members Bill currently going through parliament to introduce an Apology Law in Scotland.
- We also discussed other forms of acknowledgment- e.g. memorials and the role that Reparation can play as a form of apology.
- The role of the National Confidential Forum (NCF) was acknowledged but it was strongly emphasised that other steps should be taken alongside NCF to ensure survivors have real and effective choice.

### **Reparation (28 May):**

- We explored the different forms that reparation might take e.g. satisfaction and acknowledgement, rehabilitation and restitution, adequate compensation and steps to guarantee non-repetition.
- Who has responsibility for reparations- what challenges we face where an institution no longer exists? It was said that the survivor's access to reparation should not depend on the continued existence of a particular institution and that a national process is needed with the State taking the lead.
- How might a National Reparations Fund be set up, run and administered?- eligibility criteria. Reservations about transplanting models from abroad e.g. Ireland, but still value in pursuing.
- Cross cutting themes- Empowerment and potential role of one-stop shop where survivors could get advice and support- resource challenges.

Minutes from the above meetings as well as today's will be circulated to broader group to give everyone the opportunity to contribute to the discussions before 20 June.

Alan began by inviting any thoughts/comments on where we are with process or other issues that participants wished to raise.

Comments made included the following:

- From point of view of survivors, it is very encouraging to see the amount of ground that has been covered in relatively short period of time. Recognition given to the involvement key bodies that have been particularly supportive and committed to survivors. We are now beginning to see some tangible outcomes.
- There are still differences in understanding and opinion about what are achievable and desirable outcomes from this process. The meeting on 17 June will provide survivors with an opportunity to comment on outputs from all mini-InterActions. This is a very important step to ensure survivor views are well represented on 20 June.
- The InterAction process has helped allay many of the fears that survivors have previously felt. However, drawing information from disparate groups and individuals continues to be a monumental task.
- Roisin McGoldrick and Moyra Hawthorn updated the group that they were invited to speak at annual meeting of Conference of Religious safeguarding group, which was attended by around 60 people. Input from Roisin/ Moyra was very well received.
- Prof Andy Kendrick will also be attending the upcoming Residential Childcare Workers Association conference. Involvement in these event helps reiterate that the InterAction process is about everyone's rights and the need to move forward together.
- Remembering the rights of all involved in this process is paramount- a recent case where two nuns were found not guilty of child abuse was mentioned as reinforcing the need to take into account the rights of everyone, including current and former care workers. Reference was made to a recent case where it was suggested that defects in the investigation process raised concerns about the right to a fair trial for the accused.
- There was some discussion on the notion of "false allegations" with some feeling these risked undermining the experience of survivors and visiting new violations on those accused. Others cautioned against the use of the term "false allegations" - the fact that an allegation is not sustained does not mean that abuse did not take place. There can be a number of reasons why individual case are not proven, including for evidentiary reasons or where memories are unreliable over time and errors may be made in good faith. It was suggested that experience across criminal law indicates that the number of malicious false allegations is likely to be very small indeed, but there may be more cases where other factors such as memory or evidence cannot sustain prosecutions.
- It was pointed out that the experience of being in care and being victim of child abuse is very complex; care leavers may have been hurt in multiple different ways throughout their lifetime and it is sometimes difficult to disentangle/ unpack the main source of their hurt. A person making a "false allegation" may not necessarily be malicious or greedy but lacking in the right kind of help to identify the location/origin of their pain. It is not a black and white process.



- It was also noted that some survivors had reported facing barriers to having reports of criminal abuse investigated, a situation which risks impunity for abusers. This highlights a need for adequate support to be in place for survivors at point of disclosure.
- There are action steps we could take to improve the current system as part of the Action Plan- e.g. providing enhanced guidance for procurator fiscals and police in dealing with cases of this nature. It was pointed out that rigorous tests are applied by the prosecution service to assess the merits of a case- cases will not get to court unless sufficient evidence available. There is also clear guidance to witnesses and victims about what might and might not happen in court. Cases do not go forward lightly.
- Throughout the InterAction process, it has been consistently acknowledged that many young people formerly in care had a very happy and nurturing experience. However, this was not the case for everyone- and we need to speak up for those individuals.
- It would be useful for someone from the prosecution service to attend an InterAction meeting to explain how cases are assessed to group.
- We should be clear about the difference between individual, institutions and systemic responsibility. Purpose of Inquiry could be to establish whether the State created unsafe conditions that allowed people to be abused. Responsibility for abuse may lie with the State, the local authority, the institution in which the abuse took place - through potential failings in placement, oversight, management and response.

#### Questions- INQUIRY

- The Chair asked whether there is potential for a constructive form of accountability that aims to identify systemic lessons that can lead to improvements in services i.e. looking at what happened, why it happened and how we can avoid it happen in future, rather than pursuing adversarial route that involves naming and shaming individuals.
- On 28<sup>th</sup>February 2013, there were varying degrees of interest for an Inquiry as well as varying understandings of what an Inquiry actually is.
- Posed the questions: What motivates people to support an Inquiry- what should it achieve? What should be the outcomes? What are the concerns that have to be taken into account? What would be the scope, purpose and process of an Inquiry?

#### *Responses:*

##### Form and purpose of an inquiry

- It was clarified that the purpose of an inquiry from a human rights perspective is to identify where the state failed and draw out lessons for future. It is also to investigate allegations and satisfy the victim's 'right to the truth'.
- What tends to differentiate a formal public inquiry from other forms of redress is the statutory powers to compel the production of evidence, including written evidence (where it exists) and oral evidence. Examples of inquiries elsewhere:
  - Australia: a Royal Commission has just been established as a form of Public Inquiry led by a leading judge. A previous Inquiry took evidence from 1,920 people, passed allegations

of criminal abuse in relation to 170 people to the police. In the inquiry alleged perpetrators were not named, but information was passed to the police.

- Ireland: the Commission to Inquire into Child Abuse was also led by a judge but took a different approach in that the investigations committee investigated individual allegations of abuse in an adversarial approach. In consequence it has been noted that this drove up associated legal fees and the process cost hundreds of millions of euro.
  - Northern Ireland: The Historical Institutional Abuse Inquiry is currently running. It is led by a leading judge. Purpose: Investigating where the state had responsibility and learning lessons for the future (spelled out clearly in terms of reference). Establishing accountability, not just proportioning blame. This wasn't established under the Inquiries Act (which allows minister degree of control over the report) because events happening before 1999 are expressly excluded by section 30(3) of that Act. It is time limited to run no more than 2 ½ years and is estimated to cost £15-19m.
  - Other inquiries have been held in Denmark, Iceland, Netherlands Norway, Sweden, Wales.
- Parliamentary Inquiries are also possible - under discretion of parliamentary committees- do not have same legislative basis.
  - A good place to start might be to decide on what kind of Inquiry we are talking about- some Inquiries can be very adversarial. When we use the term Inquiry, most people automatically think of a Public Inquiry- which would generally mean following very specific processes according to the Inquiry Act- some felt this form of Inquiry could be overly formal and threatening to all those involved, as well as very costly.
  - Experience was shared on the way previous inquiries or investigations in Scotland had run - for example an experience shared of a Fatal Accident Inquiry was that it was very formal, held in a court and adversarial in nature - a very challenging atmosphere.
  - Perhaps a better way of looking at it is to ask what is it that survivors want and need that isn't available now and how can we fill those gaps? Is an Inquiry in fact the best way to address those gaps?
  - It is important to differentiate an inquiry model which is intended to be **inquisitorial** from one that is **adversarial** (note that an adversarial one is more costly). Some participants expressed a preference for an inquiry that is impartial and not looking to attribute blame.
  - Participants expressed concern about involving lawyers in the inquiry process, which would inevitably make it adversarial. This would risk harming the reconciliation that has already occurred through the InterAction process.
  - Some expressed concerns that Inquiries tend to take on a life of their own and once we decide to run with it, the control over the process can quickly be lost.
  - It was said that, if there was to be an Inquiry, the Panel of experts would need to be extremely well versed in what residential childcare was historically and is now. That would need to be an absolute prerequisite.

- A view was expressed that substantial benefits could be gained by an Inquiry- Those who seek to go through court process often have no proper records to support their story. An Inquiry with sufficient powers to establish that abuse did take place could provide an evidence base for people seeking legal redress. A series of records could be mandated, as institutions could be compelled to be produced reports if they are available.

#### What added value in the Scottish context?

- It was questioned whether we need an Inquiry or can we make appropriate progress without one? Tom Shaw's 2007 Historic Abuse Systemic Review was mentioned. It was said that nearly all recommendations have been implemented. However it was noted that Shaw's report did not have a mandate to hear from all survivors and it was limited in time (1950-1995)
- There were also independent inquiries conducted in Edinburgh, Fife and Kerelaw.
- Different from an inquiry, the National Confidential Forum has no investigatory powers and members have discretion in deciding whether or not to pass names to the police, other than where the panel feels that there is an ongoing risk or where the panel feels it is in the public interest.
- From a residential point of view, it was suggested that Tom Shaw's review has been successfully used as basis for changing current practice. But Shaw's review was quite narrow in focus and had some limitations. It was felt by some that an inquiry could go further, hearing from more survivors and having powers to compel the production of evidence, providing a public record of the truth.
- In Australia, the history of abuse of children in residential care is well known publicly. Is there something here about the need for wider public acknowledgement-a recognition that these things happen? Many people here still don't know about child migrants.
- It would be interesting to find out whether smaller investigations have compelled broader responses? An Inquiry should compel organisations right across the board to look at their past practices.
- Organisations tend to be reactive to the publication of reviews rather than proactive.
- The NCF will give us an indication for the first time of scale of abuse nationally. But it should be passing on anything that has criminal nature to police.
- Systemic question- who is regulating direct care today? Huge webs of involvement from range of parties e.g. direct carers, those managing direct carers, those regulating care providers, social workers who make placement etc.
- Some survivors are questioning the point of NCF as they want to recognise their own testimony in reports.
- A participant expressed the view that it would be helpful to review Shaw's Systemic Review and other independent inquiries collectively to assess what hasn't been covered that would merit a public inquiry.
- Shaw's review only goes back as far as 1950- the circumstances before that time were quite different as families could place children in care placements themselves.
- Initially Shaw's report didn't have power to hear individual testimonies, but later he heard from some individuals. However, he didn't have power to compel production of written or oral evidence from anyone. It was suggested that the legal powers of 'contempt of court'

when documents are not produced (as in a public inquiry) can help individuals know whether their recollection is accurate and can help contextualise their experience.

- There was general recognition that historic record keeping by institutions was at best patchy and more often than not poor. This has relevance for how we manage expectations- important that an inquiry wouldn't raise hopes about gaining access to information that may not be available.
- Social work records are sometimes more revealing than records of residential child care institutions.
- In 1982- when revelations surfaced about abuse that had taken place in Quarriers homes, it transpired that records had been lost and deliberately tampered with.
- Inquiry would be part of public record for people of Scotland.

**After the break, Alan summarise the discussion so far:**

- We began by agreeing that we would need to be clear about what benefit an inquiry of any nature would bring to Scotland.
- We then moved on to identifying where an Inquiry might bring added value- in this respect there was a range and balance of views. There appears to be 3 potential benefits of an Inquiry:
  1. Whilst it's true that there have been specific inquiries in terms of locations/ institutions, there hasn't been a Scotland wide systemic inquiry looking at the responsibilities of the state that could contribute to how all actors could learn from past.
  2. An Inquiry could help identify where there is sufficient evidence of perpetrators to pass on to police (While NCF would have capacity of referrals to prosecuting authorities, this is discretionary power rather than mandatory)
  3. We have a 'right to the truth'. Survivors have this right but so does Scotland as a whole, so that historic child abuse becomes part of Scotland's record, part of public psyche, an understanding of the past and how to address it so that we can learn from the past.

**How we can pursue an Inquiry that would give added value to the InterAction process?- can we see other existing models that would be fit for purpose for Scotland, or do we have to be more creative?**

**Purpose of inquiry (continued)**

**Identifying what happened**

- A participant questioned the notion of a "right to the truth" - what does this mean? The notion of truth is itself flawed as there will always be multiple truths. Difficult to establish truth about something that happened 30-40 years ago. Submerged narratives telling different stories and passing of time effects memory.
- It was suggested that an inquiry which provided an evidence base for those experiences/ testimonies and some degree of judicial oversight monitoring, may allay these concerns about subjectivity
- A participant noted experience from England and Wales demonstrating that judicial inquiries did not always uncover the truth.

- Further, it was suggested that the right to truth is not only for survivors but for the country as a whole. There is a public interest for the country as a whole- getting to the bottom of it, learning lessons, apportioning responsibility where there is an evidence base, as well as validating experience as survivors.
- A participant suggested that much is missing from our current knowledge: We have never heard about the culture of the organisations that cared for children. We've not learnt about management structure, how they recruited people, what they did with reports of abuse by children, how they dealt with police and staff. What was done to make care home safe and a better environment? Staff not reporting abuse due to fear? No record. How many males/ females, what was scale and nature of abuse? Was it spiritual abuse? What was monitoring and regulatory procedure for local authority that placed young people in care? There is still so much more to learn.

### Identifying responsibilities

- Another suggested it would be helpful consider further institutional responsibility. The example was given of the Stanford experiment- where people who were allocated roles as prison guards became abusive under instruction. An experience was shared that suggested newly arrived young workers at the institution were very caring, but this changed over time- they would start issuing strange and unusual punishments. It appeared that these punishments were linked to learned behaviour from more long-standing staff with people becoming desensitised as time passed. In this light it was suggested that the Samson Committee report (from the Netherlands) asked what was it about culture of organisations that created perpetrators- couldn't find any common characteristics.
- Further, it was noted that the process described may at times have been linked to people being set up to fail - e.g. one care worker historically being responsible for 80 children. Fear motivates people to make bad decisions- fear of losing control of kids- powerlessness. Residential carers often feel that they are not fully in control. People enter that line of work with good motivations but conditions are challenging.

### Survivors' views are central

- The importance of hearing the views of a broader range of survivors was underlined. It will be important to know what survivors feel is in their interest and what they perceive to be in the national interest. It was noted that there was a difference of views among survivors during the first interaction and again in the mini-interaction on the value of an inquiry.
- All issues that have come out of the thematic mini-InterActions should be put to survivors on 17 June to find out what they want.

### Lessons from previous processes and general concerns about an inquiry

- Some expressed concerns that many hopes may be placed on an inquiry process which may not be realised. It was noted that it is hard to get accurate picture of events that took place a number of years back due to limited evidence. There needs to be a range of different options going forward- hopes would be pinned on Inquiry process.
- One participant thought that lawyers should only be brought in at the end of the process when there may be potential investigations leading to court proceedings

- Some were also concerned that an inquiry process might imperil some of the progress made in opening a space for dialogue which has been evident through the InterAction process. Would an inquiry jeopardise this relationship between agencies and the reconciliation that has begun to take place?
- Learning from the TTBH Pilot forum: some care leavers had gone forward with a view to providing a positive account to balance out negative perceptions of Quarriers. They were questioned about whether they had observed abuse and how they felt about it. In the reports, their responses were recorded as 'vicarious trauma'. Was this a projected value put on witnesses by the commissioners?
- The makeup of the panel is really important- can make or break it. It was suggested that there was no-one with direct experience of residential childcare on TTBH panel and that this was a gap.
- An experience was shared about the inquiry into Kerelaw where it was felt this had created countless victims among the staff. Care leavers reported newspapers offering to pay for comments. It was suggested that the whole process was not well managed. We should learn from this.
- A question was raised as to whether the lessons from previous inquiries have in fact been learned? If people don't read the reports, what has been the point of all the other reviews/ independent inquiries that have come before?
- Concerns were expressed at the potential impact of an inquiry on survivors - some have shared their experience many times, to many different people, and still do not feel validated. Unless an inquiry can really add value there is a risk in inviting survivors to recount their experience again.
- Lesson to be learnt: As soon as we have an Inquiry, the issue of historic abuse becomes current i.e. seen as a current crisis in the eyes of the media. We can't address historic abuse without addressing current abuse.
- Perhaps we need a literature review on Inquiry- what has come before, opportunity presented by National Forum etc. to scope.

