

## **Former Boys and Girls Abused in Quarriers Homes**

**PE1351-21<sup>st</sup> December 2010**

FBGA response to the Scottish Ministers address to the Petitions committee dated 21/12/2010.

FBGA would like to thank the Petitions committee and the Scottish Government Ministers for their time given to Petitions committee on these matters.

**Personal Injuries, Prescription and Limitation within current law in Scotland 1973 (Timebar) concerning Historical Abuse victims.**

Many Quarriers cases were previously determined in the Criminal Courts, whereby the abusers were convicted including my own case, these cases were then subsequently Timebarred in the Civil Court process.

Quarriers legal agents (Simpson and Marwick Solicitors) threaten in my own case to take legal action for the recovery of costs if I continued with my action. (I am happy to provide these legal papers to the committee).

I understand the Quarriers agents also did this in other Quarriers cases as well. Under such duress, pressure and intimidation Quarriers-victims had no choice but to discontinue or withdraw there cases.

**The Petitions committee should seek clarification on such Quarriers victims cases given any proposed changes in legislation –will such cases be allowed to proceed in the future- we understand that they will not- as they have now been closed and fully determined by the Courts.**

Lord McEwan has expressed a view point publically which the Minister referred too, this view point is supported by the majority of the Quarriers victim-survivors as to their personal experience of the Scottish Civil court process.

The current law and the discretion available has not been used equitably by the majority of the Scottish Judges as it stands in Scotland. In fact the opposite it has allowed the Judiciary to blanket ban historical abuse cases without looking at individual cases or allowing individuals to proceed to any fair oral hearing on the merits of such individual cases.

The law as it stands has not delivered true natural justice and victims have become mired in the Civil legal processes. It has not benefited the historical abuse victims, whatsoever and such a law is and outdated and is an inflexible justice gateway system, including for those Quarrier victims who have been previously had there cases upheld in the criminal courts.

Quarriers in 31/05/2006 opposed the removal of Timebar in such cases through the Scottish Law Commission report on the issues.

FBGA in 2006 and 2007 submitted papers to the Scottish Law Commission regarding Timebar.

The Scottish Law Commission in 2007 decided against the removal of Timebar in the historical abuse cases concerning Scotland. They also did not make any recommendations in relation to these cases.

Given the eminent legal advice we have received It is highly unlikely in our view, that the current legislation concerning Timebar and Scottish Law Commissions position on this issue regarding the historical abuse victim-survivors will be amended or changed, or new legislation enacted in the near future.

This appears to be a further delaying tactic by the Scottish Government which will further damage and harm an all ready vulnerable group of adults seeking immediate effective inquiries, remedies, reparation and redress .

### **Compensation**

The Home Affairs Select committee in 2002 in the UK Parliament recognised that victims in the majority of the historical abuse cases chose the Civil route for redress, remedy, and reparation, as opposed to Criminal Injuries scheme.

The said UK Select committee also recognised that Criminal Injuries compensation scheme did not address or take into consideration sufficiently the unique life long damage suffered to the health and mental well being and other issues that historical abuse victims in such cases suffer.

The UK select committee also recognised the large disparities in awards between Civil and Criminal Injuries scheme.

Criminal Injuries scheme in Scotland currently does not address issues of acknowledgement , accountability or liability in such a scheme as it currently stands for the Quarriers victim-survivors or others.

The Quarriers victim-survivors have continued to seek just and equitable reparation and remedies for the damages inflicted, based on there individual needs.

### **Compensation order**

Currently does not exists in Scotland for the Quarriers cases which have been previously determined in the Scottish Criminal Courts.

### **Criminal Injuries**

Currently does not address issues of acknowledgement, accountability or liability in such a scheme as it currently stands for the Quarriers victim-survivors or others. Many victim-Survivors view this as a Government body and not wholly independent and clearly the scheme does not take into account nor reflect fully the damage and harm inflicted over a lifetime on the victim-survivors wellbeing and mental health and other related issues.

