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SHRC

Scottish
Human Rights
Commission

SHRC InterAction on Historic Abuse of Children in Care

Summary of Responses to the Consultation on the InterAction Action Plan

June 2014

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1. Introduction

Scotland has taken various steps to address historic abuse of children while in care, driven by the calls for justice made by survivors of historical abuse in care. These steps have included: an apology by the First Minister, Jack McConnell, the *Historic Abuse Systemic Review* undertaken by Tom Shaw, the In Care Survivors Service Scotland to support survivors and their families, and the pilot *Time To Be Heard Forum* which is now being taken forward across Scotland as the National Confidential Forum.

In 2010 the Scottish Human Rights Commission published a Framework for Justice and Remedies for Historic Abuse of Children in Care (the SHRC Framework). The Commission undertook this work independently, but under contract to the Scottish Government. The SHRC Framework was based on international law, experience in other countries and research based on the views of care leavers. 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 for in 2012 and held in 2013. 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.

The Action Plan identified two broad outcomes under the themes of 'acknowledgement' and 'accountability', and for each of these a number of specific commitments.

1.1 Acknowledgement

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

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.

1.2 Accountability

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

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 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.

1.3 The Consultation

Following the development of the draft Action Plan in December 2013, individuals and organisations were invited to tell us what concrete steps they believed could be taken to achieve the Outcomes in the Action Plan.

A consultation questionnaire was first circulated in December 2013 with an initial closing date of 22 January 2014. Following feedback that survivors and others needed more time to engage with the Action Plan, the deadline of the consultation was extended to 25 April 2013. During the consultation period, the questionnaire was posted on a number of websites, emailed to a wide range of organisations, and circulated by survivors' organisations and individuals.

In total, there were 42 responses to the consultation: 37 written responses and five responses by telephone.

Half of the responses (22) were from survivors or survivors' organisations – In Care Abuse Survivors (INCAS) and Former Boys and Girls Abused of Quarriers Homes (FBGA). There were responses from ten local authorities (Angus, Argyll and Bute, Dumfries and Galloway, Dundee, East Ayrshire, East Dunbartonshire, Perth and Kinross, South Lanarkshire, Stirling, West Dunbartonshire). Responses were also received from: the Convention of Scottish Local Authorities (CoSLA), Crown Office and Procurator Fiscals Service (COPFS), Police Scotland, the Care Inspectorate, Scottish Consortium for Learning Disability (SCLD), Scottish Catholic Safeguarding Service, Sisters of Nazareth, Child Migrants Trust, CHILDREN 1st and Kibble Education and Care Centre.

Many of the key stakeholders who will be responsible for delivering the Action Plan have been involved in the InterAction process itself over the past 18 months. They have participated in the discussions about the Action Plan and had an opportunity to respond to the initial drafting of the Action Plan. For that reason, many of those in the InterAction did not respond again to the questions in the consultation. Throughout this process CELCIS has also convened a series of open events with survivors to enable their voices to be heard. A further open event for survivors will be held in August 2014.

2. Summary of Responses

In general, the Action Plan was welcomed by respondents and seen as a step forward in the way that Scotland responds to the historical abuse of children in care. As will be seen below, the outcomes and commitments of the Action Plan received overall support. A number of responses from survivors expressed frustration at the length of time that has passed since this issue was initially raised in the Scottish Parliament.

2.1 Acknowledgement

2.1.1 Apologies and the Apology Law

There was overall support for the need for effective apologies and for the consideration of an apology law. The Member's Bill addressing this presented by Margaret Mitchell MSP and currently being considered by the Scottish Parliament was welcomed.

Responses highlighted the need for meaningful apologies which were personalised and focused on the individual, that were public and acknowledged the abuse that survivors had experienced.