### Challenges in assessing historic standards

- Model of care previously advocated was to replicate a family environment and therefore daily recordkeeping not seen appropriate- we don't want to become overzealous in introducing a requirement to keep records which takes time away from caring for kids. However, achievements and significant life events should be recorded for the benefit of those in care.
- However it was recognised that it is possible to design a system which would assess conduct based on the standards of the day. This would not be unprecedented.
- Consideration given to the potential differences between people going into care historically and the circumstances of young people currently in care. It is now much harder to place young people in institutional care than it was historically- the circumstances have to be pretty extreme for them to get there. Any abuse/ trauma experienced by the young people is in fact likely to have taken place before they came into care. This has implications- how do you start to unpick early childhood abuse from secondary trauma of coming into care?
- Young people wanting to know about their life- celebratory/ milestones as well as for the sake of tracing their care history. Photographs are so important for people to get a sense/ image of what they looked like and their surroundings. Positive records are much more important than recording of negative behaviour

## Risks

A number of risks were identified by participants. These included:

- Financial cost of public inquiry to public purse - will the benefits it brings be worth it? Who reads inquiry reports? What impact will it have publicly? If we are looking to change what Scotland thinks and feels about the past record of children in residential childcare, can we pull together from resources we already have? Some were not sure that Inquiry will actually do that. Money might be better used to develop support services and other remedies that are needed.
- Will an inquiry redress the violation of human rights that have taken place or would it inadvertently undermine rights by forcing people to give their testimony again?
- People shouldn't assume that what they say at an inquiry will be accepted without question- we can't guarantee that it will bring people peace and closure.
- The most powerful thing we heard this morning was the reconciliation that can take place by sitting round the table with those we feared and being able to look into their eyes. We need to take away that fear for residential child carers- currently they would feel they would have to go in to an Inquiry with a lawyer.
- However it was underlined that whether or not to engage with an inquiry would be a matter of choice for survivors.
- Idea of forgiveness broached last week- for some survivors an important measure of healing is forgiveness.
- An Inquiry would impact on current generation on child care providers who are looking after the nation's damaged children. Anxious about how any kind of inquiry is portrayed- press not good at differentiating what happens 20-50 years ago and what happens now- they are just looking for salacious details that will sell their paper.
- Range of info from previous inquiries/ reviews that has not been effectively synthesised.
- It appears that people's personal experience of Inquiry is currently colouring our discussion today. Concerns around media portrayal are valid but shouldn't prejudice discussions- how could media be managed?

Specific issues:

### Link to prosecutions

- Concerns were raised about the discretionary powers in NCF- confused about the power this gives to just a few people- we have so much more knowledge now about the complexity of child abuse and the ways in which perpetrators operate (not just circumstantial but can be far reaching).
- In an effort to clarify the duty on the Historic Abuse Inquiry in Northern Ireland to report allegations of criminal abuse to the police it was suggested that this was due to specific legal duty to report crime in any case which does not exist in Scotland except in cases of terrorism. In response it was argued that public authorities have a duty under the Human Rights Act to report credible allegations of serious ill-treatment.
- In relation to the NCF- it was suggested that no discretion is permitted in relation to allegations where the panel acting in good faith believes there is risk of any future harm to children. But there is discretion in respect of anything which isn't seen as on-going risk.

Some questioned how the on-going risk was assessed - how NCF members would know, without investigating, whether an individual had contact with children.

### Records

- Record keeping will be patchy at best for institutions as there was no formal requirement to keep records. Therefore an Inquiry would need to look further than institutions for evidence e.g. social work records.
- But there continues to be concerns about how we keep and maintain records- even electronic, technical systems can fail and technology changes so fast that we need ensure records are updatable and transferable. Some organisations have a business and interest in keeping records (e.g. insurance companies) but others don't.
- Does the Scottish Government need to take responsibility for lack of record keeping historically?
- Wouldn't it a more enlightened approach to include children in care in the record keeping process? Clarified that indeed this is considered standard best practice now.

### Chair's summary

The Chair summarised the discussion as follows:

- There are mixed views about the merits of an Inquiry.
- There are some powerful arguments for the benefits of an Inquiry for survivors however, there is some reluctance to embrace inquiry as it hasn't gone well in other experiences and there are valid fears about media.
- Is there a need for an Inquiry? What would it add?
- One obvious next step could be for a stock taking to be done of what lessons have been learnt from the bits and pieces that have already been done. What is still left to find out? Scoping work therefore need to find out what added value it would give.
- Need to influence NCF to ensure it has duty to pass on any information to police of a criminal nature. Interest of everyone that there shouldn't be discretion.
- Another consideration is the potential cost of an Inquiry- Northern Ireland historical abuse inquiry is estimated to have cost 15-19 million pounds-are there more creative ways of achieving the same thing for less?

### Final reflections from participants were invited:

Participants were invited to make any final reflections and the following points were raised:

- Inquiries tend to take on a life of their own.
- Concerns today seem to be more focused on how an inquiry would be handled, rather than whether an Inquiry is the right thing to do. This feels quite shameful.
- It should be about human rights now and in the future.
- Need clearer indication from Scottish Government that they are going to buy into the Action Plan.
- Scottish Government has engaged in process and will be there on June 20, as well as for subsequent negotiations. This will be an opportunity to provide clarity on what they are going to commit to.
- A Lack of inquiry should not impede any further progress in this process. We cannot lose the momentum now- we need to keep moving forward.





## SHRC InterAction on Historic Child Abuse

### Mini-InterAction session on Access to Justice



Thursday 13 June 2013

#### *Present:*

Duncan Wilsons (SHRC-Chair), Henry Aitken (independent), Paul Begley (CELCCIS), Jill Clark (Scottish Government), Sheila Clingan (Dumfries and Galloway Council), Chris Daley (INCAS), Elaine Wroe (Incare Survivors Service Scotland), Sue Moody (Survivor Scotland Team, Scottish Government), David Whelan (FBGA- former resident of Quarriers), Lauren Bruce (SHRC).

#### *Apologies:*

Anne Black (The Fostering Network), Martin Crewe (Barnardos), Jenifer Davidson (CELCCIS), Stephen Findleton (independent), Rosemary Kean (Good Shepherd Sisters), Jim Goddard (Care Leavers Association), Zachari Duncalf (CELCCIS, Care Leavers Association), Helen Holland (Independent)

#### *Overarching Aim of Session:*

The theme of today's session is Access to Justice and we will be attempting to address the following two questions:

1. What steps can and should be taken to address barriers to accessing civil justice?
2. What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?

#### *Context for today's Session:*

##### **Context for today's session:**

- The Scottish Human Rights Commission (SHRC) was commissioned by the Scottish Government in 2009 to develop a human rights framework for the design and implementation of the proposed 'Acknowledgement and Accountability Forum' and other remedies for historic child abuse in Scotland. This Human Rights Framework drew on international human rights legal frameworks and good practice in other countries e.g. Ireland, Canada. It was also informed by research undertaken by SIRCC (now CELCCIS) on the views and expectations of survivors.
- The Human Rights Framework was launched in 2010- at same time as a 'Time to be Heard' pilot forum was launched- confidential forum for survivors of Quarriers homes. Once Time to Be Heard completed the Commission approached Scottish Ministers to agree to take part in an "InterAction" process to negotiate steps which could be taken to implement the recommendations on justice and remedies in the Human Rights Framework.

- The Scottish Government agreed to engage with the InterAction process, which is essentially a series of negotiations leading up to the development of an Action Plan. The process is designed to take into account the rights of everyone involved. The first InterAction on 28 February 2013 brought together around 50 people representing a wide range of interests and created a platform upon which to work together positively to develop the action plan.
- Aims of 28 Feb were fulfilled- space within which trust could be built and a constructive discussion could take place.
- The aim of the mini-InterActions is to bring forward proposed actions to the second InterAction on 20 June to inform the discussion on the creation of an Action Plan.

### **Outcomes from first three mini-InterActions:**

#### **Acknowledgement and Apology (22 May):**

- There was strong recognition that an effective apology can be an important part of a remedy
- Discussion focused on what form an effective apology should take (i.e. acknowledging responsibility for the harm that was done) and what barriers exist and should be removed to achieve effective apology (e.g. fear of civil litigation).
- The role of apology laws in avoiding civil litigation was discussed. A private members Bill currently going through parliament to introduce an Apology Law in Scotland. Subject to consultation at the moment
- We also discussed other forms of acknowledgment- e.g. value of commemorations and memorials and the role that Reparation can play as a form of apology.
- The role of the National Confidential Forum (NCF) was acknowledged but it was strongly emphasised that other steps should be taken alongside NCF to ensure survivors have real and effective choice.

#### **Reparation (28 May):**

- We explored the different forms that reparation might take e.g. satisfaction and acknowledgement, rehabilitation and restitution, adequate compensation and steps to guarantee non-repetition.
- Who has responsibility for reparations- what challenges we face where an institution no longer exists? It was said that the survivor's access to reparation should not depend on the continued existence of a particular institution and that a national process is needed with the State taking the lead.
- How a National Reparations Fund might be set up run and administered- eligibility criteria. Reservations about transplanting models from abroad e.g. Ireland, but still value in pursuing.
- Cross cutting themes- Empowerment and potential role of one-stop shop where survivors could get advice and support- resource challenges.

#### **Inquiry (5<sup>th</sup> June):**

- Recognition that there has already been a number of investigations in Scotland, as well as the 2007 historic abuse systemic review conducted by Tom Shaw. The key questions was what would a national inquiry add to what is already known?
- Discussed the merits of an inquiry:
  - To establish the 'truth'-an Inquiry would have power to compel witnesses and evidence
  - A way for survivors to contextualise their experience

- A way of identifying state negligence
- To facilitate potential prosecutions by passing evidence to police.
- The potential negative aspects/ problems of an Inquiry were also discussed, namely:
  - People's memories fading over time
  - The challenges of records not being available
  - Cost to public purse etc.

Minutes from the above meetings as well as today's will be circulated to broader group to give everyone the opportunity to consider the discussions in advance of 20 June.

Duncan Wilson welcomed everyone to the group.

He reminded the group of the key principles of the InterAction Process:

- Do no Harm
- Recognising the voice of everyone as part of the process
- Ensuring that everyone is heard
- Respectful treatment
- Constructive Engagement.

He began by inviting any comments about today's agenda or the process so far.

- SHRC thanked for the comprehensive minutes to date. The mini-InterActions have been extremely valuable as a means of opening up the discussion. It has been helpful to hear diverse views. This process has been very valuable and a welcome change from what came before, which was characterised by denial and back tracking.
- One participant felt we've come a long way....this has also been acknowledged during other mini-InterActions. The dialogue that has been fostered between different parties is vital for moving forward. The issue of Inquiry therefore still sits slightly uneasy-concerned that an inquiry might jeopardise that dialogue and the positive way things are flowing right now.
- Another participant felt that Inquiry is important for a process of reconciliation- establishing the facts and truth. He maintained there are compelling reasons why there should be an inquiry given the large number of individuals who have been convicted concerning Quarriers. No other care home has had as many individuals convicted in the UK. Would advocate Northern Irish model which is non-adversarial. Inquiry has potential to rebuild public confidence in the care system and confidence that complaints are properly investigated.
- Reconciliation should be at heart of this process. Up to this point survivors weren't effectively included in decision making except in a tokenistic way.
- Struck by the thoughtfulness of the discussions and the willingness to listen to on another- it is very heartening. This process is about people after all and rebuilding damaged relationships- we shouldn't lose sight of that.
- Discussions to date have been good- this is a credit to survivors for sticking with the process. Thanks given and acknowledgement to survivors for staying their staying power and contribution to the process. There appears to be real hope and a shift in attitudes and therefore optimism about going forward and the next InterAction on 20 June.
- Nice to see the light at the end of the tunnel- good to see that what happened in one local authority is starting to transpire into a national movement- we need to continue to build a process that is clear and transparent for everyone. Knowing that it is being taken on more broadly makes it less of a lonely experience.

### Next steps:

- There will be an open event for Survivors on 17 June to ensure their views are at heart of discussion.
- Next full InterAction will be on 20 June. After this event, we hope to have a framework for an action plan that we can take forward for consultation and negotiation with those that need to make decisions.
- The aim is to have the Action Plan finalised by the end of the year.

### Looking at first question:

#### What steps can and could be taken to address barriers to accessing civil justice?

Some of the barriers that were highlighted on 28 February in terms of accessing civil justice were:

- Accessing legal advice
- Accessing legal aid to secure legal advice
- Challenges of engaging with civil justice system for vulnerable people
- Issue of the time bar.

Would anyone like to comment or elaborate on the above?

- Anyone who has had any experience with the civil justice system will know there are a number of barriers. There is no access to legal aid now for historic abuse cases. The discretion that is available to the judiciary has not been exercised to the benefit of survivors, unlike in England where certain time barred cases have been allowed to progress.
- You are penalised if you are a resilient survivor- penalised because you are seen to have knowledge of abuse and have chosen not to come forward. But there are a number of complex reasons why people don't come forward earlier.
- It's hard to understand why things don't progress within civil proceedings when there have already been criminal convictions.
- It is even more difficult for people who haven't been through criminal courts- even where corroborating evidence is often strong.
- A number of organisations are contesting cases of historic child abuse on the basis of the time bar. If the law is updated or changed, would this improve?
- Hope through act of reconciliation that these cases could be taken out of the courts and progressed in a civil manner.
- At present, we have system of criminal prosecutions which has no time limit. A case can be proven on higher evidential level, but can still be time barred at the lower civil standard on balance of probabilities. Judges can exercise discretion in relation to time bar but that doesn't appear to be being used in courts at the moment.
- The challenges people have experienced in getting legal representation has resulted in some people choosing to represent themselves. We need to think about the support that survivors will need if there is a change in the law which allows for more cases to progress. They shouldn't be left in a position where they are going through this adversarial process by themselves because they can't find a lawyer willing to represent them whereas institutions and local authorities often have top barristers representing them.
- People need an awful lot of support to go through to civil courts.
- During the period Dumfries and Galloway council were going through the apology process, they consulted with solicitors in central belt to see if they were willing to support/represent

ex-residents. They found that survivors needed a lot of support even to attend solicitors appointments-(emotionally and financially) and ongoing support was required outwith the sessions. There are even more complexities for those living in rural areas.

- There isn't an appetite within the legal profession to take these kind of cases forward- this has been people's experiences elsewhere too.
- A participant cited a case that he had been involved in, whereby the solicitor (who had a number of historic abuse cases on his caseload) did little to advance the case- there was no open record sent to court of session and no productions submitted for the case. This was done for test cases but not for the other cases. Gathering records was therefore left for the survivor to do e.g. medical record, social work records. It was a minefield for someone without any experience.
- However, the solicitors were working within the limits of the law - the test cases had revealed that the cases were unlikely to succeed? Solicitors had previously tested cases to the maximum within the law, but ultimately time barred by House of Lords
- In a number of the test cases, the judge had made a decision without calling on the claimant to give oral evidence- the claimant wasn't therefore given the opportunity to explain in their own words why they hadn't come forward earlier. Decisions were made without a hearing of claimant in front of them.
- The first time a case is heard, there is generally just one judge. When it goes to appeal, there are generally three judges, and then when it goes to House of Lords, there are generally 7 or more judges.
- Update from Jill Clark: The Scottish Government (SG) have just finished consulting on Damages and Personal Injuries. Time bar was significant component of that consultation. They received 45 written responses which have just been analysed and SG is now assessing where to go from here. In addition 2 stakeholder events were held as part of the consultation process. The consultation sought views on the **Scottish Law Commission's** recommendations that:
  - Time bar should be increased from 3 years to 5 years
  - There should be a list of additional criteria that judges take into consideration in deciding whether to exercise judicial discretion
  - No changes to law were needed in relation to principle of 'One harm, one action'.
- SG found from the consultation responses that there isn't a huge amount of support to change time bar law from 3 to 5 years; from the perspective of survivors of historic child abuse, the change wouldn't help much.
- There were mixed responses to the proposal to provide new guidance on discretionary powers of judges (roughly split down the middle)- some concerns shared that by providing a list, it might actually have the effect of narrowing the power rather than increasing it as at the moment the discretionary power is quite broad and can be interpreted loosely.
- There was support for maintaining law as it stands in relation to 'one harm, one action' - apart from the responses of those raising issues of historic child abuse and industrial disease.
- Conversation today can still be fed into deliberations.
- A view was expressed by some respondents at the consultation events that the judiciary may find it helpful to have some sort of briefing/awareness training in respect of the particular issues and challenges faced by survivors in raising a civil action
- One participant asked when we can expect to see an outcome from the consultation process. Response: Will be published soon-likely within the next month, but can't give precise date.

