

**Has the Scottish Criminal Justice process met the expectations of delivering, True Justice to True Victims and those alleging abuse in historical physical and sexual abuse cases in Scotland?**

While, FBGA have every sympathy and empathize with all individuals who are alleging that they were physically and sexually abused in-care in Scotland in the past. There are fundamental issues that are required to be addressed re: historical abuse allegations, now that the **(Scottish Human Rights Commission)** is involved in the processes. FBGA are addressing some of the historical abuse issues in the coming months, so as to promote a wider understanding, while having an equitable, transparent, balanced debate on the abuse issues re: Scotland and how these may or have impacted on alleged victims and the True Victims.

What about alleged abuse cases where The Procurator Fiscal has brought no charges and has not proceeded to bring a case to Court due to any number of reasons? Are there other Legal avenues available to the alleged victims? What about **The Rights** of the individuals & parties involved? What about the accused in such cases, are they exposed to potentially false claims and allegations made in public and the media without any due process or recourse? How will you ensure rules of natural, **Justice and Rights** for the alleged victim and the accused in these historical abuse cases concerning Scotland in such a **Forum** as being envisaged?

In this 1<sup>st</sup> paper, we have chosen to highlight some of the complexities and anomalies of the Criminal Justice System in Scotland in relation to two historical sexual abuse cases which were previously highlighted in the Scottish media.

**One case proceeded to Court the other did not.**

**Case Study One**

The alleged victims, 5 in total in this case are all claiming to have been sexually abused in Quarriers Homes by a house parent. The case was highlighted in **(The Scotsman 2005), (The Sunday Mail, June, 2008), (The Sunday Mail, August, 2008).**

There is sufficient credible, fact and evidence to charge the alleged abuser and the Procurator Fiscal proceeds to bring the case to Court. Prior to the Trial the case is adjourned, due to issues raised by the defence team concerning the indictment, that it was flawed. This allowed the alleged abuser to escape trial on a legal technicality, because a formal legal phrase was not included in his indictment **(The Scotsman 2005)**. The flawed indictment issue is upheld by the Appeal Court,.

The Crown-Procurator Fiscal announces that they will re-indict the case and a retrial will take place. This causes further delay while this process takes place. The case eventually comes to Court many months later adding further anxiety and distress for the alleged victims. The alleged abuser continues to deny the allegations in the media. Given the facts and evidence presented to the Jury and Court, the accused was found guilty of abusing 1 individual only by the Jury **(Sunday Mail, June, 2008)**.

The jury found the alleged abuser not guilty of four other charges and not proven on a fifth. This is the 8<sup>th</sup> ex-employee of Quarriers to be convicted. A further twist is yet to come adding to the distress of the victim. The Procurator Fiscal has to accept the conviction is flawed as the jury has disregarded a sheriff's instruction they could only convict him of two or more charges.

**Under a legal precedent in Scottish Law called the Moorov doctrine, at least two separate but similar crimes must be proved in Scotland, if the only witness is the accuser (The Sunday Mail, August, 2008).**

All the alleged victims who have anonymity, in this particular case continue to maintain in Public that they were sexually abused. Yet the Public, Survivors and others may not fully understand all the facts of this particular case due to insufficient knowledge of Scots Law in relation to the jury's original decision being flawed and the subsequent limited media coverage of this particular case

**Case Study Two**

The alleged victim, 1 in this case is claiming to have suffered horrific sexual abuse in a care home, Nazareth House, Kilmarnock. The Procurator Fiscal took the decision not to bring charges against those accused nor proceed to bring this case to Court. The case was in the media, **(The Sunday Herald 2000), (Scotland on Sunday 2002), (The Sunday Mail 2005).**

Did the Crown-Procurator Fiscal, take the decision not to proceed due to the fact that there was insufficient credible fact and evidence available? Was there also no other complainants or witnesses (corroborating fact or evidence) either to support the allegations of serious sexual abuse, by the Crown's and claimant's admission in the media? **(Scotland on Sunday 2002).**

According to the alleged victim's interview in the **(Sunday Mail, 2005)** one of the alleged abuser may be deceased. If so they cannot respond or defend themselves against the serious sexual abuse allegations. There could have been any number of factors including confidential reason's, why this case did not proceed to Court and no one was charged with any abuse offences. Was there decline in the quality of the fact and evidence, due to delay? Witnesses may be deceased or to old, infirmed to testify etc.

The elderly Nun who has also been accused in this case, has publicly denied all the allegations and abuse claims made by the alleged victim in the media **(Scotland on Sunday 2002)**. We know that paedophiles and others will deny such abuse.