“Individualised apologies from Government and the institutions implicated in abuse in my view would be more sincere and genuine.”
(Chris Daly)¹

Two survivors highlighted the personalised apologies given by Dumfries & Galloway Council as an example of how this could be done. Responses also emphasised the need for apologies to come from all those involved in historical child abuse, as highlighted in the following comment:

“No child who experienced abuse while being brought up in the care system in Scotland should be excluded from any official apology no matter as to where or what establishment they were brought up in, be it a small children's home, a large Institution, a Religious run children's establishment or even a 'boarded out child living in some secluded farm'.”
(George Clark)

¹ Names of individuals and organisations have only been used with explicit permission

It was felt to be important that a consistent and transparent process for survivors should be created that would generate an open culture of acknowledgement. As was stated:

“The act of apology can be a powerful determinant in the outcomes of the healing process for survivors. We need to support those organisations and individuals who fear making an apology of the past hurt caused by others.”
(Scottish Catholic Safeguarding Service)

Six responses considered that for an apology to be meaningful it had to be accompanied by action to put things right and repair the damage. This was expressed in various ways and linked, for example, to the need for a public inquiry, access to justice, addressing the ‘time bar’ to civil justice, prosecution of abusers and access to justice. The quotes below illustrate this:

“Apologies are meaningless unless there is a commitment to repair the damage.”
(Alan Draper)

“There can’t be a ‘meaningful’ apology if access to Justice is denied.”
(P. Sumner)

“An apology is essentially a symbolic measure which needs to be given substance by effective measures of reparation and policy changes to ensure that there are reduced chances of the activity which requires an apology being repeated. Without such substantive measures, apologies run the risk of seeming hollow or insincere and not being accepted as genuine.”
(Child Migrants Trust)

2.1.2 National Confidential Forum

The National Confidential Forum was welcomed in the 10 responses which made explicit reference to it. It was considered to be a major step forward in providing a place to hear the experiences of a wide range of individuals who had been in residential care and in institutions. It was hoped that the fact that it would provide the opportunity for all those who had experienced residential and institutional care and who had both positive and negative experiences would provide a balanced view of the care system in the past. It was considered that this would be beneficial for the individuals taking part in the National Confidential Forum and in acknowledging the experiences of people who were in care as children.

The most effective and achievable concrete step under Outcome 1 is the establishment of a National Confidential Forum for survivors which gives them a chance to speak about their experiences and help others to understand and acknowledge the experiences of people who were in care as children, whether those experiences were positive or negative. The Forum will help to raise awareness of childhood abuse and its long-term consequences as well as identifying support services available if required.

(South Lanarkshire Council)

The National Confidential Forum was also considered to be an important opportunity to create a national record of the experiences of adults who had been in care as children and their experiences, both positive and negative.

“We believe that the NCF will contribute significantly to establishing a national record that will provide a safe space and confidentiality to those who wish it. It is expected that it will also hear testimony from a wide spectrum of former residents from various institutions, who may have had positive and negative experiences of the past Scottish care system. Whereby there will hopefully be a balanced view of the past Scottish care system.”

(FBGA)

However, it was acknowledged that there was an inherent tension in creating a national, public record from a confidential forum, and that appropriate boundaries, consent and issues of anonymity would need to be addressed in order to ensure the confidentiality for those who want it, while acknowledging the wish of other survivors to have their experiences made public.

2.1.3 Foster Care and Other Care Settings

The steps taken to address the historic abuse of children in care in Scotland have focused on residential and institutional care. The apology by the First Minister, the *Historic Abuse Systemic Review, Time To Be Heard* and the *National Confidential Forum* all address abuse in residential care.

A number of the responses called for a more inclusive approach which would take account of the experiences of those who were in the full range of care settings as children, including ‘boarding out’ or foster care, adoption, and kinship care.

“... we believe strongly that all survivors of childhood abuse, whatever the setting, should be given the opportunity to share what happened to them in an appropriate forum. In order to gain a realistic understanding of the scope of child abuse which has taken place historically, we need to know what has

happened across the country. This includes adults who were in residential care as children, as well as those who were looked after by foster carers, kinship carers, or indeed, their own parents.”

(CHILDREN 1st)

The particular ways in which specific groups of people may have been treated was also emphasised, it was considered that:

“... recognition of the specific context in which disabled people were institutionalised as children, namely as a systematic policy response to disability, based on discriminatory attitudes flowing from medical/ charity/ welfare models of disability. Historically, successive governments adopted a policy of segregation of disabled people, which meant that disabled children were often likely to end up in institutional care.