- Personal injury/ damages other time bars- questioned whether SG have looked at other jurisdictions e.g. Ireland. Response: yes, as did Scottish Law Commission.
- The Association of Abuse Lawyers in England did a comparison of 'like for like' cases in Scotland and England and found that in Scotland that judges are not using the discretionary power available to them. In England judges had allowed a number of these cases to go forward.
- Unable to determine how many cases in Scottish Courts have been able to invoke Section 19a and get clarity about what the impediment is to them using it. Suggestion that judges fear getting it wrong or setting a precedent that would have to be followed- scared of 'opening up a can of worms?'
- Question as to whether European Convention on Human Rights (article on property rights) allows child abusers to escape prosecution. DW clarified that the ECHR article being referred to is a qualified right, not an absolute right which means that it can be limited based on a number of criteria, one of which is whether it is in the public interest.
- The Law Commission didn't consider it appropriate to have a special regime in Scotland for survivors of historic child abuse akin to those with Plural Plaque- In the cases of Plural Plaque, the Supreme Court found that it was within power of Scottish Parliament to embed those remedies as it was justified in the public interest.
- On the face of it, the discretionary power is a good thing. If they are not using it, we need to understand why.
- There is still a need to understand what organisations did when they were given reports of child abuse- this is relevant for people wanting to take civil action. We also need to understand whether young people leaving care were advised by the institutions of their rights in the future. The fact that care leavers may not have been educated about their rights should be taken into account in court cases.
- Discussed the use of expert witnesses called to give evidence in a number of cases. Participants recounted experiences with an expert witness who had assessed a number of claimants and referenced 'False Memory Syndrome' in court- diagnosed survivors with personality disorder which prevented them getting support under Mental Welfare Act.
- A participant reported visiting the expert witness for an assessment, but was denied access to the report about him. They felt the process seemed to be 'stacked against the complainant'. Asked why do the courts not employ someone independent of the complainant and institution to do medical/ psychiatric assessment?
- Another participant had agreed to an assessment with the expert witness, but had stated prior to the assessment that he would like to see his report. The witness responded: "I don't have an issue with that'" which the participant felt was misleading as they understood the witness was not in a position to let him see the report.
- The civil justice system is adversarial. Each party owns their documents - that is the nature of the system here- it is the system that denies people right to access their documents.
- Section 19a- clarity sought on how many cases have been subject to that discretion in relation to child abuse cases- no one had knowledge of how many cases have gone in front of judge and how many cases where that power was invoked. Notes on cases are only held of limited time and would not necessarily be filed under child abuse but negligence.
- Referring back to the issue of how allegations are recorded by institutions and what advice is given to care leavers about their rights- This is current and well as historic- had relevance for current practice. There are advocacy services to promote the rights of young people while in

the care system- but are they being told that they are welcome to come back at a later stage? Very unlikely. And even if they are, is this being documented?

Comfort Break.....

- Can we talk about how to overcome barriers in the civil justice system?
- We think there should be a special regime for historic child abuse or an ad hoc reparations programme to take it out of the courts. If we are thinking about reconciliation we will want to have choice- need a wide range of remedies- is the court the best for reconciling?
- Wholeheartedly in support of the right to choose. Survivors need the best quality advice and advocacy in advance so they can get a clear picture of what might happen so they can make an informed decision as to whether they want to go down an adversarial route.
- It would be helpful for someone to go through the courts and get a positive outcome to show others that it can be done. Why is it that not one case to date has attracted use discretionary powers available to judges? Also worth noting that in situations where a case has not made it to court, not one agency has suggested an alternative for survivors or offered a different remedy.
- Beginning to see synergy through all mini-InterActions- calls for range of remedies, choice and access to good advice. How can we get best quality advice and advocacy with removal of legal aid?
- Understand that legal aid was withdrawn from historic abuse cases as test cases were tested to limit within law.
- Empowerment is theme that is cross-cutting through all these InterActions- how can survivors be empowered to access advice and services? The advocacy role of ICSSS has been mentioned previously and the need for a one-stop shop to get advice and support to be able to access a range of remedies.
- One person highlighted the importance of regular contact for survivors and the role that informal counselling can play-- checking in regularly so survivors feel they are being kept informed and haven't been forgotten.
- SG always cite ICSSS when asked what they are providing for survivors- if they are going to provide the additional advocacy needed, it will need to be better funded- currently workers spread too thin- having to cover vast areas. If a survivor still chooses to take a case to court, how do they get the best advice? And access financial support?
- One reason why legal aid wasn't granted was the poor prospects in Scottish Courts relating to Time Bar. For legal aid to be granted, there not only needs to be a legal cause but also merit of the case succeeding. If the 'highest court in the land' has said these cases don't have reasonable prospect then solicitors are unlikely to take on these cases as they would have to do it pro bono- this is the reality.
- Difference between Scotland and England- one of reasons more pro bono cases taken in England is it helps barristers move up the chain- doesn't apply in same way in Scotland.
- In relation to support for survivors, the Survivors Scotland Strategy in which ICSSS sits is very much about choice and responding to what people want in relation to their own circumstances. There are a whole range of other agencies and services available. ICSSS has particular expertise and was established on that basis but other agencies have expertise across a range of other areas. Important also to acknowledge that most voluntary organisations are funded on a year by year basis- this is not unusual practice in this sector.

- There a number of things coming up imminently that will add to the workload of ICSSS but additional funding has not been granted to accommodate this.
- Reference Group is going to be looking at provisions around financial support. We don't yet know what the people coming forward to the NCF will want and need. Very few people who came forward for TTBH were getting professional help.
- Through ICSSS- 80 letters were sent out to civil lawyers across Scotland in all the major cities to try and get civil lawyers to represent service-users and the wider survivor community. Not one of them was willing to help because of the outcome of the test cases.
- A lot of criticism was directed at the judiciary during a consultation event run by SG- does this flag up a training need about how the court system works?
- Concerns that too many agencies in Scotland do not speak to survivors- benefits of speaking to a group who are well versed to hear about their experience with the system to promote engagement.
- ICSSS helpline is currently only available for 3 hours per day 9am-11am- this is not useful for many survivors- most survivors are 'at their worst in darkness of night' - need a 24 hour line. Is this about resources? If you have a service that is underfunded, how can it offer more than 2 hours per day?

**Question two: What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?**

Points made on 28 February and additional points made last week of relevance:

- An example given of how many stages there are in reporting process which forces survivor to have to recount their experiences again and again. Concerns about how the system is functioning at the moment.
- The human rights framework maintains that the state has a responsibility to investigate and where appropriate prosecute all serious allegations of ill-treatment. However, it also advocates a right to fair hearing and fair trial of the accused.
- Dangers/ risks inherent of false allegations- experience of people who had been named of perpetrators and damage cannot be done. Use of term false allegations is itself dangerous- just because a prosecution is not successful does not mean abuse did not take place. Rights of many invoked here.
- Previously discussed concerns about the NCF and provisions in bill which provide some degree of discretion to allow Commissioners to use their judgement as to whether to pass info to police- there is an imperative to pass information to the police if there is deemed to be an ongoing risk - but without a police investigation how do we know whether there is an ongoing risk of harm?
- Important to pass information to police in all cases which will enable them to identify patterns of abuse. It's when you put all the individual stories together, patterns and trends are revealed and individual cases become corroborative.
- It was pointed out that NCF will not have an unfettered discretion- they will have to judge carefully whether it is in the public interest to pass information to the police. Not all allegations are reported in our current system. There could be ECHR implications if there was a requirement to report in relation to the rights of the accused? This hasn't come out of nowhere. It's not about members deciding for themselves, there will be detailed guidance produced by the head as a result of consultation with the police and the prosecution service-



decisions therefore will be based on careful guidance and set of criteria that they will be expected to apply.

- It was asked whether the guidance-protocol for reporting allegations to the police will be made public?
- ACTION POINT: Clarify state of discussion on protocol with between SG, Police and Prosecution service. SHRC have sought a meeting with Crown Office and Procurator Fiscal on the InterAction.
- Should we use term 'mistaken allegation' rather than 'false allegation?'
- Everyone has rights and a robust process should uphold rights of everyone. The process itself should manage this effectively- it's not for us to determine whether someone has made a false allegation.
- Concern that information given to NCF will not be used as evidence in criminal proceedings.
- False allegations impact on genuine victims and innocent people. Important that people going through the process come out with their honesty and integrity intact. NCF is a hearing, therapeutic, believing system to allow people a voice.
- There are some people who not around the table today that we need to hear from to understand how they see these issues being addressed, to provide clarity and that there is readiness and uniformity to respond in police stations around the country.
- This meeting has been very useful in providing clarity on the barriers that people face in accessing justice.



## **SHRC InterAction on Historic Child Abuse**

### **Summary of Survivors/Victims' Open Event, 17<sup>th</sup> June 2013**

#### **Background**

In 2010 the Scottish Human Rights Commission published a Human Rights Framework for justice and remedies for Historical Child Abuse ('The Framework'). Copies of the Framework are available at the Scottish Human Rights Commission at [www.scottishhumanrights.com](http://www.scottishhumanrights.com). The Commission is using an InterAction process to allow those affected by historical child abuse, institutions, government, civil society and others, a platform to give their views on how the Framework should be implemented. The InterAction process is chaired by Professor Monica McWilliams, an internationally renowned expert in transitional justice and violence against women with extensive experience of peace and post conflict negotiation.

The first InterAction event on 28 February 2013 brought individuals and organisations to the same table in order to start developing a plan to deliver justice for victims/survivors of historical abuse. There were 50 participants including representatives of victims/survivors, agencies that had historically provided residential care of children, Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback on the day indicates that participants generally found this to be a positive opportunity to progress a very sensitive agenda. Four broad themes (Empowerment, Acknowledgement, Ability and Accountability) emerged which provided the framework for further discussion. It was finally agreed that subsequent negotiations would be established around the following themes:

## **1. Acknowledgement and Apology**

Questions:

- How do we ensure that survivors' experiences are acknowledged in a way that is effective for them personally? (Forum/ Apologies/ Remedies/ Record Keeping, etc.)
- What steps beyond the National Confidential Forum can and should be taken?

## **2. Accountability**

### **a) Inquiry**

Questions:

- What would be the scope, purpose and process of an inquiry on historic child abuse?
- What steps can and should be taken in respect of an inquiry?

### **b) Reparation**

Questions:

- Can and should a National Reparations or Adult Survivor Fund be established?
- What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

### **c) Access to Justice**

Questions:

- What steps can and should be taken to address barriers to accessing civil justice?
- What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?

## **Survivors/ Victims Open Event on 17<sup>th</sup> June**

Following four Mini-Interactions around the themes of Acknowledgement and Apology (22.5.13), Reparation (28.5.13), Inquiry (5.6.13) and Access to Justice (13.5.13), an Open Event took place on 17<sup>th</sup> June facilitated by Professor Andrew Kendrick and Moyra Hawthorn (University of Strathclyde) in order to ensure that survivors/ victims and care leavers had a further opportunity to feed their views into the InterAction process. There were 20 participants in total and it was decided that possible issues to be addressed at the event were as follows:

## **Acknowledgement and Apology**

- How should society and organisations acknowledge historic abuse?
- Is the National Confidential Forum sufficient?
- What form should a meaningful apology take?

## **Reparation**

- Should survivors/ victims of abuse receive compensation?
- What other forms of reparation should they receive?

## **Inquiry**

- Should there be a Public Inquiry into historic abuse?
- What other forms might an Inquiry take?

## **Access to justice**

- How can civil justice be achieved?
- How can perpetrators be brought to justice?

The event explored the identified themes and produced much useful discussion. All the themes overlap and are interlinked and therefore could not be looked at in total isolation. Nevertheless, feedback on the day indicates that participants generally found this to be a positive opportunity to work towards further developing the plan to deliver justice for victims/ survivors of historic abuse. The remainder of this paper provides a summary of the process of the Survivors/Victims' Open Event on 17<sup>th</sup> June and the content of the group-work discussions around the identified themes (for detailed points see Appendix 1).

Following an introduction to the event, underpinning principles were set and participants worked in small groups with a facilitator to address the themes of Acknowledgement and Apology, Reparation, Inquiry and Access to Justice. Each theme was discussed four times, so that every participant had the opportunity to contribute. A summary of the points that were raised is as follows:

## **Acknowledgement and apology**

- The need to be believed was highlighted
- The need to raise public and professional awareness
- There needs to be acknowledgement of abuse and its life-long consequences
- Apology needs to be heartfelt and freely given to be meaningful
- Apology at national, organisational and individual level
- The concept of an Apology Law was discussed.
- Apology is not just through words – it is through actions
- The need for some form of commemoration was discussed

## **Reparation**

- It was felt that a range of services are important in reparation:
  - Education
  - Medical
  - Long-term therapy and counselling
  - Travel fund
  - Respite care
- Compensation
  - Concern that this should not be 'dirty money'
  - Monetary compensation is acknowledgement
  - Specific and transparent criteria required
- Training for professionals involved in the process required

## **Inquiry**

- Judicial Inquiry should:
  - Have the power to establish facts
  - Compel organisations to produce records and documents
  - Produce a full and fair account
  - Have 'panel of experts' including victims/survivors and care workers
- Inquiries:
  - Take a long time
  - Outcomes may not offer tangible support
  - Expensive
  - Potential for conflict and further trauma

## **Access to justice**

- There is a lack of understanding of rights and routes to justice
- There are emotional barriers to accessing justice
- There should be a choice of remedies including justice remedies
- There should be access to legal services
- Access to records should be facilitated
- The issues and difficulties caused by the time bar were discussed
- Reporting of abuse revealed by Inquiry to criminal justice system discussed
- Prosecution of alleged abuse

## **Conclusion**

Strong themes which emerged throughout the day included the importance of acknowledging that victims/ survivors are individuals with disparate needs; that they should be enabled to choose from a range of options, and that there should be a focus on the improvement of current and future services for children in care. In conclusion, a high level of mutual respect and constructive discussion was evidenced throughout the day. It was felt that a great deal had been achieved in terms of consolidating ideas and opinions which could be fed into the InterAction process.

The summary of the discussions from the Open Event was presented to the second InterAction event which took place on the 20<sup>th</sup> June 2013.

## Appendix 1

### Specific points raised by participants in Survivors/Victims' Event, 17<sup>th</sup> June 2013

**NB.** The points recorded here are a summary of points made by individual participants at the event, and do not necessarily reflect the views of CELCIS or SHRC or other participants.

#### 1.0 Acknowledgement and Apology

- Who is responsible? The Scottish Government was not in existence at the time of the abuse and local councils have been reorganised. How do you seek compensation from authorities who are not morally responsible for events which took place?
- Some felt that the issue lies with the UK government.
- Apologies should be made at individual/ institutional/ government level.
- We know that abuse has taken place as there have been numerous investigations, reports etc. confirming this. Acknowledgement of the truth and acceptance of responsibility are required.
- There is no 'right' approach to apology – different for each individual.
- Different avenues for apologising needed but definitely some form of national public acknowledgement required, as the population of Scotland/general public don't know what has happened. Reparations can be seen as a form of apology.
- It was felt that Jack McConnell should have apologised on behalf of the government, not 'the people of Scotland': if other countries can do it, why not Scotland?
- The timing and sequence of acknowledgement/apology is important.
- A verbal apology is necessary, not just for what happened, but also for what occurred after.
- A personal apology matters to some, but not all people. Others simply want to know what changes will be made in order to prevent the same things happening in future.

- Perpetrators need to apologise AND give monetary compensation to be used for the benefit of survivors who haven't been able to cope after suffering abuse. Certain institutions possess wealth in the form of land and property or have sold these assets for profit – where is this money? However, the provision of compensation doesn't mean that apology is no longer needed.
- Victims feel invisible, so acknowledgement/discussion can help to validate who individuals are (e.g. some adults who were forcibly transported don't know anything at all about their birth families).
- What may seem like a simple gesture, e.g. erecting a memorial stone or creating a memorial garden, is important in terms of acknowledgement, especially when the perpetrating organisation/institution funds this.
- Survivors can feel ostracised and not part of society, so consider that funding to publicise what happened would be beneficial. Funding could come from various organisations– but it is important that there is no interference from government.
- It is difficult to accept the value of an apology if it is not freely given (e.g. the Catholic Church). Liability might be an issue here, so perhaps a 'no fault' system should be introduced (as has happened in other countries). However, it is acknowledged that this might not be acceptable to everyone.
- A change in the law is required in order to allow authorities to admit that abuse has occurred, e.g. an Apology Law has been adopted in other countries.
- System/environment has led individuals to behave in a certain way, i.e. the system has failed. The impact of this is then carried by survivors into their lives and can then impact upon their subsequent relationships/family life etc.
- The issue of when/how to seek help was also raised (lack of education, feelings of not being worthy etc. relevant here).
- Some survivors don't tell anyone; they feel ashamed and take their own life.
- Survivors find acknowledging and discussing what happened to them to be very difficult, so the process needs to be made as easy as possible, e.g. don't want to just be handed a leaflet by GP, but want GP to call someone.



- Survivors need to feel supported by whoever they open up to. Many survivors can't talk to close relatives but are able to talk to complete strangers.
- Some survivors would rather forget. They may have settled lives/families and don't want to affect this.
- Useful and effective interaction/engagement with survivors is now taking place, e.g. CELCIS and SHRC. This has meant a shift in emphasis, although there is still much work to be done.
- Collaboration between CELCIS and SHRC was seen to be positive (i.e. no government officials)
- There may be acceptance by the authorities of what has happened, but this has not been translated into effective practice.
- Authorities need to learn lessons based on what has happened previously.
- The long-term, historic role of institutions needs to be acknowledged in order to address how these institutions deal with victims today (and the services they offer).
- Lack of training amongst employees of institutions means that there is a paucity of empathy and ignorance surrounding how to advise people seeking assistance.
- The correct setting is important when confronting those responsible.
- It was felt by some that the National Confidential Forum was being 'bull-dozed' through. Some scepticism was voiced over who (from among survivors) responded to the consultation process, as none of the participants had been involved, or knew of anyone who had been.
- What about 'Time to be Heard'? Has this now been forgotten? Need confirmation from government on what will be gained from NCF.
- Acknowledgement that the NCF wouldn't work in isolation but needs to be part of a wider process. Clarification should be sought on its aims. An apology from NCF alone would not be acceptable.
- It was felt by some that academic studies are of no value to survivors and that any money would be better spent on support for victims.

