

VICTIMS AND WITNESSES (SCOTLAND) BILL: RESPONSE TO A CALL FOR EVIDENCE

Introduction

CEL CIS welcomes the opportunity to respond to the Health and Sport Committee's Call for evidence to inform Stage One of the Victims and Witnesses (Scotland) Bill. Our response focuses on the establishment of the National Confidential Forum (NCF). We appreciate the further opportunity to provide oral evidence to the committee on Tuesday 16th April 2013.

CEL CIS is the Centre for Excellence for Looked after Children in Scotland based at the University of Strathclyde. Together with partners, we are working to improve the lives of all looked after children in Scotland. Established in 2011, CEL CIS has been committed to further improving the outcomes and opportunities for looked after children through a collaborative and facilitative approach that is focused on having the maximum positive impact on their lives.

The work of Professor Andrew Kendrick, Jennifer Davidson and Moyra Hawthorn at CEL CIS, in collaboration with others, has generated considerable expertise to inform the proposed National Confidential Forum. As highlighted in our response to the Scottish Government's consultation on the creation of a National Confidential Forum, CEL CIS welcomes the National Confidential Forum as an opportunity for adult survivors of abuse in care to give testimony of their experiences.¹

Key Messages

Omission of those in foster care

Following consultation, we welcome the extension of the NCF to include long stay secure hospitals and secure units. However, the omission of foster care from the eligibility to participate in the forum remains a cause for concern. The evidence highlights that many adults may have experienced abuse and poor standards of care in foster care.² In the Swedish Inquiry into abuse in care, the majority of those who gave testimony had been abused in foster care.³ While we acknowledge that the National Confidential Forum is not only concerned with historic abuse, this evidence suggests that it is important that the National Confidential Forum should be open to adults who spent time in foster care as children. A Scottish Government funded study is currently underway to gather the views of adults previously in foster care as children on the appropriateness of the model of an

¹CEL CIS (2012) [Written Response to the Creation of a National Confidential Forum](#)

² Kendrick, A. & Hawthorn, M. (2012) [National Confidential Forum for Adult Survivors of Childhood Abuse in Care: Scoping Project on Children in Care in Scotland, 1930 - 2005](#). Glasgow: CEL CIS.

³ Nyman, A. (2012) *Summary of the Swedish Inquiry on Child Abuse and Neglect in Institutions and Foster Homes*. Presented at the XIXth ISPCAN International Congress on Child Abuse and Neglect, Istanbul, September 12th, 2012.

acknowledgement forum. The findings of this study should inform the development of NCF. We have identified other types of establishments which should be considered such as education hostels, youth justice provision, and evacuation centres. We must also remember that adults may have been placed as children in adult institutions, hospitals, prisons, Public Assistance Institutions.

Balance of Care Experiences

Time to Be Heard was established to hear the experiences of adults who had experienced care in Quarriers and ‘especially abusive experiences’.⁴ This, then, sets the framework for the Shaw’s recommendation of a differentiated approach to those who regard themselves as survivors and those who do not.

Some participants in the Time to Be Heard pilot considered that there was too much of an emphasis on historic abuse and that they had come forward precisely so that they could counter this and report their positive experience of the placement in Quarriers.⁵ We welcome the fact that the National Confidential Forum will hear testimony of positive experiences of care as well as any abuse experienced. However, we consider that it is important that this balance is maintained in the work of the National Confidential Forum. This is particularly important in terms of the impact of the National Confidential Forum on current and future child care services.

Archiving of Data

We agree that the National Confidential Forum should produce reports which will provide a record of participants’ experiences in care, and we acknowledge that limits will be required on information in the public domain in order to ensure anonymity and confidentiality. However, we believe that there is too much discretion and ambiguity in the wording of the bill about what may be recorded and in what format. We believe that careful consideration should be given at an early stage to the preservation and archiving of participants’ contributions to the Forum and in the variety of media in which it is captured (audio, transcripts, etc.). Similarly, consideration should be given to the preservation and archiving of all documents related to the National Confidential Forum. Discussion should take place with relevant stakeholders to consider how the maximum benefit can be gained from the wealth of information that the Forum will provide. There is a clear gap in the function of the NCF ‘to make a contribution to the permanent record of life in care, enhancing public knowledge and understanding of an important part of Scotland’s history’⁶ and the absence of any detail of how this will be achieved in the Bill. We strongly recommend that greater consideration is given to the archiving of data and respect for participants to retrieve personal testimonies to the NCF at a later date.