(Scottish Consortium for Learning Disability)

The plight of child migrants was also emphasised in that children may have been abused in Scotland before they were sent abroad.

“As well as being subjected to major forms of abuse – sexual, emotional and/or physical – child migrants lost touch with their community and family. Many were told that they were orphans who did not have any close relatives.

(Child Migrants Trust)

2.1.4 Commemoration

Six responses explicitly mentioned commemoration of historical abuse of children in care, and emphasised that survivors should guide the most appropriate form of commemoration. The varied experiences of survivors was mentioned and the importance of ensuring that all are involved in decision-making, including disabled people. Three respondents suggested actual forms of commemoration which included monuments and statues (in site-specific locations) and a National Children's Day where children in schools would learn about the history of children in care.

One person stated that commemoration should be:

“... a reminder to those caring for vulnerable children to be alert at all times to the signs of abuse.”

(Survivor).

The way children in care were viewed historically was also raised by two respondents as being an important component of commemoration, highlighting that

children in care had suffered already by being removed from their families and often felt stigmatised at entering the care system. It was suggested that society had the impression that '*children in care were deviant, lumped into criminality*' (Survivor). The public perception of vulnerable children historically therefore also needs to be addressed.

One response, however, suggested that commemoration may not be the top priority for some survivors.

For some victims/survivors this may be a requirement, a majority in our view are more concerned about individual outcomes that meets their and their families' specific needs and addresses their issues without further delay.
(FBGA)

2.2 Accountability

2.2.1 General

Respondents made a series of general comments on the issues of accountability. One survivor stated that:

"[Accountability] is the only suitable 'outcome' for the only individuals whose views deserve to be taken into account, i.e. the victims."
(P. Sumner)

Another stated simply:

"Access to justice for all survivors"
(William B. Logan)

In relation to access to justice in particular, SCLD emphasised the importance that people with learning disabilities could access good quality information on their rights and be well supported through the court process.

Respondents also addressed the specific elements of accountability outlined in the Action Plan.

2.2.2 Review of Lessons Learned from Previous Inquiries

There was general agreement about the need for a review of the lessons learned from previous inquiries.

“Research/review of all previous enquires to highlight lessons learned and identify gaps or issues that should be taken forward, either in further research or enquiry.”

(Local Authority)

Some responses stressed that this should not just focus on residential care, but should include all forms of care, including foster care and institutional care for disabled people, which have not been included in previous reviews.

It was suggested that the review is likely to have most impact if it focuses on the key features of abuse in care and what needs to be done to prevent this. One respondent also considered that lessons could be learned from other sources, such as Serious Case Reviews. Respondents emphasised that the voices of survivors should be central to this review of the lessons learned.

There were a range of views about how this should be taken forward. Half of the responses from survivors called for a ‘full public inquiry’ or a ‘judicial inquiry’.

“Access to justice can only be achieved by a judicial inquiry so that all those responsible can be made to give evidence.”

(Frank Docherty)

“A full official enquiry to investigate in depth the extent of abuse.”

(Survivor)

“No less than a public inquiry.”

(Survivor)

Some of the responses linked the inquiry to specific issues such as the extent of abuse, progressing cases through the criminal courts, or gaining the testimony of those responsible for the abuse of children in care. Another linked the inquiry to the opportunity for survivors to tell of their experiences of the past, and to ensure the protection of children currently in care.

Other responses, however, stated that further consideration needed to be given to whether a national inquiry was the most appropriate way of taking things forward and the potential benefits and disadvantages of a national inquiry.

“It is not clear at this stage what a national inquiry would add to current developments. It may detract from any progress made to date.”
(Local Authority)

“We agreed with this proposal [to review lessons learned and consider added value of national inquiry].”
(FBGA)

One local authority respondent considered that such an inquiry could be expensive and further delay things, and that more appropriate ways of achieving justice for survivors might be identified.

2.2.3 Civil Justice System and the ‘Time Bar’

There was strong support for the commitment to improve access to civil justice.

