

Victims and Witnesses (Scotland) Bill

Former Boys and Girls Abused of Quarriers Homes (FBGA)

Background

To-date eight former employees of Quarriers Homes have been convicted in the Scottish Criminal Courts of abusing children placed in their care. These criminal cases relate to the 50s, 60s and 70s. Many former residents made allegations of being abused sexually and physically.

Time To Be Heard

Time To Be Heard (TTBH) was the pilot to test out the feasibility of introducing the National Confidential Forum. Despite the fact that there had been no prior proper and full consultation with former residents of Quarriers who the pilot was intended for, FBGA gave it our full support despite our initial reservations. Ninety-eight former residents of Quarriers came forward to participate in "Time To Be Heard" including myself and FBGA highlighted TTBH on our website and we encouraged other former residents to contact TTBH.

Victims-Survivors were treated with respect and many had an opportunity to recount their experiences. There were appropriate safeguards. However, there were concerns relating to the protocols concerning storage and retention of victims-survivors testimonies. The mix of the expertise of the chair and commissioners was well balanced and they were sensitive to the needs of those who participated in TTBH.

Feedback was generally perceived to be initially positive however a major concern and complaint of TTBH by participants was that there was no redress or remedies or reparation package-scheme available. There was no closure or resolution to their issues. Despite many participants having previously reported allegations to the Police and been through the Scottish Criminal and Civil Courts processes. Many participants felt disappointed and let down by the limited remit and mandate as their needs and expectations were not met nor addressed in TTBH.

Victims-survivors seeking redress, remedies and reparation issues were not addressed or highlighted nor their views expressed by any of the TTBH Commissioners who had operational responsibility for TTBH nor in any TTBH reports published.

The "Restorative Justice" model added to TTBH without any prior consultation was not widely supported and we believe that this restorative justice model is not appropriate for this particular group of vulnerable adults.

FBGA appreciated and welcomed Quarriers Charity and there Trustees support of TTBH despite our initial reservations.

Survivor Scotland Strategy

Despite the Scottish Parliament debating these issues in 2004. The core issues remain unresolved for victims-survivors and the outstanding issues have dragged on for far too long without any closure or resolution whatsoever. There has also not been a range of remedies or redress or resolutions with beneficial outcomes for those directly affected by this abuse.

There have been some positive steps taken within the Survivor Scotland Strategy such as the setting up of the support service ICSSS which FBGA campaigned for. There have also been various data collection projects, research, some development funding for innovative new projects. Development of care pathways.

FBGA participated on the Survivor Scotland subgroup in 2005 which resulted in The ICSSS service being set-up. FBGA have referred many former residents from a number of past institutions to the service for help and support over the years. A recent National Confidential reference and Survivor Stakeholder group set-up has ensured a wider more inclusive representation of a broad spectrum of victims-survivors in the processes of engagement this time round.

The functions and powers of the National Confidential Forum (as set out in the Bill)

We have liaised with Scottish Officials (Louise Carling) the Bill Team Leader for the SurvivorScotland Team who has been very helpful and kindly addressed FBGA's queries regarding the Bill.

Status of the National Confidential Forum – housed as a sub-committee of the Mental Welfare Commission – and its independence

As we understand it the Mental Welfare Commission (MWC) will retain overall responsibility for the National Confidential Forum (NCF) functions, but the Forum itself will discharge day-to-day functions. The MWC will provide support to enable the NCF to discharge its functions (to hold hearings and produce reports). The head of the NCF will be accountable to the MWC (Commission).

The specific mechanism for setting up NCF within the context of the Commission is the creation of a committee of the Commission to be known as NCF. The NCF will have a distinct identity within the Commission structure. We understand from the correspondence we have received that the NCF will not operate as a "usual committee" but rather operate as the NCF.

We would want to be assured by the Scottish Government of "NCF's" operational independence and its governance in this particular structure. Especially in relation to obtaining, the holding and storage of confidential data pertaining to victims-survivors testimonies and personal details.

We also believe that it is important for the NCF Chair to have operational autonomy and retain certain powers to carry out their Independent role effectively and as they determine. Within the NCF perimeters and structures as laid out within the Bill but with freedom to make decisions. As issues may arise which have not been considered or previously encountered.

We understand from Louise Carling, more specific arrangements for the hosting of the NCF within the Commission will be set out in an agreement and will provide more detail as to how the NCF will be able to discharge its functions with as much operational autonomy as possible. We would expect due consideration to be given to All who wish to submit a testimony, but this in our view is an operational matter for NCF commissioners.

Concerns regarding false allegations by a number of the parties need to be addressed. FBGA are seeking a fair and robust process for all taking into consideration the "Kaufman Canada 2002" report recommendations. The Rights of All require to be upheld in the processes.

