

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

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

### **1. Eligibility to participate in NCF**

The letter to the Health and Sport Committee from the Minister, Michael Mathieson, attempts to explain the Scottish Government rationale for not including in the NCF, young people in the age group 16-17. However, it is worth noting that any child, who may have experienced in care abuse, and had left care under the age of 13 years, would be out with the current 3 years prescribed by the “Time Bar” law before their 16<sup>th</sup> birthday. On that basis, it seems fair to include them in the NCF from the age of 16; otherwise they could be subjected to the same “Time Bar” restrictions that many adult survivors have suffered for many years. It would also indicate that the Justice system would not have learned anything from the current survivors’ experiences.

It would be interesting to know if anyone had actually asked the young people of 16/17 years, the youngsters who had been under kinship care and those who had been in foster care, whether or not they would like to be participants in the NCF. If no one has asked them, perhaps it would be wise to do so, just in case it causes problems in the future. After all, these groups must also be allowed to exercise their rights, and the oft times quoted mantra we hear in Scotland is - “the victims/survivors’ needs must always be at the centre of any decision making process”.

This issue raises another matter which has been of continuing concern to survivors, viz, that any child, currently, and in the future, placed in the Scottish care system, should get the benefit of any learning to be had from these many justice issues, and that every child should be fully informed of all of their rights, prior to leaving the care system, so that they too do not suffer the injustice of an inequitable “Time Bar” law.

### **2. NCF participant testimonies**

It is particularly important that participant testimonies be stringently dealt with under the relevant laws of data management and archiving and that the necessary control procedures with regard to access are at all times strictly adhered to. A necessary feature of these procedures should also take account of the situation that could arise if, for any valid reason, a participant is unable to complete their testimony at one session, or if they would like to make amendments or deletions, they should be permitted to return and do so.

Also, it would help if they were given a transcript of their testimony for that purpose and to keep as a record. Furthermore, as the TTBH report did not record that some participants had submitted legal documents to the TTBH Forum, this copy of their transcript would act as evidence that these documents had been submitted.

It would be helpful if all of these procedures were presented in an easy read format and included in the preparatory literature given to all intending participants in advance of them taking part in the NCF.

### **3. Reports to the Police by NCF Commissioners**

It is a matter of concern that the Commissioners in the TTBH Pilot Forum chose to use their discretion on the basis of age, perpetrators being deceased or care homes no longer operating.

To obviate this happening again, it would be wiser to tighten up the Victims and Witness Scotland Bill by making this a statutory requirement. This will bring clarity to the Victims and Witnesses Scotland Bill and will eliminate any possible doubt in the minds of the NCF Commissioners and the participants.

All testimonies given at the NCF which include allegations of child abuse should not be left to the discretion of the NCF Commissioners to report, but should be automatically referred to the police. Only then should it be for the Police to deal appropriately with these allegations - not for the NCF Commissioners to have any reporting discretion.

Furthermore, in the event that an allegation of child abuse is false, the participant should be fully informed at that point, what action the Commissioners intend to pursue. If the allegation is false, that advice given within the hearing, would give the participant an opportunity to retract the allegation, with no damage to themselves or the alleged perpetrator. Also, it should be made clear to participants that they have the right not to talk to the Police, if they so choose.

As has been shown by the Savile case in England, all incidences of child abuse reported to the Police was valuable intelligence. It served to gather an overall picture of the scale and scope of child abuse during that period and gave the Police grounds to broaden their investigations into the alleged behaviour of other child abusers.

An added requirement of child abusers being named at the NCF, and subsequently referred to the Police, is that the specialist Police investigation teams should be given appropriate training in the handling of these types of cases. This could help to eliminate the all too familiar experience by survivors whose cases are made to fit the system, rather than the system adapting to suit them.

### **4. Support and Advocacy**

It should be a matter of course that any vulnerable participant in the NCF, displaying the effects of historic child abuse, should be entitled to appropriate support measures to protect them against re-traumatisation throughout the whole process – for however long that support is needed – and that they should be allowed to choose the provider of that support and advocacy. At that point, any support should be customised to the needs of the individual, depending on their circumstances.

Broader discussions of the implications of the NCF have highlighted a more acute concern that the support and advocacy services currently available in Scotland, appear to be of a fragmented nature. This is creating the potential for conflicting advice, and the uncertainty that participants may not know where these services are located, or who best to engage.

Perhaps the NCF process has created an opportunity to standardise and integrate these services across Scotland so that the quality of service is assured, is cost effective and is flexible enough to meet the needs of all victims/survivors.

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