

## **Victims & Witnesses (Scotland) Bill**

### **Harry Aitken (former Chair of In Care Abuse Survivors, Scotland)**

#### **1. Introduction**

It seems right and proper that, while making comment or observation on any initiative designed to advance the cause of victims/survivors, a fair and balanced view should be taken.

Survivors of historical in care child abuse have readily acknowledged that many children placed in various Scottish care settings had a very happy, supportive and loving experience. They were the lucky ones!

The survivors also recognised that this was due to the dedication of many caring, committed staff who unselfishly gave of their time, their energy and their life's work to the encouragement, nurturing and development of the many children in their care.

However, there is a substantial, well documented bank of evidence, gathered over many years, confirming that thousands of Scottish children placed in care had a very unhappy, abusive and traumatic experience. These innocent, vulnerable children suffered all forms of abuse at the hands of evil, exploitative staff who were allowed, with impunity, to perpetrate such abuse.

Failings by care home managers and staff, the Local Authorities, Social Work Departments, the Police, the judicial system, the Church, the Education Authorities and the Scottish Government, allowed a culture of fear and abuse to permeate the Scottish child care system without, apparently, doing anything about it. Instead, they abandoned these children to face on their own, a life of horrific, debilitating torment.

Children who reported abuse were either not believed or branded as liars and as a result, suffered further punishment. Their human rights were violated! They did not get justice! The trauma of such maltreatment was carried with them throughout their time in care and into their adulthood. Many still live with the consequences of that traumatic experience. And still they have not had justice!

#### **2. National Confidential Forum – Responses to Explanatory Notes**

Here are some responses to the items in the Victims and Witnesses (Scotland) Bill which may be worthy of consideration, or may be used to contribute to a more detailed discussion.

Analysis of the Time to Be Heard (TTBH) Pilot Forum done by Strathclyde University showed that some adults who were placed in institutional care as children found the participation in TTBH a cathartic and therapeutic experience.

However, it has been reported by some participants in the TTBH Forum that, after giving testimony, and once the state of elation or euphoria had subsided, they felt a void in their lives because nothing more productive had happened to improve their lives. They were no closer to obtaining access to justice, redress or reparation. In fact, they questioned the efficacy of the TTBH process and as a result they felt re-traumatised by the experience and wished they had not taken part.

What the analysis of the TTBH process also showed was that, before any future roll-out of a National Confidential Forum is undertaken, there are significant improvements required to be made to the process and that participants should be given certain assurances.

### **2.1 Section 26 – 4ZA – National Confidential Forum**

- **(67)** - National Confidential Forum as part of the Mental Welfare Commission (MWC) for Scotland.
- No rationale for this choice was given.
- However, if complete confidentiality and independence of the MWC is maintained throughout the existence of the NCF, there is unlikely to be any further issue for participants.

### **2.2 Section 26 – 4ZB – General functions of NCF**

- **(71)** It is a continuing source of great concern that, despite the majority of respondents to the NCF consultation process stating that adults placed in foster care should also be allowed to give testimony to the NCF, this has not been included in the Bill. (see **Schedule 1A – Part 3 (108)** below )
- Many children placed in Foster Care under the aegis of local Social Work Departments also suffered horrific abuse and their human rights were violated at that time. Foster parents were located, selected and paid by the Social Services (i.e. the public purse), and the residence became similar to the cottage home system used by Quarriers. By disallowing them access to the NCF, this constitutes re-traumatisation and another violation of their rights – a course of action which will surely store-up problems for the Scottish Government in the future.
- **(73)** Despite the two main Scottish survivor groups submission's (FBGA & INCAS) to the NCF consultation process giving valid and sound practical reasons that the names of care institutions should be recorded, this has been denied and no explanation given as to why.
- **(74)** It is absolutely imperative that any advice given to a participant during a Hearing should be validated, accurate, current and in a form that is easily understood. It is also essential that anyone delivering that advice is competent to do so.