- As a nation, Scotland is not good at acknowledging failure, as a consequence of which it is hard to bring issues into open. Individuals encounter obstacles when trying to uncover facts.
- Survivors feel discredited when nobody will believe them: they need to be believed. They can be assisted in this if proper records are available, but sometimes records are missing and survivors don't necessarily know how to track these down.
- A lot of information went missing after reorganisation of local government. It is therefore difficult to track down information/records.

## 2.0 Reparation

- What does reparation actually mean? This was asked by every group. A definition was provided as follows: trying to establish what people may need to heal/recover from what has happened in the past.
- Time bar perceived to be major barrier to reparation.
- Being heard and taken seriously is important. Survivor recounted how, at the age of 16, he had disclosed abuse to his GP and was told to 'keep it to himself'.
- It was felt to be very important to be able to talk about what had happened. Unhealthy to suppress feelings and emotions.
- Lack of skills and training of professionals/ agencies for working with complex problems and issues which arise out of abuse.
- Training is required for GP's, employers (line managers) and others (i.e. NHS staff) who are in contact with people who have been abused. Some people felt that once they had disclosed abuse, people would react differently to them or make them feel isolated or stigmatized. Some felt that people/ professionals had no time to listen to them.
- A common theme identified was the issue of individual choice: there is no one reparative route that "fits all".
- It was expressed that an Education fund to facilitate study at any level (degree, PHD, etc.) is vital for survivors.

- Small start-up grants for businesses should be available.
- Support to access employment would be useful, particularly for those who have criminal records.
- Necessary to support long term therapy/ counselling –individual or group.
- Specialist trauma counselling would be useful.
- The option of respite care should be available.
- A Family Travel Fund would be useful- to help survivors reconnect with families when they have left care.
- Support should be provided for elderly who were in institutions as children and have no family. As people get older, they can become ‘invisible’-need assistance.
- Support should be provided for those who have become institutionalised as a result of prison life. Help is needed for some to stay out of prison.
- Many were in favour of a Survivors Support Group being established- therapeutic benefits were perceived, derived from talking with others who understood what they had been through.
- There was a discussion around receiving a lump sum of cash, but some people felt that was a form of “dirty money”.
- Some people felt that a lump sum should be offered and that there should be specific criteria regarding what the money was used for, such as alternative therapies; education.
- If a Reparation Fund becomes available, the eligibility criteria needs to be specific but also transparent, as copious amounts of information and jargon can result in confusion with regard to what is being offered; more trauma and a perpetuation of mistrust.
- If people are given a lump sum or other payments, negotiations need to be undertaken with the benefits agency in order to ensure that benefit payments are not affected.

- Some discussion took place regarding where the money for reparation should come from (i.e. council insurance/ part government/part relevant institutions)
- Lack of trust expressed regarding social workers and government officials.
- It was felt that it would be useful to have a key person identified to discuss different options with the survivors and accompany them (if needed) to various places in order to help them move on with their lives (not a social worker or government body: an independent advocate).
- National Memorial- Scotland needs to recognise what has happened here (as is the case in Australia).
- Many felt that accessing records has been made unnecessarily difficult.
- Having better access to records would help enormously. Perhaps a specific section in libraries devoted to care home records would assist.
- Access to records also helps to provide credibility to abuse allegations, thus facilitating reparation.
- Easily accessible services tailored to meeting the needs of abuse victims (including specially trained lawyers) would be beneficial.
- Language-some people didn't like the term 'survivors'.
- Some concerns expressed about the stigma of being labelled as having a mental health problem on records.

### **3.0 Inquiry**

#### **General points:**

- Some survivors expressed anger that there hadn't been a judicial inquiry (independent of government) years ago. A judicial inquiry would have statutory powers to compel institutions to produce records and give evidence. Survivors are 'children of the state', and the Scottish government, which must take primary responsibility for historic abuse, and should be seen to be held accountable.

- However, some expressed a mistrust of the judicial process. Survivors vividly remembered feeling disempowered as children in care with no choice, no rights, when nobody listened to them.
- It was clearly stated that survivors should feel empowered by any inquiry process.
- It was suggested that it would be better if the confidential process worked in parallel with the judicial process to support victims who may not want to be compelled to give evidence and who may be further damaged by a robust judicial process.
- Many survivors had no confidence in authorities; little confidence that the Scottish Human Rights Commission had much clout and expressed animosity at the way in which insurance companies complicated issues which were not just about money. Survivors stated clearly that the attitudes of people in authority had to change.
- It was suggested that there should be victims/survivors on any inquiry 'panel of experts'. Preferably at least a 50/50 split with a cross section of witnesses such as care workers, rather than 'experts' (who tend to come from a certain walk of life) or judiciary.
- Any inquiry should come up with recommendations for specific support services and funding for supportive group-work.

**Whilst mainly in favour, arguments were made both for and against an Inquiry:**

**Against:**

- It was observed that previous inquiries were expensive and protracted, in which lawyers and other professionals made money whilst survivors got nothing. In fact worse than that, survivors were forced to re-live painful experiences for little or no gain.
- It was argued that there would be little point in either a public or judicial inquiry. Both, it was said, would be hampered by powerful agencies (such as insurance companies) and the process may upset some of the healthy interactions between survivors and agencies. Truths would be denied and in the process survivors would be hurt again. Survivors didn't want their time wasted repeating accounts that were simply written down and then archived.
- Some felt that money and manpower could be utilised to better effect. For example, it was suggested that monies should be given to survivors who need private help: why not provide a luxurious resort where survivors could meet with friends again or book people into Castle Craig or organise events/gatherings such as the event

organised in Woodside Hall by INCAS and the Big Issue. These were seen as tangible results rather than 'promises then a wilderness'.

- Survivors observed that recommendations from previous inquiries had made little difference, and given the nature of abuse, it is often difficult to 'target the real shit that goes on'. Helping people directly would be a better use of money.
- An inquiry would be a waste of time, just another talking shop.
- Inquiries can go wrong (e.g. Dunblane) in ways that can be very hurtful to individuals.
- There were big issues around matters of trust. With any inquiry there would be potential for further trauma and let down.

**For:**

- It was remarked that a public inquiry might be useful in terms of involving many institutions to raise awareness of issues so that ideally people might learn from past mistakes. The mistakes that institutions had made could be examined and in the future staff could be better trained to care.
- Survivors stated that wounding abuse is still happening, social workers do still lie to children and record keeping is poor. An inquiry could look at practice issues and setting minimum standards for record keeping.
- Previous inquiries have led to convictions. It was suggested that a judicial inquiry set up like the recent one in Northern Ireland would establish facts, produce a fair and full account from which people could learn from events and find a way forward.
- A judicial review would be therapeutic, as it would lead to resolution and reconciliation and give the public more confidence in the care system in Scotland. Its scope would be concerned with improving current systems as well as redressing wounds of the past. Institutions would have to address issues in order to move on.
- An Inquiry would validate what survivors have been saying for years. It was contended that survivors as a group could provide a body of evidence. Courts would have the power to access records and make individuals at the top of hierarchies (such as Bishops in the Catholic Church) accountable using law such as the Children's Act and the Administration of Children's Homes Act. In an inquiry, organisations would be compelled to produce records and authorities would be challenged about their management policies. Evidence of abuse could be systematically gathered from residential workers, education authorities, hospital records, police records and church organisations.

- An inquiry would be a positive thing, whereby the government would be seen by the Scottish people to be doing something constructive.
- An inquiry would raise public awareness of historic abuse issues.

#### 4.0 Access to justice

- It was felt that there are two elements to accessing Justice –
  1. Holding to account the organisations/individuals providing care and,
  2. Justice from legal system a) civil b) criminal
- Need a choice of remedies, including justice remedies.
- Risk of re-traumatisation from participation in events
  - E.g. PTSD triggered by exploration of past events
- It was felt that a barrier to accessing justice is the lack of availability of solicitors who are knowledgeable regarding child care generally and institutional care, including abuse, specifically.
- Solicitors have been unwilling to take on the cases of survivors. For example, a survivor who wished to raise an action against authorities because he believed he had been inappropriately returned to his parents was informed by a solicitor that he wouldn't take case as he felt that the authorities were only doing what they had to.
- In England there is an Association of Child Abuse Lawyers – there is no equivalent in Scotland.
- **Access to records:**
  - Often records are just not available.
  - When they are available there are significant barriers to accessing them:
    - not signposted
    - blocked access
    - limited access
    - fee required
  - The Public Records (Scotland) Act 2011 has not really made any difference.

- The requirement that records are needed in order for an action to be brought should be waived (because of poor availability of records).
- **The Northern Ireland model:**
  - A good model.
  - Inquiry can compel witnesses to attend.
  - Survivors can be represented by solicitors.
  - Nevertheless, the Irish model was discounted because of the potential cost and perhaps too large a proportion of costs eaten up by solicitor's fees rather than allocated to survivors.
- **The time bar in civil cases:**
  - Judges need encouragement to use their discretion.
  - This is an issue which requires increased awareness and/ or training for the judiciary.
  - The time bar should be lifted in respect of children previously accommodated/ abused in institutional setting.
  - Time bar with regard to Criminal Injuries Compensation Scheme – need to clarify rules (are they different from civil court time bar rules?).
- **Reporting incidents to police/authorities**
  - There is no agreed protocol for keeping survivors informed of progress.
  - There is no feedback and no explanation before, during or after process.
  - No support – (ICSSS could offer support).
  - Historical abuse is accorded lower priority than more recent/ current abuse.
  - There is a lack of privacy for adults when reporting events.



- **Further issues**

- Legal aid availability – test of likely positive outcome requirement needs to be waived.
- It was felt that the justice system (police, courts, procurator fiscal; solicitors) is not sympathetic or supportive.
- Colludes with denial of historical child abuse.
- Young people or adults are not believed.
- The lessons from Inquiries are not being learned or incorporated into practice or approaches to acknowledge and support for survivors.
- There have been no meaningful prosecutions of people in authority who knew about abuse and colluded with it.
- Even after the successful prosecution of staff, management are not held accountable - no prosecutions.
- There are emotional barriers to reporting abuse because of past denial by adults and/or retribution/punishment for raising issues of abuse when children.
- Abused children and adults have a lack of understanding of rights and routes to justice and are not provided with adequate support or explanations by helping agencies.
- Judgemental attitudes to those with particular health or social issues, e.g. mental health/addiction.

- **Additional points regarding National Confidential Forum:**

- The remit is too narrow.
- A waste of money.
- £6 million could be better spent by SHRC.
- Hosting by Mental Welfare Commission is deeply offensive to survivors.



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## **SHRC InterAction on Historic Abuse of Children in Care**

### **Summary of InterAction Process and Report of Interaction Event on 20<sup>th</sup> June 2013**

## Contents

1. Background .....	3
1.1 First InterAction meeting 28 February 2013 .....	3
1.2 Mini-InterAction sessions .....	4
1.3 Open Event on 17 <sup>th</sup> June 2013.....	7
2. InterAction Event on the 20 <sup>th</sup> June 2013.....	9
2.1 Introduction .....	9
2.2 Summary of the Discussions .....	10
2.3 The Next Steps .....	11
2.4 Conclusion .....	13
Annex: Specific points raised by participants in InterAction Event, 20 June 2013 .....	14
Annex 2: Information provided by the Scottish Government .....	29

# 1. Background

In 2010 the Scottish Human Rights Commission (the Commission) published a Human Rights Framework for justice for victims of Historic Abuse of Children in Care<sup>1</sup> ('SHRC Framework'). Copies of the SHRC Framework are available at [www.scottishhumanrights.com](http://www.scottishhumanrights.com).

To agree an Action Plan to implement the recommendations in the SHRC Framework, the Commission is using an "InterAction" process. This is a facilitated negotiation within a human rights framework. In the InterAction those affected by historic abuse of children in care, institutions, government, residential care workers, civil society and others, all have a platform to give their views on how the SHRC Framework should be implemented through the development of an Action Plan.

The InterAction process is chaired by Professor Monica McWilliams, an internationally renowned expert in transitional justice and violence against women with extensive experience of peace and post conflict negotiation. During the process two full InterAction meetings have been held, involving around 50 participants from all of the groups above, four "mini-InterActions" which have enabled a smaller number of participants to explore in depth a number of the themes and an open event attended by around 25 victims/survivors<sup>2</sup> and other care leavers.

## 1.1 First InterAction meeting 28 February 2013

The first InterAction event on 28 February 2013 brought individuals and organisations to the same table in order to start developing a plan to deliver justice for victims/survivors of historic abuse of children in care. There were 50 participants including representatives of victims/survivors, agencies that had historically provided residential or foster care of children, Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback from the day indicates that participants generally found it to be a positive opportunity to progress a very sensitive agenda. Four broad themes (Empowerment, Acknowledgement, Ability and Accountability) emerged which provided the framework for further discussion. It was finally agreed that subsequent negotiations would be established around the following themes:

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<sup>1</sup> Throughout the term "children in care" is used to describe those who were in foster care or 'boarded out', as well as those in residential or institutional care.

<sup>2</sup> Throughout, this paper refers to "survivors" on the understanding that this term is most frequently used in Scotland by those individuals themselves who have experienced abuse as children.

## **1. Acknowledgement and Apology**

Questions:

- How do we ensure that survivors' experiences are acknowledged in a way that is effective for them personally? (Forum/ Apologies/ Remedies/ Record Keeping, etc.)
- What steps beyond the National Confidential Forum can and should be taken?

## **2. Accountability**

### **a) Inquiry**

Questions:

- What would be the scope, purpose and process of an inquiry on historic abuse of children in care?
- What steps can and should be taken in respect of an inquiry?

### **b) Reparation**

Questions:

- Can and should a National Reparations or Adult Survivor Fund be established?
- What form should it take? What types of reparation could and should it support? Who should contribute to it and in what manner?

### **c) Access to Justice**

Questions:

- What steps can and should be taken to address barriers to accessing civil justice?
- What additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate?

## **1.2 Mini-InterAction sessions**

Following the event on 28<sup>th</sup> February, four Mini-InterAction sessions took place with the aim of exploring in greater detail the themes of Acknowledgement and Apology and Accountability. The Accountability sessions were conducted under the headings of: Inquiry, Reparation and Access to Justice. It was acknowledged throughout that all the themes overlap and are interlinked and therefore could not be looked at in total isolation. Nevertheless, the Mini-InterActions were set up to allow time and space for a more detailed analysis of the topics with a view to feeding something back to the second InterAction event on 20 June 2013. The outcomes of these sessions were as follows:

## **Acknowledgement and Apology (22 May)**

- There was a strong recognition that an effective apology can be an important part of a remedy.
- Discussion focused on what form an effective apology should take (i.e. acknowledging responsibility for the harm that was done) and what barriers exist and should be removed to achieve an effective apology.
- The role of apology laws in avoiding civil litigation was discussed. A private members Bill is currently going through parliament to introduce an Apology Law in Scotland. Subject to consultation at the moment.
- Other forms of acknowledgement were also discussed-e.g. the value of commemorations and memorials and the role that Reparation can play as a form of apology.
- The role of the National Confidential Forum (NCF) was acknowledged but it was strongly emphasised that other steps should be taken alongside NCF to ensure survivors have real and effective choice.

## **Reparation (28 May)**

- The different forms that reparation might take were explored, e.g. satisfaction and acknowledgement, rehabilitation and restitution, adequate compensation and steps to guarantee non-repetition.
- It was questioned who has responsibility for reparations-how might resource constraints inhibit agencies from making effective contributions and what challenges are faced when an institution no longer exists? It was stated that the survivor's access to reparation should not depend on the continued existence of a particular institution and that a national process is needed with the State taking the lead.
- It was discussed how a National Reparations Fund/ Survivors Support Fund might be set up, run and administered, including what the eligibility criteria should be. Reservations were raised about transplanting models from abroad, e.g. Ireland, but it was acknowledged that there is still value in pursuing and lessons to be learnt from other models.
- Cross cutting themes- empowerment and potential role of 'one-stop shop' where survivors could get advice and support about the range of services/options available to them. However resource constraints were also acknowledged.

## **Inquiry (5 June)**

- Recognition that there has already been a number of investigations in Scotland, as well as the 2007 Historical Abuse Systemic Review conducted

by Tom Shaw. The key question was what would a national inquiry add to what is already known?

