

## Consultation Questionnaire

**Q1. Do you agree or disagree with the purpose of a National Confidential Forum?**

Agree  Disagree  No preference

### Comments

CELCIS welcomes the National Confidential Forum as an opportunity for adults who have been in care as children and survivors of abuse in care to give testimony of their experiences. While we agree with the overall aim, there are a number of issues regarding the purpose of the National Confidential Forum which require further comment.

The consultation document limits the participants in the National Confidential Forum to adults who spent time in residential care as children. However, we know that many experience abuse and poor standards of care in foster care (Kendrick and Hawthorn, 2012). In the Swedish Inquiry into abuse in care, the majority of those who gave testimony had been abused in foster care (Nyman, 2012). 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. Similarly, over the past 100 years, children have been placed in a range of institutional settings (youth justice establishments, hospitals, prisons, education hostels, Public Assistance Institutions, WWII evacuation centres, etc.), and adults who have experienced care in these settings should be eligible.

We agree that it is imperative that lessons learned from the past are used to prevent abuse in the future. The recent case in Rochdale highlights that even now looked after children are vulnerable to abuse and exploitation and do not always receive adequate protection even when they report abuse to professionals (Rochdale Borough Children Safeguarding Board, 2012). As we have highlighted in our recent response to the Scottish Government consultation, *Improving advocacy for children and young people: Principles and minimum standards*, we know advocacy has been recognised as an important safeguard for children, especially for those children living away from home. For example, a specific recommendation of the Kerelaw Inquiry (2009) was to improve avenues for listening to children through easily understood and accessible complaints procedures; effective monitoring and review of complaints; and adequately resourced children's rights and children's advocacy services. There are a range of other issues which also continue to be addressed to ensure the proper protection of children in care, e.g. recruitment, training, physical restraint procedures, whistleblowing, etc. No assumptions can be made about the current and future protection of children, and we agree that the findings of the Forum should make suggestions for improvements in child care services (both residential and foster care).

We agree that the National Confidential Forum should produce a report 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 careful consideration should be given at an early stage to the preservation and archiving of participants' contributions to the Forum, 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.

We agree that the National Confidential Forum should operate for a fixed period of time. However, we consider that there will be a need to ensure that needs of care leavers and survivors of historic abuse can be addressed into the future and beyond the operation of the National Confidential Forum.

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*.

<http://www.survivorscotland.org.uk/downloads/1343290344-Scoping%20Report%20final%20June%202012%20v2.pdf>

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

Rochdale Borough Safeguarding Board (2012) *Review of multi-agency responses to the sexual exploitation of children* <http://www.rbscb.org/CSE2.pdf>

Scottish Government (2009) *Independent Inquiry into abuse at Kerelaw residential school and secure unit: Jointly commissioned by the Scottish Government and Glasgow City Council*, Edinburgh: The Scottish Government.

**Q2. Do you agree or disagree that the Forum should operate independently from Government?**

Agree  Disagree  No preference

**Comments**

Given the sensitivities around the issues to be addressed by the National Confidential Forum and the fact that Scottish Government is a significant stakeholder in relation to the provision of state care and addressing the needs of care leavers and survivors of historic abuse, we consider it important that the National Confidential Forum should operate independently from Scottish Government.

**Q3. Should the Forum**

**(a) be integrated into another public body ?**

Agree  Disagree  No preference

**(b) be a separate unit within another public body?**

Agree  Disagree  No preference

Comments

As noted above, the issues to be considered by the National Confidential Forum are highly sensitive and it is therefore important that the Forum is 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.

**Q4. Do you agree or disagree that all adults who were placed in residential care by the State should be eligible to take part in the National Confidential Forum?**

Agree  Disagree  No preference

Comments

We agree that all adults who were placed in residential care by the State should be eligible to take part in the National Confidential Forum. However, we consider that other groups should also be eligible to take part in the Forum. We have noted above that we consider that adults who were placed in foster care and in a range of other institutional settings (youth justice establishments, hospitals, prisons, education hostels, Public Assistance Institutions, WWII evacuation centres, etc.) should also be eligible to take part in the Forum. In addition, all those in residential and foster care under private arrangements should be eligible where the State had a regulatory function in monitoring and inspecting placements. This recognises the changes in legislation and types of placements which have taken place over the past century (Kendrick and Hawthorn, 2012).

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. Therefore, it is feasible that an adult who participates in the National Confidential Forum may still be under the care of the State. In these circumstances, there are additional considerations

for their support to participate in the process, and where sensitive handling of confidential data is required. Current safeguarding concerns will need to be addressed. This is an area that requires further consideration.

