

Working together and moving on: A human rights approach to addressing Historical Abuse

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Historical Abuse, Human Rights

I never for one moment missed not having my natural parents around. Being in one place for my entire childhood until the age of sixteen gave me everything any child needs to have. I had stability, education, love and security - exactly what any parents [sic] wants for their child - as Miss Martin and her staff made sure that all of the children at Tenterfield never missed out on all these things.

(Irvine, 2010, p.201)

Thus Margaret Irvine described her childhood in residential care in the 1940s and 50s. Others have reported similar experiences, citing carers who made a difference, who acted as role models and offered opportunities not possible if they had remained at home (Hawthorn, unpublished; Divine, 2013). Likewise, practitioners hold memories of loving and caring for the children and young people in their charge. In the 1980s, however, concerns began to emerge in the UK about what is now referred to as historical institutional child abuse. Although there had periodically been disquiet about the quality of residential childcare over the years (Kendrick and Hawthorn, 2012), such concern became more sustained, escalating during the 1990s. This paper will outline the process in Scotland of using a Human Rights Framework to address the issue.

Emerging Awareness of Historical Institutional Child Abuse

Possibly as a result of care leavers reconnecting with childhood friends through social media, support groups for survivors of historical institutional child abuse emerged during the 1990s. Some of these care leavers, who may refer to themselves as 'survivors' or 'victim/survivors', proceeded to campaign in respect of what they perceived to be historical injustice. In 2002, Chris Daly, a survivor of institutional child abuse, lodged Petition 535 with the Scottish Government (a) to make an inquiry into past institutional

child abuse, in particular for those children who were in the care of the State under the supervision of religious orders and (b) to make unreserved apology for said State bodies and to urge the religious orders to apologise unconditionally (Scottish Parliament, 19 August 2002). In 2004, Scotland's First Minister, Jack McConnell issued:

A sincere and full apology on behalf of the people of Scotland, to those who were subject to such abuse and neglect; who did not receive the level of love, care and support that they deserved and who have coped with that burden all of their lives. (The Scottish Parliament, 1 December 2004)

Following the apology, a range of initiatives was introduced to address the issues emerging. Stakeholders, including survivors were involved in discussions. Tom Shaw, a former chief inspector of education and training in Northern Ireland, was appointed to consider the laws, rules, regulations and powers that governed how residential children's services were run, regulated and inspected, what systems were in place to ensure that these were followed and how these worked in practice (Shaw, 2007). In 2008 the In Care Survivor Service Scotland (ICSSS) was formed to provide a counseling and advocacy service for care leavers and survivors. In September 2009 Scottish Ministers gave approval for a Pilot Confidential Forum and Tom Shaw was invited back as Chair. Loosely based on the Irish model of Confidential Forum wherein survivors could speak of their experiences of institutional abuse in a sympathetic and informal forum, the panel heard the narratives of care leavers and survivors of institutional abuse in Quarriers, a voluntary agency that had provided residential care for children for some 140 years in Scotland (Shaw, 2011). This was evaluated (Hawthorn and Kendrick, 2011; Scottish Government, 2011) and drawing on the lessons learned in 2014, a National Confidential Forum was inaugurated to hear the experiences of care leavers and victim/ survivors, regardless of whether or not they deemed themselves abused.

Also in 2008, the Scottish Government announced that it would pilot a form of 'truth commission' on historical abuse of children in care, later given the working title of 'Acknowledgement and Accountability Forum' (Scottish Government, 2008). In March 2009, Scottish Human Rights Commission (SHRC) was commissioned by Scottish Government to develop a Human Rights Framework for the design and implementation of the Acknowledgement and Accountability Forum and in 2010 SHRC published the 'Framework for Justice and Remedies for Historic Abuse of Children in Care' (known as the SHRC Framework). This drew on a consultation with survivors of institutional abuse (Duncalf, Hawthorn, Davidson, Goddard & McMahon, 2009) and an analysis of international human rights law (Kemp & SHRC, 2010). This work was independent of but under contract to Scottish Government and in December 2011, Scottish Ministers agreed to engage in an 'Interaction Process' to progress the SHRC Framework. An 'Interaction' in this context is best described as a forum for independent mediation and resolution which brings key actors together to find a way forward within a human rights framework (Kendrick, Hawthorn, Karim & Shaw, 2015). In this instance, stakeholders worked together to develop an Action Plan to implement the recommendations of the SHRC Framework. Stakeholders included survivors of institutional abuse, representatives of statutory agencies, providers and former providers of residential services for children, residential care practitioners and managers. The Interaction process gave an opportunity for those involved to develop