- Discussed the merits of an inquiry:
  - To establish the 'truth' – an inquiry would have power to compel witnesses and evidence
  - A way for survivors to contextualise their experience
  - A way of identifying state negligence
  - To facilitate potential prosecutions by passing evidence to the police
- The potential negative aspects/problem of an inquiry were also discussed, namely:
  - People's memories fading over time
  - Further trauma caused to survivors
  - The challenges of records not being available
  - Cost to the public purse

### **Access to Justice (13 June)**

A number of barriers to accessing civil justice were identified, including:

- no access to legal aid
  - the time bar for civil cases
  - unwillingness of judiciary to use discretion to allow time barred cases to progress
  - use of 'expert' witnesses employed by complainant or institution, as opposed to 'independent' expert
  - the adversarial nature of the system
  - challenges of obtaining legal representation
- Challenges of accessing documents.
  - There was discussion of how to overcome barriers in the civil justice system. It was suggested that there should be a special framework for historic abuse of children in care or an ad hoc reparations programme to take the process out of the courts.
  - It was questioned whether court is the best avenue for reconciliation?
  - How can the best quality advice and advocacy be obtained without access to legal aid?
  - How can survivors be empowered to access advice and services?
  - The advocacy role of ICSSS was discussed and there was seen to be a need for additional funding.
  - There is considered to be a need for 'one stop shop' to obtain advice and support to be able to access range of remedies.

- Participants discussed what additional measures can and should be taken to secure investigations and criminal prosecutions where appropriate, for example:
  - Concern about the functioning of the system at present: survivors forced to recount experiences again and again.
  - Right to fair hearing and trial for accused.
  - Question of what information NCF should pass on to police. Important for NCF to pass on information to the Police in all cases which will enable them to identify patterns of abuse.
  - Need to clarify state of discussion on a “protocol” between Scottish Government, Police and Prosecution Service re: guidance-protocol for reporting allegations to Police.
  - Concern that information given to NCF will not be used as evidence in criminal proceedings.
  - Should the term ‘mistaken allegation’ be used, rather than ‘false allegation’? Malicious allegations are extremely rare, but misplaced memories are more common, therefore the term mistaken allegation may be more accurate. The fact that an allegation against a named person is not proven does not mean that abuse did not take place.

### 1.3 Open Event on 17<sup>th</sup> June 2013

Following the Mini-Interactions, an Open Event was held on 17<sup>th</sup> June to ensure that victims/survivors and care leavers had a further opportunity to feed their views into the Interaction. Over twenty people took part, including participants from across the country, some of whom had been actively campaigning for years and others who had not previously engaged with national processes. This event explored the identified themes and added much to the discussion:

#### **Acknowledgement and apology**

- The need to be believed was highlighted
- The need to raise public and professional awareness
- Acknowledgement of abuse and life-long consequences of abuse
- Apology needs to be heartfelt and freely given to be meaningful
- Apology at national, organisational and individual level
- Apology Law
- Apology is not just through words – it is through actions
- The need for some form of commemoration was discussed

#### **Reparation**



- It was felt that a range of services are important in reparation:
  - Education
  - Medical
  - Long-term therapy and counselling
  - Travel fund
  - Respite care
- Compensation
  - Concern that this should not be 'dirty money'
  - Monetary compensation is acknowledgement
  - Specific and transparent criteria required
- Training for professionals involved in the process required

### **Inquiry**

- Judicial Inquiry should:
  - Have the power to establish facts
  - Compel organisations to produce records and documents
  - Produce a full and fair account
  - Include 'panel of experts' including victims/survivors and care workers
- Inquiries:
  - Take a long time
  - Outcomes may not offer tangible support
  - Expensive
  - Potential for conflict and further trauma

### **Access to justice**

- There is a lack of understanding of rights and routes to justice
- There are emotional barriers to accessing justice
- There should be a choice of remedies including justice remedies
- There should be access to legal services
- Access to records should be facilitated
- The question of the time bar was discussed
- Reporting of abuse revealed by Inquiry to criminal justice system discussed
- Prosecution of alleged abuse

## 2. InterAction Event on 20<sup>th</sup> June 2013

### 2.1 Introduction

The purpose of the InterAction Event on the 20<sup>th</sup> June was to bring together and share the outcomes of the previous discussions around the themes of Acknowledgement and Apology, Reparation, Inquiry and Access to Justice and take this forward via further group discussion with a view to developing the Action Plan and deciding what the next steps in the process should be. There were 49 participants including representatives of victims/ survivors, agencies that have historically provided residential care or foster for children, the Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. Feedback from the day indicates that participants generally found this to be a positive opportunity to work towards further developing the plan to deliver justice for victims/ survivors of historic abuse. This section provides a summary of the process of the Interaction event on 20<sup>th</sup> June and the content of the group-work discussions around the identified themes (for detailed points see Annex).

The morning session began with an Introduction from the Chair of the InterAction process, Professor Monica McWilliams, followed by feedback from the Mini-InterActions by Duncan Wilson (SHRC) (see pp. 4-7). After this, Professor Andrew Kendrick and Moyra Hawthorn (University of Strathclyde) provided feedback from the Open Event on the 17<sup>th</sup> June (see pp. 7-8).

Following this, underpinning principles were set and participants worked in small groups of between seven and eight with a facilitator to address the themes of Acknowledgement and Apology, Reparation, Inquiry and Access to Justice. Discussions were framed around the following questions:

- How can good practice be taken forward?
- What are specific and achievable outcomes?
- What would be a realistic timeframe?

Each theme was discussed four times, so that every participant had the opportunity to contribute. The group work carried on until 3pm when Professor Alan Miller (Chair of the Scottish Human Rights Commission) fed back to the whole group on the key themes to emerge from the day, and the proposed next steps in the process.

## 2.2 Summary of the Discussions

Professor Alan Miller summarised the day's discussions. He started by noting that each theme discussed during the day is interconnected, with the common areas being:

1. The need for survivors to have supported decision making and self-determination.
2. The benefit of exploring the practice and lessons from Dumfries and Galloway – good practice for us to build on.
3. Records – issues of access, historical management; there is also a need to ensure that current record keeping is much better. It was suggested that there should be a dedicated person within every local authority with responsibility for gathering records, rather than it being the responsibility of survivors to travel the country seeking parts of records.

### **Inquiry**

There was a very balanced view on the value of an inquiry. Discussions were well-grounded and articulated doubts regarding the value and possible benefits beyond what we have achieved as a result of previous processes. It was felt that we shouldn't rule out the possible benefits of a national inquiry at this stage but that research was required to ascertain what we have learned from previous inquiries and what the deficits might be. Based upon the outcome of such research it can then be decided what form an inquiry should take or whether other processes would be preferable. Care needs to be taken to ensure that the process is well managed and contained?

### **Reparation**

There was a lot of support for a National Reparations Fund/ Survivors Support Fund. This needs to be carefully designed with thought given to eligibility criteria and the basis for contributions from disparate institutions. While lessons must be learned from other countries, it must nevertheless work in the Scottish context.

### **Acknowledgement and apology**

There was broad agreement on the merits of pursuing an Apology Law. However, it must be carefully thought through in order to ensure that it is meaningful and effective, benefiting the survivor and improving future practice. Participants also noted the importance of public apologies for national acknowledgement, as part of our shared history and to demonstrate a shared responsibility to prevent abuse happening again.

### **Access to Justice**

The justice system is not working for survivors, so we have to try to improve this.

- The time bar is a real barrier to survivors getting access to civil justice. Its consequences include that survivors can't obtain legal aid, which then impacts on lawyer's decisions to accept cases. How to address this? Should there be a distinct exception for victims of historic abuse in care? Should there be an explicit reference to child abuse in the discretionary criteria for judges? Would this be enough – judges have discretion but don't use it, so do we need to raise awareness of the issues with them? Perhaps they should provide reasons when refusing to exempt cases in order to be more accountable and the subject of appeal?
- Criminal justice – frustration was expressed that there is no nationally consistent approach to investigations and preparing prosecutions. Therefore, there is potentially the need for a specialised unit with a tailored approach to investigating such cases. This would require lawyers, police and those with experience of the care sector to work together to design and administer it. The system must be transparent in order that survivors and others know what to expect.
- A broader perspective on justice is perhaps also needed; a need to think creatively. It could be that another forum altogether would be more appropriate for survivors. We need to create a culture of change with more accountability and empowerment, so that justice is seen as part of the landscape of service improvement.

References were also made to National Confidential Forum (NCF) in all discussions. This was seen as part of the solution, but not the whole solution. Discussion took place regarding ways in which the potential benefit of the NCF could be maximised through changes to legislation as it goes through Parliament. Could this be an opportunity to capture the lived experiences of survivors as part of the national narrative – an oral history in the sense of what happened with the crofters? Or would this perhaps be better captured separately from a NCF?

## 2.3 The Next Steps

It was stated that overall, the next step is to develop the shared aspirations with decision makers and legislators. More specifically, the next steps are:

1. SHRC will draft an Action Plan as a result of this InterAction process. This will then be shared with the participants in August 2013 for comment and clarification, before it is placed in the public domain.
2. The Action Plan will then be placed in the public domain in order that survivors and those who have responsibility for taking action can contribute to its development.

3. There will be another gathering, where responses are made to the Action Plan so that actions can be agreed. At that stage this process concludes<sup>3</sup>.
4. This links with the SHRC work in development of Scotland's National Action Plan for Human Rights (SNAP), based on evidence of what needs to be done to realise internationally recognised human rights: SNAP is to launch on 10 December 2013. Our proposal is that this Action Plan is linked to SNAP, which will be independently monitored so that progress or lack thereof is monitored, in order to promote accountability.

In the closing discussion participants raised a series of additional points:

- The importance of making sure we have a balanced story of what happened in child care institutions was emphasised and it was felt we should pursue all opportunities to develop an accurate record of experiences. A question was raised as to whether there is scope to discuss the process around the NCF, for example the possibility of adding in the idea of the oral history model such as was used with the crofters.
- There was discussion on issue of “false” or mistaken allegations. As at other points in the InterAction process very different views were expressed. It was suggested that there is a fear among workers of such allegations, and that some allegations have later not been proven.<sup>4</sup> In response it was pointed out that there have been a number of successful prosecutions. It was also said that unsuccessful prosecutions do not equate to “false allegations” but may be the result of misplaced memory or other factors - the term “false allegations” can be stigmatising and is generally inaccurate as number of malicious allegations is likely to be very low, with misplaced memories more common.<sup>5</sup> Overall, the fact that the allegation against a specific person may be unsubstantiated or mistaken does not mean that the abuse did not happen. The SHRC Framework recognised that the rights of everyone have to be respected and if they are not, this process is not going to work – so care workers’ rights to fair trial, reputation, privacy and family life have to be at the heart of this process too. The Action Plan too should ensure an appropriate balancing of the rights of everyone – survivors as well as care workers.

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<sup>3</sup> Please note the timescale for delivery has altered since this report was produced to allow time for concrete commitments to be developed. Publication for the Action Plan is now expected to be in Spring 2014.

<sup>4</sup> In the comment the participant did not specify which institutions were involved. In exchanges in response to a draft of this report participants have requested that it is clarified here that there have been a number of successful prosecutions, for example it was said that there have been eight successful prosecutions of individuals for child abuse in relation to Quarriers Homes.

<sup>5</sup> In exchanges in response to a draft of this report widely differing views were expressed on this point.

- Survivors were moved around many times, not knowing when, where, why – there is the need for a history. Every child today leaving care should have a record.
- CELCIS has been running a parallel project on “reclaiming lost childhoods” looking at access to records. Scotland’s Information Commissioner has an important role in helping institutions to keep worthwhile records.
- There is a need to know whether the Government will commit to action on the findings of the InterAction.

## 2.4 Conclusion

In conclusion, a high level of mutual respect and constructive discussion was evidenced throughout the day. It was felt that a great deal had been achieved in terms of consolidating ideas and opinions and moving the process forward. There is still much to consider and participants will continue to be involved during the next steps of the process as outlined on p.11 (the next steps).

## Annex: Specific points raised by participants in the InterAction Event, 20 June 2013

**NB. The points recorded here are a summary of points made by individual participants at the event. Neither the SHRC nor CELCIS nor any other partner in the InterAction process takes responsibility for their accuracy.**

### 1.0 Acknowledgement and Apology

- *“The National Confidential Forum (NCF) represents an acknowledgement.”*
- *“Acknowledgement and apology need to be heartfelt and not forced.”*
- *“Acknowledgement constitutes words, actions, changes in policy and practice.”*
- *“There should be a range and choice of acknowledgement, not ‘one size fits all’.”*
- *“Acknowledgement should be of the role that both individuals and institutions play.”*
- *“Organisations should have acknowledged wrongdoing, rather than putting obstacles in the way of survivors’ quest for justice (i.e. having people assessed by false memory experts and invoking the time-bar).”*
- *“Organisations need to take responsibility.”*
- *“Individual workers have had no guidance regarding how to deal with these issues.”*
- *“It was stated that organisations being told by insurers to be careful what they say,”*
- *“What is the government’s position on how organisations should respond?”*
- *“After former First Minister Jack McConnell’s apology in 2004, it was thought that organisations would follow suit with a public apology: perhaps the current First Minister needs to show organisations the way forward.”*
- *“A Private Members Apology Bill was initiated by Margaret Mitchell MSP, need to find out what has happened to it.”*

- *“Perhaps a ‘no-fault’ process should be considered.”*
- *“If lawyers were involved, there would be no chance of any form of apology.”*
- *“Organisations want to apologise, but solicitors are advising them against it, as it makes the company uninsurable.”*
- *“It is important that lawyers become involved with the InterAction seminars and related work.”*
- *“There shouldn’t be a cut off point for an apology (and associated reparation): it should not be time-limited.”*
- *“It’s about restoring relationships that have been damaged with organisations.”*
- *“A reparation fund should be made available with either a lump sum pay-out or payment for education/ help to start a business, etc.”*

### **Comments on Good Practice**

- *“What form should an apology take? Should apology be ‘en-masse’ or a personal apology? Would a letter be adequate?”*
- *“Forgiveness is a subjective process: different things will work for different people; some will take longer than others to forgive. Apologies are only a starting point.”*
- *“Dumfries and Galloway Local Authority cited as a model of good practice: Director of Social Work apologised on behalf of the council, as a consequence of which good relationships were developed with survivors. Apology was considered to be heartfelt and sincere.”*
- *“Local Authorities don’t do the same things which cause a lot of confusion.”*
- *“Good models of practice need to be rolled out.”*
- *“Local Authorities should apologise.”*
- *“In an ideal world, the person who committed the abuse should be the one to apologise.”*



- *“Concern that if a small organisation took on the responsibility of an apology, it would be put out of business as a result of compensation payments, which would be to the detriment of children who are currently the responsibility of those organisations.”*
- *“Issues regarding an Apology Law should be sorted out as soon as possible via strong and effective leadership from the government.”*
- *“Legal frameworks need to be changed.”*
- *“The First Minister should have apologised on behalf of the government, not ‘the people of Scotland’: if other countries can do it, why not Scotland?”*
- *“Older members should have an apology from Westminster.”*
- *“Memorials might be positive for the individuals concerned: a permanent symbol of what occurred, taking into account the experiences of those in residential care and foster care and those who were adopted.”*
- *“Needs to be a long-term, cultural shift in how Scotland treats and cares for children”*
- *“If survivors are willing, then their accounts could also be given as oral histories, separate to the National Confidential Forum.”*

## **2.0 Reparation**

### **What forms should reparation take?**

- *“Reparation should not simply involve direct monetary compensation. What constitutes reparation is complex and takes many forms for different people.”*
- *“Reparation should invoke a ‘sense of family’, belonging and engender healing.”*
- *“For some people this could involve being given access to formal records, for others reparation might involve being enabled to access therapeutic/trauma counselling which can cost around £55 per hour and is not always available via the NHS. An example was given of the system in Ireland where ‘healing’ organizations (primarily the church) have contributed money to pay for private*

*counselling. This has been available to the family unit, not just the individual. Advice on health and well-being might be appreciated by some.*”

- *“Reparation should constitute a fund for health, education, support, growth and development and not just a lump sum given to survivors.”*
- *“Support and after-care is often required; help and advice might be needed to trace family members.”*

### **How should it work?**

- *Suggestions included that:*
  - *“The scheme should be funded by either the government (National Survivor Fund) or relevant local authority and it should be the survivor’s choice what form reparation should take.”*
  - *“Organisations could sign up and supply funds with those institutions that are no longer in business funded by the Scottish government.”*
- *“Dumfries and Galloway Local Authority set aside one million pounds. A single, ‘significant and meaningful’ ex-gratia payment was given to 49 survivors: a tiered system was not utilised.”*
- *“Should it be the survivor who comes forward to claim reparation/ funds or should agencies and organisations approach them?”*
- *“Certain individuals might need help and support to come forward/ access funds.”*
- *“Would a ‘one size fits all’ system of payment work or should payment be made according to individual experiences. How would an individual’s experiences be assessed? ( i.e. in terms of the abuse suffered or the effect/ outcome)”*
- *“Who would have access to the fund: i.e. family, elderly siblings, family members of those who are deceased?”*
- *“Concerns that costs should not spiral out of control like in Ireland.”*
- *“Need to clarify what the process would be for making an application to the fund.”*

- *“How would information be verified in order to decide whether payment should be made: (i.e. in Dumfries and Galloway, verification was linked to whether individuals referred to certain key events when they told their stories).”*
- *“In the case of Dumfries and Galloway, survivors that were not already known about were visited by the police, had meetings and their information was verified, as clear patterns emerged. The care workers were not interviewed.”*
- *“Need to learn lessons from different systems” the example was given of different approaches in Canada (outlined in the Kauffman report) and Ireland, in respect of dealing with specific allegations.*
- *“What would happen if no records were available/ how this might affect claim.”*
- *“If an ex-gratia payment is made, it should be the survivor’s choice regarding how the money is spent.”*
- *“The individual could either manage the money themselves or the fund could arrange things and pay, such as a holiday.”*
- *“In terms of how the survivors have made use of previous ex-gratia payments, examples include purchasing a car, furniture, a holiday; housing, money being placed in a trust fund; some was used to purchase drugs and alcohol.”*
- *“Concern was also expressed regarding whether it is ethical to give lump sums of money to vulnerable people or those with addictions. This could potentially make them more vulnerable.”*
- *“Some will need help with financial management.”*
- *“vulnerable and damaged individuals would need help in the form of after-care and support: help with housing, payment of bills, practical life skills.”*
- *“Important to identify the needs of vulnerable and damaged survivors and provide support and guidance to access different agencies.”*
- *“Need to negotiate with benefits agency to allow exceptions so that ex-gratia payment won’t affect social benefits.”*
- *“Survivors should be helped to deal with what they might find as a result of the reparation process: an example of an ex-recipient of residential care who was allowed to access her records but wasn’t helped to deal with what was in them.”*

- *“Notion of corporate parenting and people feeling they can keep in contact and continue to receive support from local authorities and the institutions in which they were resident (i.e. Quarriers after-care community, Lothian Villas).”*

**Records**-the improvement of record keeping and access to records was seen as an important feature of the reparation process.