“Survivors should be able to access civil justice.”
(Survivor)

“The time bar is a get out of jail card for the state and other institutions.”
(Survivor)

“If we believe in the importance of easing the routes to civil justice for victims of abuse, then the law should facilitate that access.”
(Dundee)

The importance of the law making access to civil justice easier rather than creating barriers was emphasised. Many of the responses focused on the issue of the ‘time bar’.

“There is no access to justice because of the ‘time bar’.”
(Survivor)

“In view of the significant restraints posed by time bar this is an area which should be challenged over the longer term.”
(Local authority)

“Certainly the time bar needs to be reviewed.”
(Scottish Catholic Safeguarding Service)

Guiding the discretionary powers of judges to enable access to justice was discussed in some responses as one way in which this might be addressed in the short term, with one response suggesting that judges should provide reasons for why they do not use their discretion.

The fact that some survivors find the legal process traumatic and difficult was raised by one survivor, and this linked to the need for information and support for individuals going through the court process.

2.2.4 Consistent Approach to the Investigation and Prosecution of Offences

The need for the accountability of perpetrators of historic abuse of children in care was emphasised by respondents, and seen as being paramount by some survivors.

“Pursue vigorously through ‘criminal courts’ custodial sentences for the perpetrators of all such crimes without fear or favour, regardless of the social standing of anyone accused of these crimes.”

(James McKenna)

“Prosecution of abusers and those complicit in cover up.”

(Alan Draper)

“Past perpetrators identified and held to account.”

(Local authority)

Respondents also supported a consistent approach to investigation and prosecution.

“All investigations and inquiries should be consistent and conducted under the same criteria nationally, this could be done with consistent guidance and procedure. It would have to take into account the extent to which discretion from all involved influences many decisions.”

(Dundee)

“While the creation of specialist units may be appealing in considering how to improve the response to historic abuse investigations, there may be merit in developing greater clarity on how a more consistent approach can be achieved. This would enable existing agencies to share learning, and to develop an appropriate response.”

(Local authority)

This is important in terms of there being clear processes in place to support individuals who make allegations through the investigation process. Responses from Police Scotland and the Crown Office and Prosecution Service highlight some of the developments in investigation and prosecution procedures, and these developments were acknowledged in the response of one survivor organisation.

2.2.5 Reparation

There was clear support for a national fund to provide financial and other forms of support to survivors of abuse. This was described in terms of a compensation fund, a reparation fund or a survivors' support fund.

"Compensation fund for survivors and their families."

(Survivor)

"CHILDREN 1ST supports the idea of a reparation fund or survivors' support fund, and would want this to be applied as widely as possible."

(CHILDREN 1ST)

It was acknowledged that any plans for a reparation fund would need to be handled sensitively, particularly in terms of financial payment to individual victims. Some responses referred to schemes abroad such as in Ireland, and compensation based on the nature and scale of abuse.

A reparation scheme similar to Ireland's with a clear tariff on a sliding scale based on abuse and over what time period could be an option. Court cases can be lengthy and may leave the victim open to re-traumatisation. Therefore a reparation scheme would be more accessible and user friendly.

(Chris Daly)

It was also suggested that such a fund should not prevent individuals applying for compensation through litigation, and this might have implications for the contributions to such a fund. Another suggestion was that such reparation could be funded through a compensation or restitution order applied to those convicted of online sexual offences.

The issue of financial reparation was linked to wider issues of counselling and support. Financial support, it was suggested would allow survivors choice in how

they wished to move forward, including, for example, return to education, training, employment or counselling. A number of responses commented on the need for specialist services and resources to address the particular needs of survivors of historical abuse in care.

“There should be a reparation fund with separate monies made available for specialist trauma counselling, education and a fund for travel to reunite families.”

(Helen Holland)

“Access to effective remedies should not only mean therapy but also to enable a holistic approach to the care and wellbeing of individuals who have suffered.”

(Scottish Catholic Safeguarding Service)

2.2.6 Empowerment

Respondents considered that the empowerment of survivors of historic abuse was absolutely central to the process of acknowledgement and accountability. The direct involvement of survivors in the decision making regarding all aspects of apology, commemoration, justice, reparation and remedies was welcomed by key stakeholders. As one respondent stated:

We support the action plan’s commitment to empower survivors by supporting them to understand and access the range of measures in the action plan.