⁴ Shaw, T. (2011) *Time to Be Heard: A Pilot Forum*. (pg5)
<http://www.scotland.gov.uk/Resource/Doc/344008/0114448.pdf>

⁵ Hawthorn, M. and Kendrick, A. (2011) *Time to Be Heard Pilot Forum Evaluation : A Chance to Say More*, Glasgow: Scottish Institute for Residential Child Care.

⁶ Victims and Witnesses (Scotland) Bill Explanatory notes, Point 176.

Response to Key Aspects of the Bill

1. The Functions and Powers of NCF

The National Confidential Forum provides one important measure through which survivors may choose to recount their experiences and be acknowledged in a confidential setting. As the Time to Be Heard pilot forum evidenced, the Forum cannot be viewed in isolation from the wider issues of acknowledgement and accountability, reparation and redress, and justice. The Time to Be Heard report and the evaluation of the process identified how participants in the forum did not see it as a panacea, and were explicit in their demands for accountability in the response to historic abuse. We endorse the response of the Scottish Human Rights Commission and the development of Scotland's National Action Plan for Human Rights to include access to justice and right to effective remedy for historical child abuse.⁷

It is important that Scottish Government and other stakeholders accept that the National Confidential Forum is only one element of the response to the injustice of historic abuse, and will raise further expectations and demands for justice.

Further clarification is needed to address a core function of NCF 'to identify any patterns and trends in the experiences of persons placed in institutional care as children and to make recommendations about policy and practice which NCF considers will improve institutional care' (4ZB (c)(d)).

2. The Status of NCF

The issues to be considered by the National Confidential Forum are highly sensitive and it is therefore important that the Forum is seen to be as independent as possible, not only from Scottish Government, but also from any other public body and, ideally, it would be a free-standing organisation. We do not consider that it would be beneficial for the Forum to be integrated into another public body. If the Forum needs to be linked to another public body, it is important that its independence is recognised by it being a separate unit. It will also be important that clear and transparent governance arrangements are in place to underline the Forum's independence.

3. Support for Participants

Participants in the evaluation of the Time to Be Heard pilot were extremely positive about the process of the pilot and the support that they received. We think that the support mechanisms put in place for Time to Be Heard should be used as a model for the National Confidential Forum, and that additional suggestions identified through the experience of the pilot should be put in place. A number of these are detailed in the Time to Be Heard report. We would welcome greater consideration of support in the proposed Bill identifying the range of support needed to participate in the forum at all stages and more

⁷ Scottish Human Rights Commission (2012) [Getting it Right? Human Rights in Scotland](#)

specifically, open access to support for an extended period of time after participating in the forum.

Specific areas to consider are:

- Disabled children in care have been particularly vulnerable to abuse, and a range of supports will need to be put in place to support them to come forward and give testimony. The Committee should consider how this group of adults are actively informed and supported to participate in the NCF with recognition of their range of communication needs.
- People with mental health issues will also need particular support, especially those whose mental health issues are related to their experience in care and/or their experience of abuse.
- Specific measures of support will also need to be put in place for those who are in prison, hospital or care homes, for homeless people, and for the gypsy and traveller community.
- Consideration will need to be given to those living abroad, particularly those who went abroad as child migrants.
- Support needs of older people, as we know that a significant number of adults over the age of 75 will have experienced care as children.
- There should be consideration of young adults participating in the National Confidential Forum that may have different support needs. There should be assurance that participation in this process will not have any negative consequences for an individual accessing care leaver support.

4. Further comments

The Scottish Government should also consider what definition of 'adult' will be used and the implications this will have on the participation of young adults in the National Confidential Forum. Under the Adult Support and Protection (Scotland) Act 2007, an adult is defined as aged 16 years or older. The proposed Bill indicates the age of 18. It is feasible that an adult who participates in the National Confidential Forum may still be under the care of the state. Under the proposed Children and Young People (Scotland) Bill, a duty to support care leavers would extend to the age of 25. Therefore, there could be ambiguity about the eligibility of some young adults; for example, they may now be in a foster care placement. In these circumstances, there are additional considerations for their support to participate in the process where sensitive handling of confidential data. Present safeguarding concerns will need to be addressed.

For further information:

Professor Andrew Kendrick Andrew.Kendrick@strath.ac.uk
Jennifer Davidson Jennifer.Davidson@strath.ac.uk
Moyra Hawthorn Moyra.Hawthorn@strath.ac.uk

Prepared for submission: 9th April 2013