- *“Concern that records which were kept might be too sterile: day to day narratives are gone with no connection to others or family.”*
- *“Has become too much about ticking boxes.”*
- *“Need to keep a coherent record/reflection of the lives people have in care.”*
- *“It is important to retain keepsakes, photos, cards, baptismal records, other milestones, etc.”*
- *“Need to standardise record keeping, as there has been a huge variation in what was kept (not always the records that people wanted).”*
- *“Records kept in some places but not in any order-Planned Environment Therapeutic Trust trying to work on this, pulling together records. However, they are not always kept in logical places: archives or files.”*
- *“Marrying social work records and residential care records has been hit and miss.”*
- *“Concerns for the future as records now constitute a series of assessments/tick boxes and are process driven, instead of constituting life story books.”*
- *“Life story book should be kept in trust for each child.”*
- *“Many survivors can’t find ‘lost’ family members: how can we put this right and ameliorate the sense of being alone?”*
- *“Concerns about the costs involved in accessing records and tracing family (i.e. some said to charge £50)”*
- *“Current guidance from the Information Commissioner: £10 to access records, yet examples given of varying charges (£72; £28).”*
- *“Difficulties encountered in accessing records due to Data Protection laws. If record involves sibling, difficulties gaining access (need sibling’s permission).”*

- *“How can access be facilitated? a protocol needs to be designed and put into place in order to enable access and provide clarity and consistency.”*
- *“Some people are not sure about what documents they can access and survivors are collecting information for themselves without outside help.”*
- *“Small organisations have less space in which to keep records.”*
- *“There should be a discharge protocol and that people should at the very least be given something when they leave care, even if it is just a chronological list of where they have been.”*
- *“No matter what age-group a person belongs to, they should have a narrative about their time in care.”*
- *“Some organisations have ‘bad attitudes’ when a care leaver asks for records- varying degrees of helpfulness. People need to be educated regarding the importance of this issue.”*
- *“There should be a ‘one-stop-shop’ where people can access their records.”*

### **3.0 Inquiry**

The pros and cons of holding an inquiry were debated by the groups and some of the arguments for and against were as follows:

#### **Arguments in favour of an inquiry included:**

- *“Necessary to bring concealed evidence to public attention.”*
- *“A judicial inquiry would compel organisations and individuals to participate: it would make them accountable for past abuse.”*
- *“It would root out abusers and lead to restorative justice and reparation.”*
- *“It would be seen as a national acknowledgement of historic abuse and send a positive message to survivors.”*
- *“Previously unanswered questions could be dealt with, with added clarity and transparency.”*
- *“An inquiry ‘could go back to go forward’, exposing bad practice.”*
- *“Would provide as an outcome a positive framework for remedial action and it would drive cultural change nationally to de-stigmatise the lives of ‘children in care’.”*
- *“There are compelling reasons why there should be an Inquiry: given the large number of convictions of individuals who have been convicted concerning*

*Quarriers. No other care home has had as many individuals convicted in the UK.”*

### **Arguments against an inquiry included:**

- *“An inquiry may well trigger traumatic or misplaced memories, and the process may be damaging to the mental health of survivors.”*
  - *“An adversarial style of inquiry would most likely cause more traumas to survivors.”*
  - *“An inquiry could damage organisations which are currently looking after children well and harm future provision.”*
  - *“An inquiry would take too long, which would not be fair on elderly care leavers/survivors who might die without getting peace of mind or justice.”*
  - *“In previous inquiries, recommendations have been ‘glossed over’ with little change and progress made.”*
  - *“There are few new lessons to learn and little to gain.”*
  - *“It would be costly; only lawyers would benefit from an inquiry and there would be no money left for restorative justice.”*
  - *“Resources would be better directed into a range of support packages for survivors.”*
  - *“Lack of availability and/ or access to good quality records will be a barrier to a successful and meaningful inquiry.”*
- Overall it seemed that there was recognition that whilst some people clearly advocated a national inquiry which would acknowledge historic abuse and enable people to hear the truth, equally there were others who advocated other perhaps more therapeutic initiatives which wouldn’t adversely affect the care of children today. Some suggested that a better approach might be to look at the culture and structure of existing organisations to safeguard children now and in the future.
- It was also suggested that if an alternative national initiative could be established then an inquiry might not be necessary or at this stage desirable. Such an initiative would enable survivors and others affected by historical abuse (e.g. provider organisations or care workers) to be fully heard and the record used to continue learning lessons and ensure a range of remedies (support, advice, reparation and access to justice) is established, co-ordinated and delivered in an accessible way.
- It was considered by many that if an inquiry were to go ahead, it should be ‘inquisitorial’ in nature, rather than adversarial.
- It was suggested that an adversarial inquiry might upset current engagement process and derail potential for progress. More could be gained perhaps by capitalising on progress towards acknowledgement, apology and support inherent in the current InterAction process; go beyond an adversarial inquiry

process towards a more creative, engaging and healing dialogue that supports survivors and others involved to tell their stories, have them recorded and efforts made on a regular basis to reflect on them and learn lessons for current and future practice.

- It was felt by some that we should learn and apply lessons from the past before embarking on new inquiry. The suggestion was made that a review should be undertaken of previous inquiries to date within a tight timescale (possibly 6 months) which would then be used to inform final view about value of inquiry.
- It was suggested that an aggregated oral report, a stand-alone oral history seen as a memorial (like the BBC listening project) would empower survivors and may encourage a bigger number of care leavers to give voice. Residential workers and care institutions could potentially contribute to the project, and given the historical framework, broad lessons could be recognised more clearly. There could be positive spin-offs, for example, current care workers could learn from past care users.
- It was suggested that the National Confidential Forum may be able to be adapted to provide a framework for recording testimony from those who wanted to give testimony, not just survivors, but also care workers and care institutions. This would be an inquiry through dialogue, but linked to and only possible if supported by a range of supports and the opportunity for survivors to access formal civil or criminal justice processes if they still felt this necessary.
- There was a view expressed that while the recording of oral history of abuse might be a worthwhile activity, that the NCF would not be the forum to take this forward although the National Archive service may consider doing so.
- It was felt that a barrier to a successful or meaningful inquiry is likely to be lack of, or access to, good quality records.
- One survivor gave a powerful example of how his requests for records were repeatedly blocked by individuals within authorities. It was stated that many survivors had experienced difficulties getting hold of family records and on many occasions organisations had been proven to be holding back information, stating that 'it doesn't exist'.
- Some suggested appointing local government funded officers dedicated to identifying, gathering, preparing and making available to enquirers relevant historical care records. It was suggested that any such role be pro-active rather than reactive. This role would be in addition and complimentary to any role developed to check, prepare and monitor local authority records plans

subsequent to the implementation of the Public Records (Scotland) Act 2011 which has the intention of improving public record management in the future and ensuring that it is never again as bad as it has been in the past.

- It was stated that *“we have enough information about the past to learn and plan for the future”*. An idea was then floated that a national archive could be set up to hold papers as a resource for academics (and others) to expand on-going research in order to build knowledge year on year and provide a positive underpinning of best practice. (For example by researching questions like, ‘How has the sector moved on in the last 10 years?’ or ‘do children in care should live in a sterile ‘don’t cuddle’ environment?’). An audit of recommendations would hopefully lead to the implementation of a range of new remedies. Such a process would be a means of raising standards ‘across the board’ without damaging the experience of children today or deterring good people from joining organisations.

#### **4.0 Access to justice**

**The groups discussed a number of potential barriers to accessing justice including:**

- *“Time-bar in civil cases: how realistic is it to hope that the law will be changed in the near future? Process of changing law is ‘ponderous’- Time bar has been argued against time and time again.”*
- *“Time bar has caused devastation and lack of ability to pursue legal justice has prevented people from getting on with their lives.”*
- *“Why has time bar not been taken to the European Court of Human Rights.”*
- *“In Scotland, legal aid has not been granted to pursue time-barred cases because of poor prospects of success in the Scottish courts: consequently solicitors are not willing to take such cases. The political will needs to be there to change things.”*
- *“If the removal of time bar occurred, would that impact on local authorities being able to give apologies akin to Dumfries & Galloway?”*
- *“Many judges don’t seem to have a grasp on complexities of issues for survivors- why have we not made progress in this area?”*
- *“Going to court is for many about being heard, but complainants don’t have any control over what is heard- the lawyers direct this. People are made to feel like liars by defence lawyers. This is perpetuated by the adversarial system in which you have to prove that it happened.”*



- *“The current justice system does not provide justice: deals are done ‘under the table’ and people are let down.”*
- *“Language used around access to justice and capturing views of survivors is often overly complex and jargon-laden.”*
- *“The hurdles to accessing justice are not just legal- people don’t know their rights, their choices or their options. Managing expectations sensitively is also important and can be challenging for those working with survivors.”*
- *“The church has avoided responsibility by saying that Orders were independent of the Church.”*
- *“Orders are self-governing, but can only operate within the diocese- the buck has to stop with the bishops. This was dealt with in relation to one organisation in the USA, but in the UK matters have not progressed.”*
- *“The decent/ humanitarian thing to do would be to surround survivors with compassion rather than blame. Survivors historically seen as trying to ‘bring down the church’. It would be good to be able to say to survivors that people are coming together and this is the start of a process of acknowledgement.”*
- *“There is an accountability gap at the moment in terms of institutional responsibility.”*
- *“People who don’t have a voice- those with physical or learning disabilities are sometimes unable to speak out or be heard.”*
- *“A significant number of people are not able to access formal justice routes due to poor mental and physical health.”*

**Suggestions/ Ideas for overcoming barriers to accessing justice included:**

- *“Part of the reason SG is here is to find out what the attitudes are around the time bar so that it can be fed back to ministers.”*
- *“The law on limitations should be changed to actually allow cases to be heard.”*
- *“Need to examine discretionary powers given to judges and why they are not being used to allow time barred cases.”*
- *“What guidance is given to judges in relation to discretion? Further statutory guidance may be needed as well as awareness raising/ training amongst judges of the enduring consequences of child abuse.”*

- *“Judges should be required to state reasons for refusing to exercise their discretion and allow time barred cases to be heard: this could then be used as a ground for appeal.”*
- *“Alternatively, organisations should not be allowed to contest a civil case on the basis of the time bar if there has already been a criminal conviction.”*
- *“What is the cost to the public purse of these kinds of cases? Damages would be due only if civil cases were successful. Putting figures on this might be helpful in terms of moving cases forward with government.”*
- *“The language used around access to justice and capturing views of survivors really needs to be simplified: it should be expressed in clear, basic language that people can understand. There is too much legal terminology without adequate explanation.”*
- *“Is there a better way forward outside the adversarial civil legal system: can we be more imaginative and find a different way of doing things? It would be a great statement for Scotland to develop a new system based on welfare principles akin to the Children’s Hearing Panel. For example we could draw wisdom/ good practice from the Truth and Reconciliation model in South Africa- bringing two sides together. This was some of the early thinking around the NCF. Could this still be an option or an alternative?”*
- *“There is currently no form of reconciliation process that allows both parties to speak openly and freely. Could this be enabled in some way?”*
- *“The process should be about ‘helping the person to become a whole human being’ i.e. helping people to ‘grow’, including those ‘who have been on the wrong side of things as well’.”*
- *“There have been several recent landmark cases in Supreme Court concerning whether local authorities have responsibility for abuse that took place in certain placements-will this be addressed in Scottish context?”*
- *“As local authorities commissioned the care and had responsibility for visiting and moderating quality of care, it was argued that they should be held responsible.”*
- *“The relevance of vicarious liability in this context in Scots law needs further exploration.”*
- *“Need to engage with the Scottish police and encourage the use of specialist officers who understand the issues to respond to the allegations of survivors and conduct investigations.”*

- *“The Crown Office and Procurator Fiscal Service should go back and revisit cases where children were not previously believed. In England the Crown Prosecution Service has apparently announced that it is going to re-visit cases in light of children not previously being viewed as credible witnesses.”*
- *“There is no exhaustive list of children’s homes in Scotland: work still needs to be done to compile this.”*

### **Reflections on the National Confidential Forum**

- *“Should there be discretion regarding the requirement of the NCF to pass information on to the police. Can it legitimately be called a Confidential Forum if it is always required to pass information to the police? Who decides whether it has reached a threshold for referral? Procedures will have to be worked out, and articulated and presented to people who might come to the forum in a way that they can understand.”*
- *“Without an investigation we won’t know whether someone is still a risk. We need to engage with the police, identifying patterns of abuse: ‘pieces of the jigsaw’. Everything should be reported to the police where there is a criminal element.”*
- *“If people are put off going to NCF because of the association with the police, is there an alternative we can direct people to or a helpline where they can obtain advice?”*
- *“At the end of the day, adults do have a choice about what they share. But it is important that they receive information about their rights and choices and the potential consequences of engaging with the forum.”*
- *“We shouldn’t discount abuse by other residents.”*

### **Concerns regarding specific allegations of abuse**

- *“There is a strong fear of false or mistaken allegations amongst residential workers. This impacts negatively on how they work e.g. they are reluctant to cuddle a child in case an allegation is made. We cannot dismiss this fear.”*
- *“The term ‘false allegations’ stigmatises victims/survivors. A number of successful prosecutions have been through the Scottish Criminal Courts, for example eight former employees of Quarriers Homes were convicted of abusing children in their past care and convictions were upheld in the Scottish Appeal Courts.”*
- *“The fact that the allegation against a specific person may be unsubstantiated or mistaken does not mean that the abuse did not happen. Need to balance rights of everyone – survivors as well as care workers.”*

- *“Government guidance concerning allegations against residential staff was published in 2011, and a follow up concerning allegations against foster carers published recently. These advocated a proportionate approach.”*
- *“Historic abuse allegations require not only the police to listen, but also social workers: a response is required which understands the child care environment. A joint investigation should be undertaken involving the police and social services/ someone with relevant training to inform the response.”*

### **Future directions for child care policy and practice**

- *“How are we going to ensure that in the future, children don’t go through what the survivors went through? Any work done to improve the care system now needs to be informed by learning from the past.”*
- *“New training is often developed as a result of an event, rather than being an on-going process. We need to change our cultural understanding in terms of residential childcare.”*
- *“We need a dramatic cultural change which enables society to understand that it is everyone’s responsibility to look after EVERY child.”*
- *“There have already been some positive changes in child care sector i.e. listening to children, the new Children’s Bill- these bits should all come together to contribute to a cultural change in attitudes.”*
- *“Why were those who were boarded out not included in the discussions? Increasing interest in looking at foster care and other care arrangements- discussing this more broadly now.”*

### **Access to records**

- *“National guidelines are needed regarding access to records.”*
- *“Poor access to records means that it is hard to obtain proof to substantiate allegations.”*
- *“We are still talking about poor quality records- this raises questions about record keeping in the current system.”*
- *“In the 1980s, very little was recorded unless there was an incident or problem. Residential child care workers were often not qualified and had not gone through a proper recruitment and vetting processes- many had low levels of literacy and there was not the inclination to keep records. It was a poor, under-resourced service and workers did not feel well looked after or well trained.”*

- Some participants spoke of finding huge chunks of information missing or heavily redacted- *“what is the law around what individuals can see/ access? Can social workers choose what you are allowed to see? There seems to be a degree of selectiveness about what people are given. Are local authorities guided by rules and regulations around this?”*
- *“The Data Protection Act has been applied inconsistently.”*
- *“Could Scotland’s Information Commissioner help to resolve this issue?”*
- *“People have experienced difficulty in finding records. Virtually impossible to obtain court records through the National Records Office.”*
- *“Organisations appear to be making up their own guidelines regarding access to records: some are deliberately saying as little as they can.”*
- *“Some local authorities appear to have a very poor attitude.”* One participant described how it took him four and a half years to obtain his records and he had to travel around the country, knocking on doors to obtain records from different institutions.
- *“Much disappointment is experienced when a person is unable to know who they are and where they have come from.”*
- *“Rich, full records should be created: they are important for a person’s identity, especially as the experience of being a care leaver can be a lonely one.”*
- *“Record keeping serves more than one purpose: it tells you who you are and where you have come from; it can be used as evidence in the formal justice system.”*
- *“Records can establish a pattern that allows authorities to hold institutions to account.”*

## Annex 2: Information provided by the Scottish Government

In response to a draft of this Report and Action Plan the Scottish Government provided the following additional information for reference.