**Q5. Do you agree or disagree that the process should be the same for all participants, regardless of whether they regard themselves as survivors of abuse in residential childcare?**

Agree  Disagree  No preference

#### Comments

This raises a number of important issues and relates to the definition of the core purpose of the National Confidential Forum. Time to Be Heard was established to hear the experiences of adults who had experienced care in Quarriers and 'especially abusive experiences' (Shaw, 2011, p.5). This sets the framework for the Shaw's recommendation of a differentiated approach to those who regard themselves as survivors and those who do not. The purpose of the National Confidential Forum, as set out in the consultation document, however, does not mention historic abuse and simply states: 'The Forum will be designed to give adults who spent time in residential care as children the opportunity to describe their experiences in residential care'. Without reiterating our argument that the remit should be expanded to include all adults who have experienced care outwith their family, we agree with the purpose of the National Confidential Forum as stated. This would mean that there is no justification for taking a different approach for those who have positive experiences of care.

One of the pieces of feedback from some participants in the Time to Be Heard pilot was that they 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 (Hawthorn and Kendrick, 2011). 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. A total focus on historic abuse could reaffirm negative messages about residential and foster care, and increase the stigma linked to these services. We therefore consider that it is important that the National Confidential Forum should hear a balanced range of testimony from adults who have experienced care as children.

Another important issue concerns the way in which individuals might define themselves as survivors or not. The fact that individuals do not define themselves as survivors of abuse does not mean that they have not experienced abuse. This would affect the way in which they might present written information as opposed to oral testimony. Whether adults who have experienced care as children might consider themselves survivors of abuse also depends on what we define as abuse, particularly in the context of historic abuse in care.

The consultation document draws on the Scottish Office guidance of 1998 and refers to : sexual abuse ; physical abuse ; failure to thrive ; emotional abuse and physical neglect. While all these types of abuse can certainly happen to children in care, there are also broader issues relevant to historic abuse. These have been defined as 'programme abuse' and 'system abuse' (Gil, 1982) 'Programme abuse' involves extreme or unfair policies, or inhumane or abusive techniques and regimes. An example in the UK, was the use of 'pindown' in Staffordshire children's homes which involved a restrictive regime involving persistent isolation with no visits, removal of ordinary clothing and enforced wearing of night clothes, non-attendance at school, and no access to writing or reading materials, television or radio (Levy and Kahan, 1991). 'System abuse' is the most difficult to define but involves the long term negative consequences of the failures of the child welfare system itself leading to poor outcomes for children and young people (Kendrick, 1998).

For these reasons, we consider that the process should be the same for all participants, regardless of whether they regard themselves as survivors of abuse in care.

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.

Gil, E. (1982) Institutional abuse of children in out-of-home care, *Child & Youth Services 4*, 7-13.

Kendrick, A. (1998) In their best interest? Protecting children from abuse in residential and foster care, *International Journal of Child & Family Welfare*, 3(2), 169-185.

Levy, A. and Kahan, B. (1991) *The Pindown Experience and the Protection of Children: The Report of the Staffordshire Child Care Inquiry*, Stafford: Staffordshire County Council.

Shaw, T. (2011) *Time to Be Heard: A Pilot Forum*.

<http://www.scotland.gov.uk/Resource/Doc/344008/0114448.pdf>

**Q6. Do you agree or disagree that people who were in the following types of residential care should be included:**

- residential schools and children's homes**
- residential educational provision for children with special needs**
- long-stay hospital provision for children with acute medical and/or mental health needs**
- secure accommodation**

Agree  Disagree  No preference

## Comments

We agree that people who were in residential schools and children's homes, residential educational provision for children with special needs, long-stay hospital provision for children with acute medical and/or mental health needs, and secure accommodation should be eligible for participation. However, we have noted above that we consider that adults who have experienced foster care should also be eligible for participation in the Forum. We have identified other types of establishment 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 (such as hospitals, prisons, Public Assistance Institutions).

It is important to ensure that people are not excluded from participating in the National Confidential Forum because of over-prescriptive definitions of the type of placements which are considered to be relevant. There has been massive change in terms of categorisation of establishments, terminology (such as the evolution of the term 'boarding out'), legislation, and policy and practice in the placing of children over the past century. All adults who have experienced care outwith their own family, therefore, should be eligible.

The consultation document raises the issue of the responsibility of the State in relation to those placed in care because of State intervention and those placed through private arrangements, and the greater responsibility of the State for the former. While this might be the case, care has to be taken due to the changing nature of such private arrangements over time and the continuing regulatory function of the State. In addition, we consider that the State's responsibility for acknowledging injustice and supporting people to give their testimony applies to all.

While it is not possible to say that an opportunity to be heard would have the same benefits for those not in institutions similar to Quarriers, the broader experience of working with the survivors of abuse (irrespective of whether or not they were in care) does not give us any reason to believe that it would **not** be a benefit to them.

Therefore, we do not consider it appropriate to focus solely on adults who spent time in residential care.

## **Q7. What other support do you consider that participants would benefit from before, during and after the Forum?**

### Comments

Having been involved in the evaluation of the Time to Be Heard pilot (Hawthorn and Kendrick, 2011), we know that participants 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 (Shaw, 2011).

As raised in Q4, there should be consideration of young adults participating in the National Confidential Forum that may have different support needs. There should be assurances that participation in this process will not have any negative consequences for an individual accessing careleaver support.