CIRCC awards are currently at the bottom end scale for victim-survivors. This scheme is also not available to many Scottish victim-survivors currently abused in the past care system.

An alternative option should be sought in our view by the Scottish Government to address these historical abuse issues affecting this particular vulnerable group of adults.

#### **Effective Inquiries into past institutions where abuse has occurred.**

Scottish Minister, Nicola Sturgeon requested in 2004 a SWSI inquiry from the previous administration- Mr Peacock, yet Ms Sturgeon singularly failed to set-up any such inquiry when elected to office.

None of these processes as they currently stand will not address sufficiently such issues and ensure that Quarriers Charity and as an organisation today is actually “fit for purpose”.

As demonstrated in Ireland when effective inquiries were actually undertaken (Dublin and Ferns reports) then abuse was found to be more widespread, endemic and the abusers worked across the sector and embedded themselves in the care and pastoral systems.

Given that 9 ex-employees of Quarriers Homes have been convicted in the Scottish Criminal courts. It is our view that a proper effective inquiry is essential and has to be undertaken to learn the depth and how widespread such abuse was, while ensuring that Quarriers is actually fit for purpose today.

The Pilots or Forums will not address effectively such issues fully in our view concerning the past institutions, including Quarriers, culture, past management and operational, regulatory and other such issues.

#### **Obtaining True Justice in Scotland**

Currently decisions rest with the Procurator Fiscal and The Crown, based on public interest interpretation including facts and evidence available to proceed to trial. In the majority of the Quarriers cases preceded to trial convictions were obtained in a number of cases whereby 9 individuals were convicted in the Scottish Criminal Courts.

As far as we are aware, The PF and the Police were fully committed to addressing any serious allegations brought to there attention by the Quarriers victim-survivors. I understand also this was the case regarding other institutions in Scotland where victim-survivors made serious allegations concerning alleged abuse.

However a number of Quarriers cases also did not proceed for any number of reasons which the Ministers referred too and addressed, including a lack of fact and evidence and other such reasons.

The Courts in our view should not be the only route to obtain true justice, remedies or redress, reparation in Scotland. We call on the Scottish Parliamentarians to deliver effective inquiries, justice, remedies and reparation for all victim-survivors of such historical abuse concerning Scotland in line with the SHRC recommendations.

## **Pilots and Forums**

There are many questions outstanding concerning the processes which we raised with the Petitions Committee, but fundamentally is it acceptable or appropriate to ask “Victims” who have been through criminal proceedings and had their individual cases upheld in the Courts, being requested yet again to revisit past events in additional processes, such as Pilots and Forums.

Why has the TTBH Pilot not been given the necessary powers, remit or mandate to obtain such Court documents or regulatory and other such documentation.

The Commissioners undertaking the Pilots clearly do not have sufficient powers, mandate or remit to carryout there functions fully in line

TTBH Pilot currently does not address issues of effective inquiries, redress, reparation, acknowledgement, accountability or liability in such a process as it currently stands for the Quarriers victim-survivors within the SHRC recommendations.

## **Individuals Accused “Rights”**

FBGA also recognise fully that all individuals have “Rights” including those accused in any process and we would ask that the “Rights” of all are fully upheld in a fair and balanced process.

One has to ask how those being accused, how their “Rights” are being represented in the current processes and by whom and how there issues will be addressed now and in the future.

The organisations and institutions also have “rights” within any process including Quarriers Charity.

Other countries around the world have addressed such issues by adopting good practice and resolved the issues to the benefit of the victim-survivors, including out-with the Court processes.

We look forward to the Scottish Ministers addressing all of FBGA’s concerns that we previously raised through the Petitions committee regarding these processes.

Again we reiterate that we believe that the issues can be managed more effectively and resolved going forward equitably by full constructive engagement of a broader spectrum of victim-survivors in all the decision making processes and the actual processes, and the genuine political will to address the issues to the benefit of this group of vulnerable adults without causing further harm or damage.

Yours Sincerely

Jennie Bristow

Secretary FBGA