### CIVIL JUSTICE

#### Time-bar

The Scottish Government has recently consulted on issues surrounding damages for personal injury. The consultation paper was informed by the recommendations contained in the Scottish Law Commission report *Personal Injury Actions: Limitation and Prescribed Claims* and sought views on a number of issues, including whether the limitation period should be extended from 3 to 5 years and whether there should be a statutory list of factors for the court to consider when asked to exercise its discretion to allow a case to proceed out with the limitation period. Part of the consultation process involved meetings with survivors of historic abuse of children in care to hear their views first hand. A number of survivors and their representative bodies responded to the consultation. The consultation closed in March this year and the analysis of responses has been published<sup>6</sup>. The issues are still under consideration and a formal response to the consultation is expected later in the year.

#### Apology

The Scottish Government has continued to engage with Margaret Mitchell MSP in relation to her proposals for an Apology (Scotland) Bill <sup>7</sup>both at official and ministerial level on this important issue. Scottish Ministers are sympathetic to measures which will assist people who have suffered harm to obtain a satisfactory resolution, and encourage openness and learning when things go wrong. Once the proposals have been finalised the Scottish Government will give them full consideration.

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<sup>6</sup>Both documents can be viewed at: <http://www.scotland.gov.uk/Publications/2012/12/5980>

<sup>7</sup> See <http://www.scottish.parliament.uk/gettinginvolved/52684.aspx>

## **LOOKED AFTER CHILDREN UNIT**

### **Implementation by the Scottish Government of the Recommendations from the Historical Abuse Systemic Review**

1. The Scottish Government commissioned a major independent review into abuse in care entitled *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*. This was conducted by Tom Shaw and published in November 2007. Virtually all of the recommendations that concern the role of central government have been implemented and work is on-going to meet the outstanding recommendations, which focus on providing a historical record of residential childcare (see paragraph 9 below). This work has been taken forward in consultation with stakeholders, including former residents, support agencies, service purchasers and providers, and the National Archives for Scotland (now called National Records of Scotland).

#### ***Progress with recommendations concerning current provision to ensure the welfare and safety of looked-after children***

2. The National Residential Child Care Initiative (NRCCI) was established in response to the Review and reported in 2009. NRCCI made proposals in relation to culture change; workforce; commissioning; improving learning outcomes; and improving health outcomes. The Looked After Children Strategic Implementation Group (LACSIG) is currently leading on an implementation programme to improve the outcomes for looked after children and young people.

3. The Care Inspectorate and the Scottish Government have agreed a new inspection regime that will strengthen the regulation and inspection of childcare services with an emphasis on outcomes.

4. Recommendations from NRCCI to ensure the quality of the child care work force have been taken forward, including better guidance on safer recruitment practices and a requirement for all staff to register with the Scottish Social Services Council.

5. An annual statistical return by local authorities is published which reports information about all looked after children. This data is being developed to provide individualized level information together with some information on outcomes.

6. The Scottish Government funds the Centre for Excellence for Looked After Children in Scotland (CELCIS). CELCIS provides direct support to implement best practice to all those working with looked after children.

7. The Scottish Government and CELCIS have jointly produced national guidance on the external management and governance of residential childcare establishments, with a particular focus on the role of external managers in safeguarding looked after children and young people.

***Progress with recommendations concerning former residents' needs***

8. In Care Survivors Service Scotland (ICSSS), the support service for adults who suffered childhood abuse in care and their families, was established in 2008. By 2015 the government will have committed £1,500,000 to this service.

9. A working group to take forward an online database of all children's homes in Scotland similar to the Australian "Find and Connect" service has been established. This database aims to help former residents locate and access their own personal records. ICSSS is also working on developing an index for locations where children's residential services records are held.



## ***Progress with recommendations concerning records***

10. The Public Records (Scotland) Act 2011 addresses one of the key findings of the Shaw Report: that poor record keeping often created difficulties for former residents of residential schools and children's homes, when they attempted to trace their records for identity, family or medical reasons. The legislation came into force in January 2013 and is supported by a Model Plan and the accompanying Guidance Document.

11. The Care Inspectorate checks records held by regulated services and the Looked After Children's (Scotland) Regulations 2009 require proper provision for the maintenance and preservation of records in relation to children placed in care by a local authority.

## **Other Related Developments**

### ***(1) Child Protection Safeguards***

12. The National Child Protection Guidance, published in 2010, sets out expectations for all those working with children and young people regarding identifying and acting on child protection concerns.

13. The Protection of Vulnerable Groups Act 2007 introduced a new membership scheme in 2011 for people who work on a regular basis with vulnerable groups. Any new conviction or other information considered relevant by the police in relation to those working with vulnerable groups can be taken into account by Disclosure Scotland, including barring individuals from working in regulated work with children.

## **SURVIVORSCOTLANDTEAM**

### **Timeline of key developments: National Strategy for Survivors of Childhood Abuse, SurvivorScotland, and Survivors of In-care Historical Abuse**

<b>1999</b>	Report of the Edinburgh Inquiry into the abuse and protection of children in care <sup>8</sup>
<b>October 2000</b>	Anne Macdonald: Petition to the Scottish Parliament calling for a National Strategy for Adult Survivors of Childhood Sexual Abuse
<b>February 2001</b>	Debate in Parliament on the petition calling for a National Strategy
<b>February 2001</b>	Launch of the Scottish Parliament Cross Party Group on Survivors of Childhood Sexual Abuse
<b>August 2002</b>	Chris Daly: Petition to the Scottish Parliament calling for an Independent inquiry into the historic abuse of children in Scotland
<b>2002</b>	Report of the Fife Council Independent Inquiry into the sexual abuse of children in care <sup>9</sup>
<b>May 2003</b>	Short Life Working Group Convened following Cross Party Group approaches to Ministers

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<sup>8</sup>*Edinburgh's Children: The Report of the Edinburgh Inquiry into Abuse and Protection of Children in Care* (1999) Kathleen Marshall, Cathy Jamieson and Alan Finlayson

<sup>9</sup>*Fife Council Independent Enquiry established by the Chief Executive following the Conviction of David Logan Murphy for the Sexual Abuse of Children* (2002) Anne Black and Ceri Williams

<b>April 2004</b>	Short Life Working Group: Report and Recommendations submitted following Cross Party Group approaches to Ministers
<b>December 2004</b>	Debate and Public Apology in Parliament on historic abuse petition
<b>January 2005</b>	Announcement of appointment of Tom Shaw to lead a Systemic Review of legislation, inspection and monitoring intended to protect children from abuse in residential schools and children's homes in Scotland from 1950 to 1995
<b>August 2005</b>	Historical Abuse Systemic Review begins
<b>September 2005</b>	Announcement and Debate in Parliament on the launch of the National Strategy for Survivors of Childhood Abuse
<b>September 2005</b>	First meeting of the National Reference Group on the National Strategy
<b>December 2005</b>	Formal launch of the National Strategy <i>SurvivorScotland</i> by Lewis Macdonald, Deputy Minister for Health
<b>February 2007</b>	<i>SurvivorScotland</i> First Conference
<b>March 2007</b>	In Care Sub Group convened from <i>SurvivorScotland</i> Reference Group
<b>November 2007</b>	Publication of the Report of the Shaw Review: recommendations relating to (1) former residents' needs, (2) record keeping and records management, and (3) current provision for those children and young people being cared for in residential settings of all kinds in Scotland <sup>10</sup>

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<sup>10</sup>*Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*

An independent review led by Tom Shaw (2007) Scottish Government

<b>December 2007</b>	Survey of services for Survivors of Historic Abuse in Scotland by In Care Sub Group to ascertain the opinion of Scottish Government developing a national support and advocacy service for in care survivors
<b>January/</b>	
<b>November 2008</b>	One to one and group meetings with Safeguarding Committees of faith groups
<b>November 2008</b>	<p>‘One Year On’ Conference- national conference to take stock of progress with the National Strategy</p> <p>Launch of In Care Survivors Service Scotland (ICSSS) funded by Care &amp; Justice</p> <p>Consultation announced on an ‘Acknowledgement and Accountability’ Forum</p>
<b>February 2009</b>	Acknowledgement & Accountability Consultation
<b>February /</b>	
<b>April 2009</b>	Additional survivor responses to the Acknowledgement & Accountability Forum
<b>March 2009</b>	Cross Party Group on Survivors of Childhood Sexual Abuse response to the Acknowledgement & Accountability Consultation
<b>March 2009</b>	Counselling agencies research and scoping survey across Scotland

<b>April 2009</b>	Report of the Kerelaw Inquiry (focusing on issues related to the extensive abuse of young people in a children's residential establishment) <sup>11</sup>
<b>November 2009</b>	Announcement by Ministers of their decision to establish a 'Pilot Forum' a test of a confidential forum modelled on the Irish Commission's 'Confidential Committee' focused on the former residents of Quarriers Homes chaired by Tom Shaw
<b>January/May 2010</b>	Time To Be Heard (TTBH) Pilot Forum Advisory Group convened
<b>January/May 2010</b>	One to one meetings with Tom Shaw, an opportunity for former residents and survivors to discuss in person their thoughts on the Pilot Forum
<b>February 2010</b>	Publication of Scottish Human Rights Commission (SHRC) 'Framework for Historic Child abuse in Scotland' commissioned by Scottish Government <sup>12</sup>
<b>February 2010</b>	Time to be Heard Information Events for survivors and former residents, survivor agencies and service providers- 81 attendees
<b>May 2010</b>	Time to be Heard Pilot Forum begins
<b>August 2010</b>	Chris Daly and Helen Holland (both survivors of abuse as children): Petition to the Scottish Parliament calling for 'Time to be Heard for all'
<b>November 2010</b>	Independent interviews with sample of participants in TTBH conducted by Scottish Institute for Residential Childcare, now CELCIS <sup>13</sup>

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<sup>11</sup>*Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit* (2009) Scottish Government

<sup>12</sup>*A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland* (2010) Scottish Human rights Commission

**October 2010** Time to be Heard Pilot Forum ends; 98 people were heard

**February 2011** Time to be Heard Report Published; key recommendations include:

- (1) There should be an independent National Confidential Forum (based on TTBH) open to all who were cared for as children in any kind of residential setting in Scotland,
- (2) Legislation should be introduced to give the Forum necessary protection in relation to the confidentiality of its operations
- (3) the Forum should engage with survivors at the earliest date to devise a communication and project development mechanism that will ensure that survivors' interests are kept at the centre, while paying due regard to the human rights of everyone involved<sup>14</sup>

**February 2011** Scottish Government response to SHRC Framework<sup>15</sup>

**March 2011** Survivor & stakeholder events held on TTBH Report

**March 2011** Discussions with IN Care Abuse Survivors (INCAS) & FBGA (Former Boys and Girls Abused of Quarriers)

**March 2011** Scottish Government response to TTBH; all the key recommendations were accepted and the roll out of the National Confidential Forum (NCF) will begin with those who were cared for as children in institutional care. Immediate priority will be given to introducing protective legislation in the new Parliament

**March 2011** Public Records (Scotland) Act 2011 passed - one of a number of important developments following on from the recommendations of the Historical Abuse Systemic Review

**December 2011** Sacro Restorative Justice (RJ) Pilot Project Final Report<sup>16</sup>

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<sup>13</sup><http://www.survivorscotland.org.uk/confidential-forum/time-to-be-heard/process-review/>

<sup>14</sup> *Time To Be Heard: A Pilot Forum, An independent Report by Tom Shaw commissioned by the Scottish Government* (2011) Scottish Government

<sup>15</sup> See SurvivorScotland website at: <http://www.survivorscotland.org.uk/confidential-forum/time-to-be-heard/scottish-human-rights-commission/>

<b>April 2012</b>	NCF Bill Reference Group established
<b>May 2012</b>	NCF Survivor Stakeholder Group convened
<b>June 2012</b>	Scoping project on Children in Care in Scotland <sup>17</sup>
<b>June 2012</b>	Resilience and Institutional Child Abuse Literature Review <sup>18</sup>
<b>June/October 2012</b>	NCF Consultation - Stakeholder meetings held in Dumfries, Inverness, Glasgow and Edinburgh; one to one meetings with survivors held in Oban, Dunoon, Greenock, Glasgow and Dundee
<b>July-Oct 2012</b>	NCF Consultation – A consultation on the creation of a Forum for former residents and survivors of childhood abuse in residential care
<b>December 2012</b>	Results of Consultation published- overwhelming support for the NCF <sup>19</sup>
<b>February 2013</b>	SHRC InterAction begins <sup>20</sup>
<b>February 2013</b>	Victims & Witnesses (Scotland) Bill introduced (National Confidential Forum included in this Bill) <sup>21</sup>
<b>June 2013</b>	Stage 1 of Bill passed
<b>August 2013</b>	Interaction completed; draft Action Plan circulated
<b>November 2013</b>	Stage 2 sessions on Bill
<b>9 January 2014</b>	<b><i>Provisional date for Royal Assent</i></b>

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<sup>16</sup><http://www.survivorscotland.org.uk/confidential-forum/time-to-be-heard/restorative-justice-toolkit/>

<sup>17</sup><http://www.survivorscotland.org.uk/news-and-resource-library/item/scoping-project-on-children-in-care-in-scotland-1930---2005/>

<sup>18</sup>*Uncertain Legacies: Resilience and Institutional Child Abuse: a Literature Review* (2012)  
<http://www.scotland.gov.uk/Publications/2012/06/5914>

<sup>19</sup><http://www.scotland.gov.uk/Resource/0041/00411684.pdf>

<sup>20</sup><http://www.shrcinteraction.org/>

<sup>21</sup><http://www.scottish.parliament.uk/parliamentarybusiness/Bills/59133.aspx>

Dear Colleague,

We are pleased to present an **Action Plan on Justice for Victims of Historic Abuse of Children in Care.**

This document is the product of a year long 'InterAction' process in which a cross section of those affected by historic abuse of children in care, institutions, government, residential care workers, civil society and others, have all had a platform to give their views on how justice and remedies for survivors of historic abuse should be achieved.

The InterAction is a forum for independent mediation and negotiation, structured within a human rights framework. The process is led by the Scottish Human Rights Commission (SHRC) and supported by the Centre for Excellence in Looked After Children (CELICIS). It is chaired by Professor Monica McWilliams, an internationally renowned expert on transitional justice and violence against women and children with extensive experience of peace and post conflict negotiation. Further information can be found at: <http://www.shrcinteraction.org/>

Since the last full InterAction meeting which was held on 20 June 2013, we have agreed on the present framework, incorporating comments from all those involved. We are now circulating the Action Plan so that specific commitments can be agreed.

The Action Plan has two overarching outcomes and a range of commitment areas within which specific actions should be identified.

- **Outcome 1: Acknowledgement of historic abuse of children in care and effective apologies are achieved.**
- **Outcome 2: Accountability for historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation**

We would like to invite you to consider specific actions which can be taken to deliver the outcomes. We are conscious that a range of agencies and organisations will have already been undertaking activities that directly or indirectly, address issues raised by the InterAction and we are keen to hear more about this.