The MWF Commission should have in place an independent and impartial complaints procedure clearly set-out regarding NCF.

Support for participants before, during and after their input

Support is important and we would expect to see a range of mechanisms for participating such as taking personal accounts through hearings, tele-conferencing and telephone interviews and email - mail facilities.

Support services should be appropriate to the needs of individual participants and seamless. Companion support is also invaluable for participants. Boundaries need to be clearly defined to participants including that the Panel members will not be offering on-going support. Support with travel expenses is required.

In TTBH counselling and other support was offered and this was provided by ICSSS (In Care Survivor Scotland Service). Participants found this help and the support invaluable.

Our concerns are that some victims-survivors require long term support that includes on-going home support and other forms of support services including intensive counselling support. Abuse and trauma support by suitably qualified health professionals such as (psychiatrists and psychologists).

FBGA would like to see a signposting of support and other services for victims-survivors who participate in NCF including for those who live outside Scotland. A conjoined and seamless approach to providing seamless support services before, during and afterwards.

Also there has to be recognition that some victims-survivors may wish to choose their own local support services but may require assistance to find local services. Especially participants who do not live in Scotland. It is

important that all participants who come forward are supported regardless of their location. Independent Advocacy support is also very important to empower and enable potential participants to make informed choices.

Any other aspects of the NCF.

The consultation for NCF was in our view appropriately managed and inclusive of a broad spectrum of victims-survivors in events that were enabling and safe. We would like to thank Survivor Scotland team for arranging these events and providing support to enable victims-survivors to contribute and participate in the NCF consultation.

Confidentiality

The confidentiality of participants and safeguarding of their testimony is important for participants if they are to have confidence in the NCF to enable them to come forward and explain their individual experience whether good or bad.

We recognise that there will be limits to confidentiality such as in the reporting to the police any allegations and where a legal duty exists to do so. Where there is a material risk of harm to children or adults-for example, where an alleged abuser identified at the Forum continues to work with children or adults-we understand the police will be informed.

The question for this Committee to consider, is will a confidentiality model on its own establish the full facts and the truth? Will this confidential model identify any systemic failures including possibly by the State?

Chair and Commissioners

It important that the NCF similarly have the relevant personnel with expertise and background to focus and respond effectively to the particular experiences, and the particular implications of those experiences, of people placed in institutional forms of care as children. FBGA are in broad agreement with (point 72) in the NCF analysis document. FBGA are awaiting confirmation as to whether there will be victims-survivors representation on the selection panel referred to in the Bill.

Retraumatiation

A major concern regarding NCF for FBGA is the potential of retraumatiation of victims-survivors who have had to revisit past abusive experiences in various processes without resolution or closure and how this abuse continues to impact on victims-survivors health and wellbeing.

Many Quarriers victims-survivors have given numerous testimonies to the Police, The Scottish Criminal Courts. Civil Court processes, TTBH and to Dr Janet Boakes, a psychiatrist with a special interest in the subject of false memory syndrome who was commissioned by the Defenders in the Court and Civil proceedings.

Revisiting past abusive events over and over again significantly affects the victims-survivors emotional and mental health wellbeing and compounds the original harm and damage inflicted. This includes victims-survivors who are considered “resilient” or with ordinary fortitude. Many victims-survivors who participated in TTBH reported having to seek additional psychiatric counselling and additional support afterwards once the realisation of their testimony they had given impacted on them.

So it is vitally important to have extensive support services in place before, during and afterwards and ensure that suitably qualified health professionals in abuse and trauma are in place and available. In addition to the ICSSS counselling support service.

Aggregation and Redaction of participants testimonies

Concerns remain about the aggregation of victims-survivors testimonies from different institutions and the potential for false allegations resulting from this practice. Whereby participants testimonies may be erroneously attributed to the wrong individual and institution.

Also will participants testimonies be identifiable in subsequent reports published and compiled, by those individuals providing such testimonies or will these testimonies be unduly redacted and disseminated in any final report on the pretext of confidentiality.

Many victims-survivors went public after TTBH and in other jurisdictions following the conclusion of confidential models and expressed frustration and disappointment that they could not identify their testimony in the said reports.

Each institution, organisation and entity had its own management, culture and structure. Institutions, Organisations and entities identified by participants as abusive regimes should have a factual history each addressed separately in any and all reports compiled, by NCF Chair and Commissioners.

We recognise also that there may be issues relating to the behaviour of former residents and others.

We see no legitimate reason why individuals convicted in the Scottish Criminal Courts of abusing children in care and in institutions and identified by participants. Why they should not be highlighted and identified in any and all NCF reports published and compiled.