(CHILDREN 1st)

2.2.7 Records and Information

Eight responses addressed the issue of records and record keeping. There was a consensus among them about the importance of access to records and responses addressed both the needs of adults who had experienced care in the past and current record keeping for children in care and the implications for future access to records.

“If a sense of belonging could be engendered, a sense of worth and understanding of their past through a complete and open freedom to examine all family records and removal of all redaction of all records, this would provide wisdom of just how lacking the system was then in a humanitarian

approach to considering the individual child and its place within residential care.”

(Survivor).

It was considered important that care leavers and survivors had guidance, information and support in accessing their records.

“Clear guidance on access to records and help sourcing social work and other records from the homes.”

(Helen Holland)

Professionals also needed information and guidance on the importance of records and how to support survivors in this, not just those directly involved in social work or residential care, but also librarians, registrars and archivists. This should also include the specific support needs of disabled people, including people with learning disabilities.

The issue of redaction was also raised in relation to personal records. One response stated there should be no redaction to an individual’s records, and it is essential for adult care leavers to access information about their families.

“No social worker should be able to perform redaction. In fact no redaction should be done to the record.”

(Hazel Macmillan)

The preservation of records also needs to be addressed so that no more records are destroyed, lost or damaged.

We agree care records are an integral and important process for all those individuals who have been in the past care system and facilitating access to such records and ensuring their preservation should be a priority.

(FBGA)

It was felt that current record keeping needed to be reviewed to ensure that the necessary information relating to children in care just now will be recorded and stored in a way that will meet their needs. The importance of the role of a records manager was highlighted in one response, to ensure responsibility for this. The start of electronic recording was also considered important for the systematic storing of information.

3. Conclusion

The responses to the consultation on the InterAction Action Plan have shown support and commitment to the process of the SHRC InterAction on Justice for Victims of Historic Child Abuse, and to the outcomes and commitments required to take forward justice for survivors of historical abuse in care. In general, the Action Plan was welcomed by respondents and seen as a step forward in the way that Scotland responds to the historical abuse of children in care.

There was overall support for the need for effective apologies and for the consideration of an apology law. Responses emphasised the need for meaningful apologies, and for this to be the case apologies needed to be accompanied by action to put things right.

The National Confidential Forum was generally considered to be a positive step in providing a place to hear the experiences of a wide range of individuals who had been in residential care and in institutions. A number of responses, however, called for a more inclusive approach to take account of the experiences of those on other care settings such as 'boarding out' or foster care, adoption, and kinship care.

Commemoration of historical abuse of children in care was supported and the importance of survivors deciding on the most appropriate forms of commemoration was emphasised.

There was general agreement about the need for a review of the lessons learned from previous inquiries. There were a range of views about how this should be taken forward. Half of the survivors who responded to the consultation called for a 'full public inquiry' or a 'judicial inquiry'. A number of respondents considered that further consideration was needed to decide whether a national inquiry was the most appropriate way of doing this.

There was strong support for the commitment to improve access to civil justice and many respondents called for the need to address the 'time bar'.

The investigation and prosecution of perpetrators of historic abuse of children in care was highlighted by respondents, and seen as being paramount by some survivors. A consistent approach to investigation and prosecution was called for, and guidance and support for survivors involved in the court system.

There was clear support for a national reparation fund to provide financial and other forms of support to survivors of abuse. This was linked to wider needs for support

and a number of responses commented on the need for specialist services and resources to address the particular needs of survivors of historical abuse in care.

Respondents considered that the empowerment of survivors of historic abuse was absolutely central to the process of acknowledgement and accountability. The direct involvement of survivors in the decision making about the full range of issues was emphasised.

There was a clear response about the importance of access to records; both the needs of adults who had experienced care in the past, and current record keeping for children in care and the implications for future access to records.

The responses to the Action Plan will be fully considered and all participants in the InterAction process will be invited to consider specific actions which can be taken to deliver the commitments in advance of a recall meeting which will take place in October 2014. To inform that meeting an open forum with survivors will be held in August 2014.

Upon finalisation of the Action Plan, its implementation will be monitored, and linked to the delivery of Scotland's National Action Plan for Human Rights.