**Q8. Do you think that the participants should be protected from legal action in connection with their work for the Forum?**

Yes  No  No preference

Comments

We agree that given the nature of the material which will be considered by the National Confidential Forum, there will be a need, in principle, for those individuals working on the Forum to have protection, and for there to be potential restrictions on disclosure of confidential information. Similarly, the nature of the confidentiality given to participants in the National Confidential Forum will need to be considered in relation to their protection.

However, we are also very aware that there are other stakeholders in this process, particularly those residential workers, foster carers, and other professionals working in the care services. Measures to protect participants and the extent of confidentiality, should not impinge on the rights of others to natural justice. Therefore, careful consideration needs to be given to the implications of any such measures.

**Q9. Do you think there are any barriers that would prevent people who are eligible to take part in the Forum from participating?**

Yes  No

Comments

There are a range of barriers which will hinder people who are eligible to take part in the Forum from participating.

One of the most important barriers is the 'silence' which has surrounded abuse over the past hundred years. The dynamics of power which are central to the abusive relationship can have long-standing psychological and emotional consequences for the survivors of abuse. Participants in the Time to Be Heard pilot expressed their anxiety, fear, upset and conflict about taking part, even if they considered that it had been a worthwhile and positive experience to have done so.

The perceived stigma of being in care is a further barrier and some participants of the Time to Be Heard pilot had not told people that they had been in care as a child.

There will be particular barriers for specific groups of people.

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.

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.

Finally, the National Confidential Forum will need to consider the 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.

**Q10. Do you wish to add any additional points about the Forum?**

Yes  No

**Comments**

The consultation document acknowledges that the National Confidential Forum is being taken forward separately from the Scottish Human Rights Commission InterAction on Historic Child Abuse, and that Scottish Government is taking part in the InterAction.

The Time to Be Heard pilot forum evidenced, however, that 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.

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.

# Equality Impact Assessment

## Introduction

The public sector duties require the Scottish Government pay “due regard” to the need to:

- Eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the “protected characteristics” of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

In effect, this means that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies.

A key part of those duties is to impact assess all our policies to ensure that we do not inadvertently create a negative impact for equality groups and also that we actively seek the opportunity to promote equality of opportunity and to foster good relations.

## The Aim of the National Confidential Forum

The aim of the National Confidential Forum is to give adults who spent time in residential care as children the opportunity to talk about their experiences.

In this section of the consultation questions we are particularly interested in finding out your views on whether the National Confidential Forum meets the needs of the following groups:

- Age
- Disability
- Gender
- Sexual Orientation
- Race
- Religion and Belief

Your responses to the questions will help us to carry out a full equality impact assessment for a National Confidential Forum.

## Questions

1. Do you think the creation of a National Confidential Forum will have a disproportionately negatively impact on particular groups of people in our target audience?

Yes  No

### Comments

It is not envisaged that the National Confidential Forum would have a negative impact on particular groups.

2. Do you think the creation of a National Confidential Forum will have a positive impact on particular groups of people in our target audience?

Yes  No

### Comments

The creation of the National Confidential Forum allows the important opportunity for those who have had experience of care to share their testimonials in a respectful and meaningful way.

3. What negative impacts do you think the National Confidential Forum will have on a particular group?

### Comments

It is important to recognise the availability of support at all stages of the process to ensure that this group of people do not experience negative consequences as a result of participating in the Forum.

It will be vital to ensure that everybody who wishes to participate in the Forum are able to do so. Some specific considerations are:

- Age  
Meeting the needs of the youngest and oldest participants to ensure they are equally listened to, respected and supported through the process. Ensuring practical support to participate (for example, transport).
- Disability  
Ensuring that information about the Forum is communicated in a wide variety of formats and the process of participation is made accessible to all.
- Sexual Orientation

Given the highly sensitive issues raised for some adults, there needs to be careful consideration in ensuring that the process is respectful at all stages. There may be particular concerns about confidentiality in participating in the forum for some adults.

The oversight of these issues may lead to a negative impact for certain groups and a concern that their views and experiences have not been heard in the process.

4. What positive impacts do you think the National Confidential Forum will have on a particular group?

#### Comments

The creation of the National Confidential Forum is the overdue recognition of the harm experienced by children and young people who should have been cared for. As Shaw (2011) found, many former residents wanted to have their experiences as children in a residential establishment heard and recorded – a means of listening to and acknowledging what they need to tell.

5. What changes would you suggest to reduce any negative impact you have identified?

#### Comments

As discussed throughout the document, the importance of safeguards for participants; equitable participation and honest learning from the process. As discussed in Q5, there should be a mindfulness of the potential stigma created around residential care and the consequences this may have.

6. What changes would you suggest to enhance any positive impacts you have identified?

#### Comments

As recognised, the Forum is only one part of the process and there needs to be access to justice for participants.

The National Confidential Forum needs to ensure that the testimonies are listened to and acted upon to ensure that there is learning from historical abuse and further potential abuse is mitigated against.

7. Are there any significant issues we need to consider in relation to:

- Age
- Disability
- Gender
- Sexual Orientation
- Race
- Religion and Belief?

Comments

See Q3.