Introduction

1. The purpose of the session with the Cabinet Secretary is to discuss issues solely within the responsibility of the Scottish Government that were covered in the Cabinet Secretary’s update to Parliament on the Inquiry on 17th November.

Background

2. The Cabinet Secretary announced that:

- there would not be an additional panel member at this time although the Chair can appoint assessors to assist her and the other panel member;
- the remit of the inquiry was to be clarified but it would not be extended;
- details of the limitation bill and who its provisions apply to; and
- a consultation on redress would be announced in the coming weeks.

3. The Cabinet Secretary has also written to the Committee providing the clarified terms of reference for the inquiry.

4. For reference the terms of the Inquiries Act setting out what responsibilities fall to the Government and what falls to the Inquiry is attached at the end of this paper.

5. As agreed by the Committee, the Convener and Deputy Convener held meetings with survivor groups to discuss these issues and broader issues relating to the progress and format of the inquiry. Meetings with Incas and White Flowers Alba have taken place and the remaining meeting, with FGBA, will take place before the Committee meeting.

6. While much of the discussion at the meetings held took place on a confidential basis, there were certain issues that individuals highlighted that they would wish to be raised with the Cabinet Secretary. Incas has provided a written submission that covers these. White Flowers Alba may provide a submission early next week. The meeting with the FBGA is yet to take place, but its submission to the Committee following the Cabinet Secretary’s statement to Parliament is attached again for reference. Open Secret has also put in a submission.

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1 the Limitation (Child Abuse) (Scotland) Bill was introduced on 16th November by the Cabinet Secretary for Justice and the Justice Committee is the lead committee
Approaches taken elsewhere

Redress

7. Incas circulated an article from the Belfast Telegraph on interim payments in Northern Ireland in advance of the meeting with the Convener and Deputy Convener.

Inquiry remit and approach

8. White Flowers Alba highlighted the approach adopted in the Australian inquiry. This is a modular system where a number of modules can run at the same time with oversight from the central inquiry. Modules have defined boundaries by sector or theme and focus on specific case studies and White Flowers Alba suggested this allows survivors to have a pathway for their case which is shorter than the overall length of the inquiry.

Related work of other committees

9. The Justice Committee has been referred the Limitation (Scotland) Bill and will commence evidence taking in the New Year.

10. The Health and Sport Committee have agreed to hold an evidence session on child protection in sport in February 2017.

11. The Public Petitions Committee has a petition in relation to the In Care Survivor Service.

Recommendation

12. The Committee is invited to raise issues from the attached submissions from survivor groups with the Cabinet Secretary including in relation to:
   • the scope of the inquiry remit;
   • panel membership, including the potential to appoint assessors; and
   • progress with and approach to redress.

13. The Convener and Deputy Convener will also contribute issues raised at survivor group meetings wherever appropriate.

Paper from the Clerk

16 December 2016
SUBMISSION FROM INCAS

Initial submission commenting on the Cabinet Secretary’s Ministerial Statement

We note the major problems with the Inquiry in England and Wales, especially in relation to the Inquiry team. We have not had the same problems in Scotland, and we have enjoyed a good working relationship with the Inquiry team. The same cannot be said, however about the Scottish government.

In relation to the Inquiry team we have throughout the process been happy with the way that they have assisted elderly and sick survivors. They have taken their evidence in preparation for the formal hearings, which we hope they will start in the New Year. The delay in starting the formal hearings has been caused by the failure of government to resolve the issue of the remit. We understand that Lady Smith intends to make a preliminary statement about the process of the inquiry early next year, but we still await a date for any formal hearings. However, survivors still need to be encouraged to come forward, as there is a need for far more publicity via the media. Survivors also need to be able to trust the process and are entitled to both legal and emotional support. We do have our own independent legal support, and we are pleased that the counsel to the inquiry have been approaching their investigative tasks in a supportive and sensitive manner, and have been providing support services. We feel we can continue to work in a cooperative manner.

In the past two years we have had to relate to three different Education Secretaries and a plethora of junior ministers. We have, however, found the Scottish Government difficult to work with, and at times obstructive, and disingenuous. We have found that they do not really listen to the legitimate concerns of survivors, and fail to follow through on their promises. We have been concerned that they have decided on the support model and are determined to fit survivors into this model. They have also been quite happy to play survivor groups off against each other.

The government have ignored our requests to consider interim payments for the sick and elderly, and we need to sit down with government to resolve this issue as a matter of urgency. To announce yet another consultation process in relation to redress beggars belief. They will no doubt spend considerable amounts of money to get an external organisation to undertake this consultation, when we know, and the government knows what are the key issues. What is required is for the government to begin to show some compassion towards the thousands who have suffered.

Because the government is refusing to extend the remit of the inquiry they are effectively saying to those survivors who are excluded that we do not care about your suffering. It is also a double smack in the face for those survivors who were abused in the community prior to 1964. They will not be able to seek civil redress, when the time bar is set aside. The government had promised to find an equable solution, but is reneging on that promise, and it is again kicking the question of redress into the long grass.
The question for INCAS members will be what is the purpose of putting themselves through a process when its key objectives of justice, accountability, and redress, are being obstructed by government policy. What INCAS members want is that their abuse is acknowledged, that their abusers are held to account, that the organisations that were complicit in the abuse are held to account, and that appropriate redress takes account of the harm caused. At the present time our commitment to the process is in the balance. We have lost trust in government, and John Swinney and it is now his responsibility to restore that trust.