Publicising the NCF

A multifaceted international and local media campaign may be required recognising that many former residents no longer reside in Scotland. Information packs concerning NCF should be non-jargon and set out clearly the processes that participants will engage in without any ambiguity. Including

the fact that victims-survivors testimonies will be redacted for confidentiality reasons. To enable potential applicants to make fully informed choices.

THE SHRC Recommendations and Framework

The Scottish Government stated in the analysis NCF consultation document that it recognises that the establishment of the National Confidential Forum is part of a suite of responses to people placed in care as children, including survivors of abuse. (Point 42).

We would ask the Scottish Government and The Scottish Parliament to now take this opportunity of constructive engagement by all the parties in the SHRC Interaction. To take immediate steps to address the outstanding issues to enhance and widen the legislation NCF Bill 2013 to include other elements of redress, remedies and reparation which meets the needs and expectations of the Scottish victims-survivors affected by these abuse issues.

FBGA and other victims-survivors are seeking The full implementation of the Scottish Human Rights Commission recommendations and framework relating to these historical abuse issues affecting Scotland.

FBGA have put forward concrete and equitable proposals in all the processes we have engaged in to-date including the recent Interaction and Timebar consultation, proposals for resolving these historical abuse issues equitably and in a non-adversarial way.

Other countries using best practice have addressed similar historical abuse issues to the benefit of their victims-survivors and society as a whole. By initiating processes that are cost effective, not adversarial but which have addressed the issues. While delivering positive outcomes which were beneficial for their victims-survivors without inflicting further harm or trauma on those abused.

We would now kindly request that The Scottish Government, The Scottish Parliament and all others face up to their collective responsibilities in these matters, and that this committee gives serious consideration to establishing a Scottish model of remedies, redress, and a reparation scheme within the NCF legislation. While ensuring the “Rights of All” are upheld in any processes.

David Whelan

Spokesperson

FBGA (Former Boys and Girls Abused in Quarriers Homes)

Biography

David Whelan is a former resident of Quarriers Homes. Following court proceedings in 2002 his abuser at Quarriers was convicted. He has been FBGA victims-survivors campaign group spokesperson since 2003/4; Participated on Survivor Scotland subgroup in 2005; FBGA contributed to the Tom Shaw review.

David participated regarding TTBH. He is a National Confidential Forum and InterAction Review group member in 2012/3
He is also the author of "No More Silence", published by Harper Collins in 2010, and a committee member of "Care Leavers Voice" UK Parliament.

Appendix Letter to David Whelan

Issues concerning survivors' narrative accounts to historical inquiry committees and those given within a therapeutic context.

Narrative Accounts to historical enquiry committees.

Where accounts are given to enquiries that do not have the strict parameters of the conduct of such accounts i.e., purpose, breadth and intention; survivors can find disappointing clashes of what they would have hoped such an enquiry to cover and any remedial effect that such an enquiry would have in terms of reaching effective compensation.

This mismatch of what is hoped for by survivors and that which is actually delivered by such enquiries is often the source of retraumatization, distress, confusion and a general feeling of not wishing to engage in further disclosures and narrations which have proven so fruitless in the past.

It would not be surprising to find real disappointment, hostility and distress by those survivors who in good faith have given their account with a wish for restorative outcomes that would truly recognize the trauma they have faced. Similarly with the wish by survivors that these restorative outcomes would also recognize those traumas which are ongoing with the consequential need of compensatory action; compensatory action which makes provision for survivors lives, so that they can effectively redress these trauma through further therapeutic means.

In some instances this will mean compensation which allows for them to usefully and credibly get back on their feet from such trauma which have been so disabling to their social personal and work lives. A future aspect of enquiry would need to be quite clear in its delineation of purpose, breadth and outcomes in terms of compensation and restorative actions,

Therapeutic Contexts

The marked differences of therapeutic contexts is that within this environment the survivor is immediately a credible client and has the right to be believed and accepted without any value judgements. This can differ markedly from the sometimes litigious digressions and reception of an account to an historical enquiry committee. This does once again demonstrate the nature and purpose of such an historical enquiry and can greatly affect the safety and security of survivors in giving their accounts. At the beginning of therapeutic narrations, it is made quite evident what the basic concept, purpose and

process of the therapeutic narration will be about. In this way confusion about intent and purpose is obviously reduced. Survivors can know their accounts are held in respect and esteem which lessens the tyranny, confusion and disappointment a survivor will feel where this is not made clear from the start. Given the above I would conclude the evident necessity of designing an historical survivor's enquiry according to purpose.

I would believe that an enquiry which has some of, if not all, the framework of an enquiry that respects the therapeutic condition as above would mitigate against any prospect of survivors feeling further abused, turned over and used for purposes that are out of their control and purposes that never in the first instance intended to respect or honour their accounts.

Dr Peter McParlin
C.Psychol., Fellow of the British Psychological Society

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