We therefore warmly invite you to respond to the following three questions:

- 1. What concrete steps do you consider most effective and achievable under Outcome 1?**
- 2. What concrete steps do you consider most effective and achievable under Outcome 2?**
- 3. Please provide details of any work you have been involved with which has not previously been shared that you consider to be relevant to addressing the outcomes in the Action Plan.**

Please email your responses using the participation form attached below to [actionplan@scottishhumanrights.com](mailto:actionplan@scottishhumanrights.com) no later than 22 January 2014. Alternatively, we would be pleased to consider other ways of receiving feedback, including in person and over the phone. Please call 0141 444 8551 to arrange this.

Following receipt of your comments, a final meeting will be held to finalise the Action Plan in February/March 2014. A second open event for Survivors to gather views on what specific steps can be taken will also be held on 12 December 2013. For more information or to book a place, please contact Kelly Docherty on 0141 444 8707.

We hope that you will join us in taking forward this important piece of work.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Alan Miller', written in a cursive style.

Alan Miller,  
Chair, Scottish Human Rights Commission.



## RESPONSE FORM

### Action Plan on Justice for Victims of Historic Abuse of Children in Care.

We invite you to consider specific actions which can be taken to deliver the outcomes of the **Action Plan on Justice for Victims of Historic Abuse of Children in Care**. Views are sought from all individuals and organisations that are affected by historic abuse of children in care.

The Scottish Human Rights Commission (SHRC) and The Centre for Excellence in Looked After Children (CELGIS) will be collecting and analysing all responses received before the **22 January 2014**.

Unless respondents consent to their views being made public, all responses will remain confidential. Contact details for the respondent will not appear online.

- Please tick this box if you are content for your response to appear online.
- Please tick this box if you are content for your response to appear online but not your name or organisation's name to appear.
- Please tick this box if you are content for us to link to your website.

Name:  
.....

Organisation: (where appropriate)  
.....

Website:  
.....

Email address:  
.....

Contact telephone number:  
.....

Completed forms should be emailed to: [actionplan@scottishhumanrights.com](mailto:actionplan@scottishhumanrights.com) or sent by post to: Lauren Bruce, Scottish Human Rights Commission, 4 Melville Street, Edinburgh, EH3 7NS.

**1. What concrete steps do you consider most effective and achievable under Outcome 1?**

**Outcome 1: Acknowledgement of historic abuse of children in care and effective apologies are achieved.**

**2. What concrete steps do you consider most effective and achievable under Outcome 2?**

**Outcome 2: Accountability for historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation**

**3. Please provide details of any work you have been involved with which has not previously been shared that you consider to be relevant to addressing the outcomes in the Action Plan.**

**Thank you for contributing to the development of the Action Plan on Justice for Victims of Historic Abuse of Children in Care.**

Contact point: [www.shrcinteraction.org/](http://www.shrcinteraction.org/)

Tel: 0141 444 8551



**Centre for excellence**  
for looked after children in Scotland

**SHRC**

Scottish  
Human Rights  
Commission

## **SHRC InterAction on Historic Abuse of Children in Care**

### **Action Plan on Justice for Victims of Historic Abuse of Children in Care**

## Contents

Background .....	4
Vision.....	6
Purpose.....	6
Outcome 1: Acknowledgement of historic abuse of children in care and effective apologies are achieved. ....	7
Outcome 2: Accountability for historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation .....	8
Implementation of the Action Plan.....	11

# Action Plan on Justice for Victims of Historic Child Abuse

Outcomes

1. Acknowledgement of historic abuse of children in care and effective apologies are achieved

2. Accountability of historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation

Commitments

- Apology Law
- Establishing a National Record
- Appropriate forms of Commemoration

- Review of lessons learnt and consideration of added value of National Inquiry
- Review Time Bar
- Consistent approach to investigation of historic child abuse cases
- Consider development of a National Survivor Support Fund

National Confidential Forum (NCF)  
*The Scottish Government is progressing this in parallel to InterAction*

Empowerment: Survivors supported to understand action plan

Better Records

Themes

Acknowledgement and Apology

Reparation

Inquiry

Access to Justice

## Background

Scotland has taken various steps to address historic abuse of children while in care.<sup>1</sup> On 1 December 2004 the then First Minister Jack McConnell issued an apology on behalf of the people of Scotland for past child abuse in residential care homes.<sup>2</sup> Among other steps the Scottish Government created a National Strategy for Survivors of Childhood Abuse,<sup>3</sup> and following an independent Historical Abuse Systemic Review, announced in 2008 that it would trial a form of truth commission on historic abuse of children in care which was later given the working title, “Acknowledgement and Accountability Forum”.<sup>4</sup> In March 2009 the Scottish Government contracted the Scottish Human Rights Commission (the Commission) to independently develop a Human Rights Framework for the design and implementation of the Acknowledgment and Accountability Forum.

In late 2009, the Scottish Government announced that there would be a pilot confidential forum which would operate from spring 2010 to listen and validate survivors<sup>5</sup> experiences, create a historical record, signpost to services available and test out a confidential committee model. That became known as the Time To Be Heard Forum, which heard from 98 former residents of Quarriers Homes. In

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<sup>1</sup> Among these were petitions to the Scottish Parliament in October 2000 (by Anne Macdonald) and August 2002 (by Chris Daly), the creation of a Scottish Parliament Cross-Party Group on Survivors of Childhood Sexual Abuse in 2001, the development of a National Strategy for Survivors of Childhood Sexual Abuse which launched in 2005 ([www.survivorscotland.org.uk](http://www.survivorscotland.org.uk)), an independent Historic Abuse Systemic Review which reported in 2007 and the launch of In Care Survivors Service Scotland in 2008. Supplementary evidence can also be found at (<http://www.shrcinteraction.org/>).

<sup>2</sup> *“I offer a sincere and full apology on behalf of the people of Scotland to those who were subject to such abuse and neglect and who did not receive the level of love, care and support that they deserved, and who have coped with that burden all their lives.”* Scottish Parliament, Official Report, 1 December 2004, <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-04/sor1201-02.htm#Col12390>

<sup>3</sup> [www.survivorscotland.org.uk](http://www.survivorscotland.org.uk)

<sup>4</sup> *“I am pleased to inform Parliament that we have been actively scoping the adaptation of the principles of a truth and reconciliation model. We are committed to that. We are considering good practice examples for establishing a forum to give survivors the chance to speak about their experiences and to help them come to terms with the past. That will provide an invaluable opportunity to establish the facts, learn from the suffering and use the experience to help us protect and provide for children in the future.”* Adam Ingram MSP, Minister for Children and Early Years, Official Report of the Scottish Parliament, 7 February 2008, <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0207-02.htm>

<sup>5</sup> Throughout, this paper refers to “survivors” on the understanding that this term is most frequently used in Scotland by those individuals themselves who have experienced abuse as children. International human rights law is built on the foundation that all individuals are born free and equal in dignity and rights. The choice of terminology is therefore motivated primarily by the importance of self-identification.

response to the report of Time To Be Heard, the Scottish Government announced that it would establish a National Confidential Forum to roll-out the confidential committee model nation-wide.

In 2010 the Scottish Human Rights Commission published a Framework for Justice and Remedies for Historic Abuse of Children in Care (the SHRC Framework).<sup>6</sup> This was based on an analysis of international human rights law, research on the views of survivors and others, and experience in other countries. The Commission undertook this work independently, but under contract to the Scottish Government. In December 2011 Scottish Ministers agreed to engage with an InterAction process (a facilitated negotiation within a human rights framework) to develop an Action Plan to implement the recommendations in the SHRC Framework. This Action Plan for Justice for Victims of Historic abuse of children in care is the result of those InterActions which were prepared in 2012 and held in 2013<sup>7</sup>.

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<sup>6</sup> [www.scottishhumanrights.com/ourwork/historicalabuse](http://www.scottishhumanrights.com/ourwork/historicalabuse)

<sup>7</sup> <http://www.shrcinteraction.org/>



## Vision

Everyone has the right to live and be treated with dignity. Sexual abuse and serious physical or emotional abuse or neglect is a breach of the human right to be free from torture or other cruel, inhuman or degrading treatment. Anyone who has been subjected to such abuse has the right to access justice, to effective remedies and reparation (which means repairing the damage done so that, as much as possible, they can be placed in the situation they would have been in had the abuse not taken place). Everyone else who is affected by historic abuse of children in care, whether they are family of victims/survivors, current or former staff in institutions or foster carers, also has human rights which must be upheld. These rights include the right to respect for private and family life, the right to protection of reputation, and the right to a fair hearing.

Recognising and upholding the SHRC Human Rights Framework, participants have identified through a series of InterActions the following areas in which commitments to additional action should be made<sup>8</sup>. This Action Plan is based on the outcomes of two InterActions held on 28 February and 20 June 2013, four “mini-interactions” in May and June 2013 and an open event on 17 June 2013.

The State has responsibility to ensure human rights are respected. This includes upholding the rights of access to justice, effective remedies and reparation for victims/survivors of historic child abuse, and the rights of others affected. Other bodies, whether public, private, voluntary or religious, should contribute to remedies in a manner which is proportionate given the responsibilities they had for the care of those who were abused as children.

## Purpose

The purpose of the Action Plan on Justice for Victims of Historic Abuse of Children in Care is to agree and coordinate steps to implement the recommendations in the SHRC Human Rights Framework, on the basis of the outcomes from InterActions.

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<sup>8</sup> For report of InterAction process, please go to: <http://www.shrcinteraction.org/>

## **Outcome 1: Acknowledgement of historic abuse of children in care and effective apologies are achieved.**

### **Context**

The human right to an effective remedy includes reparation, one element of which is “satisfaction”. This can include a wide range of measures such as establishing a public historical record, effective apologies and commemorations.

In developing the Human Rights Framework the SHRC looked at the experience of other countries which have adopted Apology Laws which appear to have been successful in facilitating effective and meaningful apologies. A Member’s Bill presented by Margaret Mitchell MSP is currently being considered by the Scottish Parliament.

The Scottish Government is currently establishing a National Confidential Forum, based on the experience of the Time To Be Heard pilot.

### **Change**

In the course of the InterActions, participants broadly agreed on the merits of pursuing an Apology Law. However, it must be carefully thought through in order to ensure that it is meaningful and effective, benefiting the survivor, increasing public awareness and improving future practice. References were also made to National Confidential Forum in all discussions. This was seen as part of the solution, but not the whole solution. Discussion took place regarding ways in which the potential benefit of the NCF could be maximised through changes to legislation as it goes through Parliament. Could this be an opportunity to capture the lived experiences of survivors as part of the national narrative – an oral history in the sense of what happened with the crofters? Or would this perhaps be better captured separately from a NCF?

### **Commitments**

In finalising this Action Plan, parties are encouraged to consider steps which will deliver the following commitments:

- 1. Barriers to effective apologies from those with historic responsibility for child care in Scotland are increasingly removed, including through a full consideration of the merits of an Apology Law.**
- 2. In establishing the National Confidential Forum, every effort will be made to consider how this might contribute to establishing a national record.**
- 3. Consideration will be given to appropriate forms of commemoration, guided by the views of victims/survivors.**

## **Outcome 2. Accountability for historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation**

### **Context**

Accountability for historic abuse of children in care includes ensuring effective access to justice, remedies and reparation. The SHRC Human Rights Framework set out what is expected of the State in terms of each, such as:

- Investigation or inquiry to establish what happened (the facts) and why, to learn systemic lessons and help prevent repetition. Perpetrators of criminal abuse should also be prosecuted.
- Access to justice – civil justice must be accessible to survivors of abuse, and adapted to their needs.
- Reparation – this includes restitution (restoring things that were lost as a result of abuse, such as education or work opportunities), rehabilitation and compensation. What adequate reparation is depends on individual circumstances – it should be proportionate to the harm suffered and the victim/survivor should participate in choosing what is right for them, based on access to reliable information and a range of meaningful choices available to them.

In Scotland there have been a number of public inquiries, such as those in Edinburgh, Fife and at Kerelaw School, and an Historical Abuse Systemic Review. There has not been a national inquiry. There have been a number of prosecutions for historic abuse of children in care and Police Scotland and the Scottish Government are currently developing a protocol for cooperation in the context of the forthcoming National Confidential Forum.

In terms of access to justice the Scottish Government has recently consulted on the “time bar” as part of its review of the law on civil damages.

In terms of reparation, a range of measures of rehabilitation have been taken in the context of the Scottish Government’s Survivor Scotland programme. There is at present no national reparation fund.

### **Change**

During the InterAction process the following views emerged on potential next steps.

Inquiry: There was a very balanced view on the value of an inquiry. Discussions were well-grounded and articulated doubts regarding the value and possible benefits beyond what we have achieved as a result of previous processes. It was felt that we shouldn’t rule out the possible benefits of a national inquiry at this stage but that research was required to determine what we have learned from previous inquiries

and what the deficits might be. Based upon the outcome of such research it can then be decided what form an inquiry might take or whether other process would be preferable. Care needs to be taken to ensure that any such process is well designed and contained.

Access to Justice: The justice system is not working for survivors, so we have to try to improve this.

- The time bar is a real barrier to survivors getting access to civil justice. Its consequences include survivors being unable to obtain legal aid, which then impacts on lawyers' decisions to accept cases. How to address this? Should there be a distinct exception for child abuse victims? Should there be an explicit reference to child abuse in the discretionary criteria used by judges? Would this be enough – judges currently have discretionary powers but don't use them, so do we need to raise awareness of the issues with them? Perhaps they should be compelled to provide reasons when refusing to exempt cases in order to be more accountable and the subject of appeal?
- Criminal justice – frustration was expressed that there is no nationally consistent approach to investigating historic abuse of children in care and preparing prosecutions. Therefore, there is potentially the need for a specialised unit with a tailored approach to investigating such cases including joint working between the police and those with experience of child care. This would require lawyers, police and those with experience of the care sector to work together to design and administer it. The system must be transparent in order that survivors and others know what to expect.
- A broader perspective on justice – there is a need to think creatively and explore possibilities beyond what already exists. It could be that another forum altogether would be more appropriate for survivors, one that is based on welfare principles. We need to drive forward a culture change with more accountability and empowerment, so that justice is seen as part of the landscape of service improvement.

Reparation: There was a lot of support for a National Reparation Fund or Survivors Support Fund. This needs to be carefully designed with thought given to eligibility criteria and how contributions can be drawn from disparate institutions. While lessons must be learned from other countries, it must nevertheless work in the Scottish context. As was said on the day, “reparation should invoke a ‘sense of family’, belonging and engender healing”. It was stated that the process should be about “helping the person to become a whole human being”, including those “who have been on the wrong side of things as well”.

The following additional points were also raised consistently:

1. The need for survivors to have supported decision making and self-determination.
2. Dumfries and Galloway, where apologies and ex gratia (no fault) compensation was offered represents an interesting example from which lessons can be learned.

3. Records – there are issues related to access and historical management of records. There is also a need to ensure that current record keeping is much better. It was suggested that there should be a dedicated person within every local authority with responsibility for gathering records, rather than it being the responsibility of survivors to travel the country seeking parts of records. CELCIS reported on a project which it is involved with to explore good practice in record keeping.

### **Commitments**

In finalising this Action Plan, parties are encouraged to consider steps which will deliver the following commitments:

1. **There should be a review of the lessons learned from previous inquiries and related processes such as the Historical Abuse Systemic Review. The review should consider what added value a National Inquiry on Historic Abuse would have, and should scope the potential costs.**
2. **The civil justice system should be increasingly accessible, adapted and appropriate for survivors of historic abuse of children in care, including through the review of the way in which “time bar” operates.**
3. **There should be a nationally consistent and appropriate approach to the investigation and prosecution of offences relating to historic abuse of children in care.**
4. **Reparation: Options for the development of a national survivor support fund should be explored with all of those affected, including victims/survivors, public, private, voluntary and religious bodies, local authorities and others affected.**
5. **Empowerment: Survivors should be supported to understand and access the range of measures of in this Action Plan.**
6. **Records: the outcomes of the ongoing review of record keeping and access to historic records should be considered in the implementation and review of this Action Plan.**

## **Implementation of the Action Plan**

This Action Plan should be monitored by the parties and periodic review should be undertaken with the participation of all of those involved. There may be a variety of means of monitoring the implementation of this Action Plan on Justice for Victims of Historic Abuse of Children in Care, one of which will be through the implementation of Scotland's National Action Plan for Human Rights (SNAP), which will launch on 10 December 2013. SNAP will include a clear best practice process of monitoring and implementation. The implementation of the Action Plan will further a process of constructive accountability and continual improvement – learning from what went wrong in the past to improve standards of child care and accountability in the present and for the future.

*In consideration of this Action Plan, we are inviting concerned parties to respond to the following three questions:*

- 1. What concrete steps do you consider most effective and achievable under Outcome 1?***
- 2. What concrete steps do you consider most effective and achievable under Outcome 2?***
- 3. Please provide details of any work you have been involved with which has not previously been shared that you consider to be relevant to addressing the outcomes in the Action Plan.***

Please email your responses to [actionplan@scottishhumanrights.com](mailto:actionplan@scottishhumanrights.com) by 22 January 2014.