**Addendum 1 on abuse in football clubs**

In relation to the recent revelations in relation to Football Clubs as you are aware INCAS has argued, for many years, that the Inquiry should cover all agencies that had a duty of care towards children. This would have covered churches, and clubs including football clubs. Abuse by clergy and religious has been widespread, and needs investigating. The recent revelations about football clubs is not new, but the volume of that abuse is new. Sadly all organisation that have some responsibility for children, attract people who wish to gain access to children so that they can groom and abuse them. What we have also seen is that all organisations, without exception, prefer to protect the so called good name of the organisation, instead of reporting the abuse. Those organisations have, therefore, covered up the abuse and as result they became complicit in criminal activity. The fact that the abuse has been covered up, makes it difficult for any organisation to investigate itself. All inquiries should be completely independent of the organisation.

What is needed is a separate judge led inquiry covering all those agencies who had a duty of care for children. Government ministers have stated that they do not want to extend the remit of the current inquiry, so as not to prolong the inquiry. What the government has to ask itself has the abuse of children been so widespread in the organisations, with evidence of a complicit management cover-up, that it would justify police and judicial intervention. If so. then a separate inquiry should be established as a matter of urgency, lest that the government also becomes involved in ignoring the criminal behaviour that has taken place. For too long this government has sat on its hands, ignoring the justified anger of so many victims who seek justice, accountability and redress.

**Addendum 2 – copy of a statement issued to Lady Smith**

The following statement was issued following the announcement from Lady Smith, about a preliminary hearing at the end of January (issued 14th December)

_We had been made aware of this preliminary hearing, though not the date, at our last meeting with counsel to the Inquiry. It would appear that we are back to the beginning with the new chair explaining the next stages. Some progress has been made with many sick and elderly survivors having already given evidence to counsel to the Inquiry, but this is a first stage prior to any public or private hearings._

_We presume that Lady Smith will be setting out how she intends to approach the next stages._
We think it is important that Lady Smith announces

1. How many survivors have come forward so far, and in what categories, and from which establishments.

2. How she intends to launch the major publicity campaign to help survivors to come forward. (We have been pressing for a publicity campaign for some time.)

3. To explain the support that is available to survivors when they come forward.

4. That survivors can be legally represented.

5. To give a clear explanation about public and private hearings.

6. To explain how the Inquiry will be independent, and protected from any government interference.

There is concern that government legal advisers have been seconded to the inquiry, and survivors are concerned about the conflict of interest, are they able to serve two masters?

Trust continues to be a major concern for survivors and they will have to be satisfied that the inquiry will help them to achieve justice, accountability and redress.

We have asked government to include in the remit that Lady Smith should be able to make recommendations on redress. This is likely to be a sticking point for survivor groups. The government has so far refused to accede to what we see as an essential part of achieving justice.
SUBMISSION FROM FORMER GIRLS AND BOYS ABUSED IN QUARRIERS HOMES

[This submission has previously been seen by the Committee as it was produced following the Cabinet Secretary’s statement in November.]

Dear Convenor, James Dornan MSP,

I am writing to update you on the following;

Former Boys and Girls Abused in Quarriers Homes (FBGA) perspective of Deputy 1st Minister John Swinney MSP, recent statement to the Scottish Parliament on issues relating to the Scottish Child Abuse Inquiry, Timebar and Redress for victims-survivors of historical institutional abuse.

The background to resolving these issues was a process undertaken through an SHRC Interaction process organised by the Scottish Human Rights Commission and CELCIS in 2012-2014. Whereby all the parties to the dispute engaged with each other, this included representation from the Scottish Government, Catholic Church, Quarriers and other institution’s alongside individual victims-survivors and a number of groups including FBGA and INCAS.

The process resulted in the “SHRC InterAction Plan on Justice for Victims of Historical Abuse of Children in Care”

This InterAction Plan had a number of elements in the plans that were agreed by all of the parties in the Interaction process as the basis of a resolution to these issues.

In addition an Interaction Review group with representation of independent victims-survivors FBGA and INCAS was set up to monitor the implementation of the Interaction Plan and report into SNAP (Scottish National Action Plan) SHRC.

The Scottish Government has since implemented the following elements of the InterAction Plan since 2014, National Public Inquiry, National Confidential Forum, Integrated Victims-Survivors National Support Fund, Apology Law and has now brought forward a bill for Timebar for Access to Justice.

The following elements of the InterAction plan remain outstanding Redress-Reparation and Appropriate forms of Commemoration.

The Scottish Child Abuse Inquiry;

The change to the inquiry remit is a positive change and will bring clarity to this now. We were not supportive of widening the remit to such a degree whereby it had a major impact on the timescale. “We were mindful of the issues that have occurred regarding the English child abuse inquiry.