insight and understand each other's perspective, thus developing a shared solution while respecting each other's rights (Kendrick et al., 2015). The outcome was an Action Plan for Justice for Victims of Historical Abuse of Children in Care (SHRC, 2013). The remainder of this paper will describe this process.

Interaction on Historical Abuse

The Centre for Excellence for Looked After Children In Scotland (CELCIS) was commissioned by SHRC to provide support to the initiative. The initial time scale was that this should be completed in four months. It quickly became clear that in order to be effective, the process required more time. A website regularly updated by a member of the CELCIS Communications Team was developed (www.shrcinteraction.com) serving to share information about the Interaction and related processes. A Review Group, chaired by Professor Andrew Kendrick, was formed to oversee the process. Membership of the Review Group was representative of stakeholders relevant to the process at this time: victim/survivors; Scottish Government; statutory and voluntary provider; and representatives of SHRC and CELCIS. It was clear, however, that there was a need to actively engage a wider range of stakeholders, particularly those that no longer provided child care services. A small Project Team was appointed; participants were selected on the basis of relevant expertise, such as mediation or working with providers and former providers of residential childcare services. A combination of individual meetings, telephone calls and group meetings with stakeholders was convened: victim/survivors including child migrants and those from minority ethnic groups; residential care practitioners and managers; the Conference of Religious and the Conference of Bishops; and statutory and voluntary agencies. There were some groups with whom no contact could be established, however, for example children from the travelling community that may have been admitted to care but lost contact with their cultural roots. The focus was to identify the enablers and barriers to engaging in the Interaction process.

Some 12 months after the process had started the first Interaction meeting was convened in February 2013, facilitated by Monica McWilliams (Professor of Women's Studies University of Ulster and former Chief Commissioner of the [Northern Ireland Human Rights Commission](#)). Fifty participants attended. They worked together in pre-selected groups, each of which, as far as possible, had representation of key stakeholders. Anecdotally most reported this as having been a positive opportunity to progress the agenda. Four broad themes emerged which provided the framework for future work and became the subject of four smaller focus groups attended by participants of the initial Interaction. These were as follows:

- empowering people to know and claim their rights;
- acknowledgement of victim/ survivor experiences;
- ability of public and private bodies to deliver human-rights-based justice and remedies;
- accountability for historical abuse.

An open event for victim/ survivors was also convened which allowed them to engage with the agenda and contribute to the remedies. Information about the meetings were posted on the website and interested parties were invited to submit their views in writing or by telephone. In June 2013, a second InterAction was convened which synthesized the conclusions of the 'mini-interactions', outlining the plans for further action which formed the basis of the embryonic 'Action Plan'.

Four InterAction meetings were held in total. After each, an open meeting was convened, facilitated by Professor Andrew Kendrick and CELCIS, and generally attended by between 30-40 survivors. By the 3rd InterAction in August 2014, a draft 'Action Plan' was completed and finalised following extensive consultation. This was presented to Government Ministers at the fourth Interaction in October 2014 where it was accepted. A final open meeting for survivors was convened in December 2014. Government Ministers attended and gave a commitment to take forward the Action Plan. Remedies fell broadly into two broad groupings:

1. Acknowledgement of historic abuse of children on care and effective apologies.
2. Accountability of historic abuse of children in care to be upheld including access to justice, effective remedies and reparation.