### **2.3 Section 26 – 4ZC – Carrying out NCF functions**

- (76) It is essential that the NCF Head is fully conversant with the full range of advice that may be sought by or given to a participant during a Hearing.

### **2.4 Section 26 – 4ZD - Further modifications in relation to NCF**

- (84) With regards to the proposed records management plan to further safeguard the confidentiality of testimony, INCAS suggested that a random number be given to a participant, to be used to record a participant's testimony and to make reference to that participant's testimony in the final NCF report.
- This will ensure that a participant will be able to recognise their testimony in the final report – something which did not happen in the TTBH report and was a source of concern.

### **Schedule 1A – Part 1 – NCF Membership selection panel**

- (91) & (92) it would be of real benefit to victims/survivors if they were represented on the NCF Membership selection panel. This would be consistent with the approach that puts survivors at the centre of the process and would be consistent with the recommendations of the Christie Commission.
- Giving testimony to the TTBH Forum was a major milestone in the life of many survivors and for some, proved to be filled with apprehension. If, for example, a representative of FBGA & INCAS was included in the Membership selection panel, they would be in a much better position to allay in advance, some of the natural fears likely to be felt by prospective participants.

### **Schedule 1A – Part 3 - Eligibility to participate in the National Confidential Forum**

- (108) specific types of care and health services which meet the conditions set out in paragraph 7(4) not including services provided at premises used mainly or wholly as a private dwelling. This excludes the supervision of children at home, foster care and kinship care from the scope of the Forum.
- Children placed in foster care with strangers were under the care of the local Social Services and by extension, the Nation State of Scotland. This is a situation distinctly different from being at home or under kinship care with family members. It therefore seems invidious to deny them the right to give testimony at the NCF.
- The CELCIS, (2012) scoping project concluded that 480,000 people were in care as children between 1930 and 2005 and, of these, 320,000 are likely to be alive today. This spans residential, foster care and community placements. Drawing on the Commission in Ireland experience, they expect that only up to 2,000 people will wish to take part in the NCF. This represents 0.6% of the 320,000 and ignores the

many that were in foster care. This can be viewed as further discrimination against and abuse of, those who were in foster care.

#### **Schedule 1A – Part 4 - Conduct of Hearings**

- **(111)** Analysis of the TTBH Pilot Forum highlighted the embarrassment felt by some participants who found it very difficult to give testimony in the presence of a member of the opposite sex.
  
- To obviate this problem and since there is scope in the Bill to have more than 3 members on the NCF Panel, it would be useful to have a total of 4 members – 2 of each sex. Hearings could then be mutually arranged to take account of a participant's preferences. This would ensure that participants were comfortable with the Panel and were more likely to raise any matter of a very sensitive nature.

#### **Schedule 1A – Part 4 - Recording of testimony**

- **(115) see 2.4 Section 26 – 4ZD (76) above**

#### **Schedule 1A – Part 4 - Payment of expenses**

- **(116)** FBGA & INCAS have requested that participants, who may be less well-off, be paid their reasonable out of pocket expenses on the day of their participation at the NCF. This would prevent the possibility of a long delay before their expenses are reimbursed.

#### **Schedule 1A – Part 6 - Confidentiality - Prohibition on disclosure**

**(127)** Paragraph 13(6) provides that a court may order the disclosure of information held by the Forum for the purposes of legal proceedings, whether civil or criminal (including for the purposes of the investigation of any offence or suspected offence); if it is satisfied that such disclosure is necessary in the interests of justice.

- Survivors of historical child abuse, during the NCF Consultation process, included asked in their submission that they be given details of all such reports made to the Police by the Forum.
  
- These details to include:
  - How many reports were made to the Police by the Forum?
  - How many investigations were conducted by the Police?
  - How many prosecutions were brought by the Police? and
  - How many prosecutions were successful?
  
- Survivors believe that this is necessary in the interests of justice, and that it would be convincing evidence that justice was being seen to be done. This matter is of prime importance, since survivors were not given any information of such actions having been taken by the TTBH Pilot Forum.