The Scottish Child Abuse Inquiry terms of reference and remit are focused, targeted and achievable in a reasonable timescale including with this additional change.”
FBGA highlighted to the Scottish Government and the Scottish Child Abuse Inquiry team in meetings why this particular change to the Inquiry remit was essential and necessary.

We feel strongly that the Scottish Child Abuse Inquiry should have set-up a consultation reference panel group with a broad spectrum of representation which included victims-survivor representation as they will be the primary users of the Inquiry. FBGA requested such a reference group in our original submission to the Inquiry and in the Interaction.

While the Inquiry team are meeting with victims-survivor groups such as FBGA and others individually. In our view it would have been extremely helpful to have a broader representative reference consultation group to raise issues collectively and constructively in a forum. Such as issues over the Inquiry remit and have others included. This may have avoided a lot of the negative media coverage around the Inquiry to-date.

FBGA have some concerns that a two panel team may not be sufficient or robust enough, but have been assured by the Scottish Government and the Inquiry Panel that the 2005 Inquiries Act permits Lady Smith to appoint Assessors. We would like to see an individual Expert Assessor who has a particular skill set and experience in Human Rights represented within the Inquiry team. As the Inquiry original mandate included a Human Rights approach.

**Timebar**;

This is a major step forward and one of the key elements in the InterAction plan. We believe that this will provide Justice and a remedy for many victims when the bill is enacted Many victims-survivors were previously denied access to Justice due to the current imposition of Timebar.

**Redress & Reparation**;

FBGA have submitted Redress and Reparation proposals to the parties including the Scottish Government a best practice model and proposals for addressing these issues. FBGAs proposals are victim-survivor centred and best practice guided from other countries affected by similar historical abuse issues. This FBGA Redress model addresses the Pre: 1964 issues and also those former residents abused who do not wish to be involved in possible adversarial court cases in the future and is a reconciliation model too.

**Appropriate forms of Commemoration**;

FBGA position is that until ALL the other elements in the InterAction Plan are resolved this element is somewhat premature but FBGA have put forward suggestions how this may be progressed and achieved. However it is not a priority at this time for FBGA.
FBGA are seeking the full implementation of the InterAction Plan in its entirety whereby there are equitable and just resolutions. We hope our constructive engagement provides a better understanding of the impact and issues directly affecting Quarriers Homes victims-survivors and others.

FBGA also meet regularly with the current Quarriers organisation and senior management in an InterAction process.

Victims-Survivors and groups representatives have been involved in helping shape, form and design all the projects within the elements of the Interaction Plan since Interaction process concluded. FBGA along with other survivors have also been involved in these issues since 2003.

Should the Convenor or committee members require further information please contact me.
SUBMISSION FROM OPEN SECRET

Open Secret have been delivering the In Care Survivor Service Scotland since 2008, initially funded by the Scottish Government and now by the ICSSF. Over that time we have worked with over 1000 survivors and currently we are working with around 140 active clients. Those clients were abused in care in a number of different establishments in Scotland. The clients have two active groups involved in campaigning and making changes for children in the future. They developed a DVD funded by health improvement to raise awareness of the impact of abuse, particularly in a care setting.

Unfortunately despite requests the clients have not been given the same opportunity as other survivor organisations to meet with the Deputy First Minister. This has been upsetting for them and they would respectfully request that they have an equal access to this opportunity. As well as the groups there is an individual survivor who would like to meet Mr Swinney.

Many of the survivors remain concerned about the direction and operation of the new In Care Survivor Support Fund and the role of ICSSS within it. They would like to have the opportunity to raise their concerns.

The Chief Executive of Open Secret, Janine Rennie was at the final stages of raising a petition regarding redress but has stalled the process due to commitment to revisiting redress as an option. However we do not feel that further consultation is required as redress was considered as part of the Interaction process. We would like to be part of any process to consider this very important issue.
INQUIRIES ACT 2005

The Child Abuse Inquiry has been set up under the Inquiries Act 2005 (see here), which extends across the UK. In relation to inquiries set up in Scotland by Scottish Ministers, the Act divides the responsibility of the Ministers and the inquiry chairman as follows:

- It makes provision for the Scottish Ministers to:
  
  set up formal, independent inquiries relating to particular events which have caused public concern, or where there is public concern that particular events may have occurred;

  set the terms of reference (here for the CAI);

  appoint a chairman to conduct the inquiry;

  appoint additional panel members and assessors where appropriate (it was originally intended that there be 2 or 3 additional panel members for the inquiry, one resigned in July 2016 and there is currently one panel member);

  remunerate the members of the inquiry panel and any assessor, counsel or solicitor to the inquiry;

  inform the Scottish Parliament of the above by oral or written statement.

- It provides for an inquiry chairman to determine the procedures to be adopted, and to have powers to require the production of evidence, the attendance of witnesses and the taking of evidence on oath;

- It places a duty on the inquiry chairman to deliver a report to the commissioning minister, and on the Scottish ministers to arrange for publication and the laying of the report before the Scottish Parliament;

(A useful House of Commons Library note on the 2005 Act is here.)