Justice Committee
Victims and Witnesses (Scotland) Bill
Written submission from the Former Boys and Girls Abused of Quarriers Homes

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 psychologically and physically.

It is our position and view that the, National Confidential Forum proposed legislation does not have a sufficient terms of reference, mandate or remit to address the issues in line with the recommendations and framework of the Scottish Human Rights Commission 2010 regarding these historical abuse issues affecting Scotland.

There are no effective remedies, redress, reparation, nor effective inquiries nor access to justice remedies in the current NCF process being proposed that meets the majority of the victims-survivors expectations and needs.

We would refer you to our 11th March 2013 written submission and also our oral testimony to the Health and Sport committee on the 26/03/2013 along with other victims-survivors in particular to our comments pertaining to the proposed National Confidential Forum and the proposed legislation.

We would also refer you to our submission dated regarding the recent "Timebar" consultation submitted on the 04/03/2013.

Sadly the Victims and Witness Bill currently falls short in addressing the needs and expectations of the Scottish historical abuse victims-survivors directly affected by these issues.

Other countries such as Ireland, Australia, Canada and including Jersey faced with similar historical abuse issues have addressed such issues by implementing good practice and legislation to the benefit of their victims-survivors.

We would welcome the opportunity to provide oral testimony to the said Justice committee on these important Justice issues affecting historical abuse victims-survivors.

The proposal to create a duty on relevant justice organisations to set clear standards of service for victims and witnesses

We welcome the proposal to create a duty on relevant justice organisations to set clear standards of service for victims and witnesses; we hope that this will assist victims-survivors in assisting them throughout any contact with any justice organisations and that these duties will be clearly set-out and be open and transparent.
Where there are failures to meet the duty what penalties or processes are in place for Clients, We believe there should be a clear complaints process that all victims-survivors can access when organisations fail in there duties.

**The proposal to give victims and witnesses a right to certain information about their case**

We believe this will help victims especially vulnerable victims-survivors understand the justice processes they engage in and we welcome this proposal.

The proposal to give vulnerable witnesses a right to access certain special measures when giving evidence;

Certain special measures for vulnerable witnesses are required especially in child abuse proceedings and where it involves a child giving evidence. It may also be necessary to provide certain measures in some historical abuse proceedings and where adults abused as children may require certain measures due to there vulnerability.

Also where there is witness intimidation prior to Court proceedings certain special measures may have to be considered to enable witnesses to give their evidence.

We recognise that a balance has to be struck to uphold the "Rights of All" including the right to a fair trial by those accused.

**The proposal to require the court to consider compensation to victims in certain cases**

Clearly in cases where there has been a conviction then the courts should be enabled to consider equitable compensation for victims in certain cases including in historical abuse cases.

This should include victims-survivors of historical abuse who may be currently denied access to certain equitable remedies including compensation due in part to current Timebar law.

The Scottish Government, Criminal and Civil Courts could consider various approaches to resolving this issue such as by having an impartial and independent Tribunal to determine the merits of each individual case and adjudicate on cases referred by the courts. Claimants in certain cases could be assisted to access an independent and impartial arbitration process.

Or other mechanisms could be established such as access to redress and a range remedies including victims-survivors funds which include reparation and compensation for the long term injuries and damage inflicted while addressing the issues comprehensively.

Each case has to be decided on its own merits and individual circumstances. It is important not to exclude on the basis of the non-availability of access to the criminal and civil courts process.
The proposal to introduce a victim surcharge and restitution orders, so that offenders contribute to the cost of supporting victims

Given the current difficulties in collecting fines which have been imposed by the courts on criminals especially those criminals with no funds then this may prove difficult to impose.

However those offenders with assets and funds could be targeted and a victim surcharge and restitution orders imposed.

It is an admirable aspiration but in our view is fraught with difficulties as victims awarded such funds may face additional criminal actions by perpetrators seeking revenge or their own form of justice, if such victims who benefit from this process are publicly identified.

Regarding Criminal Injuries Compensation the Home Affairs Select Committee in the UK Parliament in 2002 recognised that victims-survivors prefer the Civil Route to Justice in historical abuse cases. However in Scotland such access to Civil Justice remedies is denied to victims-survivors of historical abuse due to the imposition of current Time-bar law in Scotland and how it is rigidly interpreted by the Scottish Judiciary who have not exercised the discretion available more widely as they have done in similar cases in the English Courts.

Criminal injuries compensation does not hold organisations and institutions or individuals accountable. Nor does it take into account the long term damage inflicted on the health and well being of those abused. It also does not take account of any losses suffered by victims-survivors. Criminal Injuries compensation is generally at the lower end of the scale.

Again an impartial and independent victims panel-tribunal could determine the merits of each individual case and award remedies accordingly while protecting and maintaining the victims anonymity.

Any human rights implications arising from the victims and witnesses provisions in the Bill

There is currently continued denial to Scottish Justice system accessing redress, justice and a range of equitable remedies in line with the SHRC recommendations and framework 2010 for historical abuse victims-survivors directly affected by these issues.

That such a confidential forum should incorporate a range of other options for justice and remedies including establishing a fund for victims-survivors.

As the Commission outlined in the Human Rights Framework to address historic child abuse in 2010, survivors of serious ill-treatment, such as physical or sexual abuse or serious neglect, which may amount to inhuman or degrading treatment or punishment have a right to an effective remedy, including access to justice and
reparation (including as appropriate satisfaction, rehabilitation, restitution, adequate compensation and guarantees of non-repetition).

Depending on the nature of the perpetrator and the gravity of the harm the state also has an obligation to ensure effective official investigations or an alternative form of investigation sufficient at least to identify any state responsibility and systemic failures – that is to identify not only what happened (the “right to the truth”) but why it happened (to ensure guarantees of non-repetition).

We would kindly request that all the parties including the Scottish Government with collective national and International responsibilities to now take this opportunity to address these outstanding historical issues as other countries using best practice and implementing equitable redress and remedies, who were faced with similar issues have done.

The Scottish Government and Scottish Parliament should now implement in full the Scottish Human Rights recommendations and framework, February 2010 regarding these historical abuse issues affecting Scotland, see link.

http://scottishhumanrights.com/application/resources/documents/SHRCHumanRightsFrameworkonAAF.doc

5 April 2013
FBGA of Quarriers Homes