### **3. Other Relevant Matters**

- a. Timescale** – many survivors have been campaigning and promoting the cause of victims of historical abuse for 14 years. During that time, they have given an account of their childhood experiences to Social Services, the NHS, Psychiatrists, Psychologists, Researchers, Lawyers, the TTBH Pilot Forum and the SACRO – Restorative Justice process. Each exposure to any of these agencies created more re-traumatisation and disappointment. Their hopes were dashed when they realised that, after all that time, they were still no closer to obtaining justice, redress, reparation or closure.
- b. NCF Operational Independence** – participants would require assurances that the NCF, the Head and the Panel members would have full autonomy and all necessary powers sufficient for them to effectively carry out their duties without hindrance, especially with regards to security and confidentiality of testimonies or other sensitive information. It would also be a requirement that the NCF be allowed the freedom to be flexible and to adapt their procedures as the need arises.
- c. Support Mechanisms** – it is hope that these will be readily available and sufficient to the participants' needs. This to include qualified support, family support and signposting to ongoing support. The CELCIS, (2011) evaluation report of the TTBH Pilot forum recorded that, in 22 of the hearings Panel members were traumatised by the given testimony. It is therefore particularly important, that adequate and qualified support be made available to all members of the NCF Panel for as long as is necessary.
- d. Re-traumatisation** - referring back to what has been written in item a. above; this is a very serious issue for survivors of historical in care child abuse. It was again evident during the recent NCF consultation meetings in Edinburgh and Glasgow. As a result, survivors proposed to the Scottish Government, that preparatory sessions on how to cope with re-traumatisation should be presented by qualified professionals in convenient locations and should be made available to all those disposed to participate in the NCF. No concrete arrangements for these sessions have so far materialised.
- e. The Element of Choice** - by adopting the Confidential Committee approach, survivors feel that they are not being allowed to choose the Investigative Committee approach, and are being denied access to what may be, for some, a better option and will be the most likely way to get at the truth of historical in care child abuse. This, yet again, raises the question of victim/survivor human rights being violated.
- f. Accountability** – as a prelude to TTBH in 2009, the Scottish Government conducted a consultation on the basis of “Acknowledgement and Accountability”. The removal of the principle of Accountability from the remit of the TTBH Pilot Forum was done without any discussion with survivors, who perceived its removal as hurtful, disappointing and wholly

unsatisfactory. It is still a matter of concern that the NCF still does not address this issue and makes no link to the possibility of an Inquiry as a significant step towards obtaining justice for historical abuse survivors.

- g. Disclosure of Information** – Since the collection of data from the NCF will form the basis of a public historical record of the Scottish Care System, and since each care institution was different, there should be no problem with the NCF producing an accurate and coherent statistical analysis of that data in a meaningful format. Names and locations of Scottish care institutions are already in the public domain; therefore, it would not be a breach of confidentiality for these names to be recorded in any public report. It would mean a great deal to participants of the NCF (and their families), that their care institution was represented at the NCF.
  
- h. Restorative Justice** – this model proved to be completely inappropriate for historical abuse victims/survivors. There was a small minority uptake by those who attended the TTBH Pilot Forum. It was badly run; it was selective of the recommendations in the Consultation report; the SACRO facilitators had no previous experience of dealing with survivors of historical child abuse; in most cases it re-traumatised the participants; it raised false hopes; there were confidentiality clause issues; there were issues with the attempted apology; there was no justice as an outcome; and there was no coherent plan for the restoration of the child abusers.
  
- i. SHRC Framework** – further to what has been written at item a. above; for the vast majority of victims/survivors, the ultimate objective is for the SHRC Framework to be fully implemented and for the current laws to be amended so that victims/survivors can get access to justice. Only then will they feel their human rights have been properly upheld.

**Harry Aitken**  
**(former Chair of In Care Abuse Survivors, Scotland)**

7 April 2013