A core goal of the plan is that survivors should be empowered through implementation of the recommendations. In respect of Acknowledgement, the Action Plan calls for removal of the barriers to effective apologies, including consideration of the merits of an apology law whereby agencies could offer a meaningful apology without financial liability; such laws exist in other jurisdictions. The 'Action Plan' also supports the use of the National Confidential Forum, calling for this to establish a national record and forms of commemoration considered appropriate by survivors. In order to improve accountability, the plan called for a review of lessons from previous inquiries, including consideration of the costs and benefits of a national inquiry; a review of the barriers that victim/ survivors face in the civil justice system; a nationally consistent and appropriate approach to the investigation and prosecution of offences relating to historical abuse of children in care; consideration of the development of a survivors' support fund; and the implementation of the recommended ongoing review of record keeping.

After the InterAction.

At the time of writing (October 2015), commitments agreed in the Action Plan are being pursued. Although not an outcome of the Interaction process, the National Confidential Forum continues and the Historical Child Abuse Inquiry commenced on 1 October 2015; Scottish Government has carried out a Consultation in respect of the Survivor Support Fund and a consultation in respect of Commemoration is underway; legal processes continue in respect of amending Apology Law and Review of the Time Bar. Record keeping is being pursued by Andrew Kendrick and CELCIS through a series of Seminars known as 'Reclaiming Lost Childhoods', convened under the auspices of the Scottish Universities' Insight Institute. These have again brought together a range of stakeholders: survivors of

institutional abuse; residential care practitioners and managers; academics; counselors and advocacy workers; and archivists, among others.

Reflections

The Interaction process is currently being evaluated by a team at the University of Strathclyde. With a few exceptions, anecdotal accounts are that stakeholders valued this approach. The following are some of the features, which possibly contributed to such feedback:

- The two-tier approach of the Review Group retaining an overview while the Project Team focused on relationship building, allowed for a clear separation of roles.
- Allowing Stakeholders time to engage with the preparatory process, to explore the agenda, to share experiences and concerns in a safe environment, to consult with their wider networks before attending the first Interaction.
- Operating within a Human Rights Framework; Terms of Reference respecting the Human Rights of all were established from the outset and with very few exceptions over the process, were respected.
- Having an external facilitator to ‘hold’ the mediation process.
- Creating a safe environment where participants could share experiences and work together to find solutions. Arguably all participants took risks.

As remedies are being progressed, however, some concerns are evident:

- There is considerable scope for breakdown in communication between parties involved in implementing the Action Plan.
- While stakeholders worked together throughout the Interaction process, there was no locus for this to continue following completion of the Action Plan. Some survivors have expressed considerable concern at the possibility of losing the quality relationships developed with former care providers and there is no framework in place to support this.
- Due to the independent nature of initiatives such as the National Inquiry and the Confidential Forum, those leading have not experienced the close relationships between stakeholders that developed during the process.
- Despite a Member’s Bill seeking provision that an expression of apology does not amount to an admission of liability and is inadmissible as evidence, early indications are that there may be legal challenges to this; agencies are still restrained from apologising to survivors without being held accountable.

The Action Plan will be monitored as part of the Scottish National Action Plan; the Interaction Review Group is also continuing with expanded membership, representative of stakeholders in the process, now monitoring the implementation of the plan.

Conclusion

While there has been recognition of historical institutional abuse of children since the 1980s, more recently this has joined other human rights abuses such as the Holocaust and Apartheid to be viewed internationally as historical injustice (Torpey, 2003; Sköld & Swain, 2015). Although lessons can be learned through international comparisons, arguably remedies need to take account of local history and culture. Historically in Scotland responses have focused on abuse in residential care. The most recent initiatives however, such as the National Confidential Forum and Public Inquiry, have included abuse in foster care and Independent Boarding Schools. While there has been progress, much has still to be done. The SHRC Interaction has been an important stage in this process. Undoubtedly some may believe that not enough has been done and others that the response is disproportionate, that what is now framed as abusive practice was 'of its time'. There are still challenges, such as defining 'support for survivors'; supporting survivors' access to personal records and relevant archives; and identifying current practice that may be the institutional abuse of the future. The SHRC Interaction process, however, has allowed survivors to remain central to the process while the human rights of all are respected.

More information is available on the website created for the process, www.shrcinteraction.org

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