There was a further twist to this case, according to media reports in (**The Sunday Herald 2000**), Helen Holland sought the advice of her MSP, Jackie Baillie, who wrote to the Lord Advocate Colin Boyd and Justice Minister Jim Wallace. Despite the fact, the case was apparently reopened and police had launched a new investigation into abuse at Nazareth House, Kilmarnock. No one has ever been charged or prosecuted in Court with sexually or physically abusing the alleged victim in this case.

The alleged victim in this case continues to maintain in public and the media, that they were sexually abused. Are there other Legal avenues available to this alleged victim, such as bringing a Private Prosecution, as the Catholic Church claims? The alleged victim also purports and claims in public, forums and at meetings to represent the historical abuse survivor issues and views in Scotland.

The Public, Survivors and others may not fully understand the full facts of this case, due to insufficient knowledge of the Scottish Criminal & Civil Justice system, no public Court record and the ambiguity media coverage in this particular case.

**FBGA are raising a number of issues in relation to historical sexual & physical abuse cases, to promote a wider discussion for the Scottish Human Rights Commission consultation re: Acknowledgement and Accountability.**

1. How can you, uphold the Rights of the accused and the alleged victim while ensuring the rules of natural justice prevail in any Forum, if the claims and allegations of abuse are being denied in any given circumstances. Given the seriousness of sexual abuse allegations, claims made and the fact that there may only be the testimony of a single alleged victim to go on? Should such serious historical sexual abuse allegations and claims made or any allegations whatsoever, be taken simply at face value, as wholly honest and truthful without any proper investigations, a due judicial process or independent oversight?
2. If the Procurator Fiscal and the Police have investigated all the facts and evidence in a particular case, yet they have insufficient credible fact and evidence in Law and no corroborating witnesses to proceed, whereby they cannot prove conclusively, that in fact sexual abuse occurred. There may also be sensitive and confidential, contributing factors in a particular case, including in relation to the alleged victim, why the Procurator Fiscal has decided not to proceed to bring charges against any individual accused.
3. If there is no factual credible, reliable, facts or evidence and if there are no corroborating facts and evidence to support such serious historical sexual abuse claims and allegations or other abuse allegations. Should one, just assume and have complete trust and confidence **“IF”** abuse actually occurred under such circumstances, if there is only, the alleged victim’s testimony to go on and no other complainants or witnesses to support such allegations and claims? If no due process has taken place.
4. Given the seriousness of the alleged crimes, should the definition and criteria used in historical sexual abuse cases within a Forum be a lesser standard than a Court of Law? Whereby the Courts establish the facts and evidence beyond reasonable doubt?
5. Should such serious sexual abuse allegations and claims, and any other allegations, be decided on the balance of probability in an alternative Forum process? Would this be equitable for the alleged victim and those accused in such serious abuse cases?
6. Should there be conclusive fact and evidence including corroborating fact and evidence to determine guilt or innocence in historical sexual abuse cases and any other such cases? What about allegations where the alleged abusers are deceased?
7. How do you uphold and balance the **“Rights”** and the rules of natural justice, **“True Justice”** for the alleged victim & the accused in these unique circumstances? Given that not all individuals alleging historical sexual abuse may be telling the truth and that the alleged abuser may not or will not admit to the crime? **What about false collusive, malicious allegations and claims?**
8. Does the legal precedent **“The Moorov Doctrine”**, whereby at least two separate but similar crimes must be proved in Scotland, if the only witness is the accuser, provide extra safeguards in serious sexual abuse cases and other alleged crimes? Does the legal precedent **“The Moorov Doctrine” enshrined in Scots Law**, offer safeguards, fairness & protection to those accused in historical sexual and physical abuse cases without being prejudicial? Does **“The Moorov Doctrine”** prevent Miscarriages of Justices, false allegations and false claims in historical abuse cases and other cases?
9. Should there be a systemic independent, critical review and examination of all historical abuse cases in a Forum, which have not been conclusively proven in any due process or Court of Law to-date? Especially where very serious allegations are being alleged and which are being disputed in Scotland. Would this be equitable to the accused and the alleged victim?
10. Is the Criminal Court the appropriate and only proper forum to determine innocence or guilt in historical sexual and physical abuse cases? Whereby establishing the full true facts and verifying the accuracy of all the claims and allegations.

All such historical abuse claims and allegations made, in our view should be fully investigated, scrutinised and validated in Scotland, to establish the full true facts, while upholding the integrity of the processes. The **“Forum”** process should be just and equitable, ensuring **Indivisible, True Justice** for all, including those abused and individuals alleging abuse and those accused. The processes must ensure that the universal **Rights** of all individuals regardless are protected and upheld in any **Forum** processes set-up.