

# Scottish Child Abuse Inquiry

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## Address by Susan O'Brien QC

### Inquiry Call for Evidence, Glasgow, 23 March 2016

Today the Scottish Child Abuse Inquiry calls on survivors of abuse to step forward and be heard. This is the first formal "Call for Evidence", and after a while there will be others, directed at other witnesses. Right now, our priority is to listen to people who were abused when they were children, that is, when they were under 18 years old, and when they were either in residential care, or in foster care. If you are one of those children, please help us.

Like all other public inquiries under the Public Inquiries Act 2005, the Terms of Reference have been set for us by government. We have to do what the Terms of Reference ask us to do. As an Inquiry, we cannot change them. What we will do, is to carry out that task conscientiously. Be clear from the outset that this is a complex Inquiry, and it will be expensive.

What the Terms of Reference say about abused children is that the Inquiry "will provide an opportunity for public acknowledgement of the suffering of those children and a forum for validation of their experience and testimony". It is intended "to create a national public record". These are unusual requirements for a Public Inquiry, because they envisage the receipt of evidence from members of the public, on the basis that it is the witness who decides whether to give that evidence, rather than the Inquiry. The second angle to our work is to investigate issues in the usual way, which means that the Inquiry will select the witnesses and test their evidence in an inquisitorial manner.

We have consulted interested parties about the best way to take evidence. We have also been greatly assisted by examining the experience of other Inquiries. The abuse of children in institutions has not been confined to the UK, but we have learned a lot from the UK inquiries in Jersey, in Northern Ireland and also in England and Wales. I would like to express my particular gratitude to their Chairs, and to their staff. Two members of my team went to Australia and learned a great deal from the Australian Royal Commission, which is clearly the world leader in the sad science of taking evidence from survivors of abuse. I would like to thank Mr Justice Peter McClellan and his team for generously sharing their knowledge with us.

Deciding how to proceed has not been obvious, as I have had to devise procedures which would enable both paths to be followed. We certainly hope to hear from as many survivors as possible, but the Inquiry's procedures necessarily recognise that bringing every survivor along to a public hearing will not be practicable within our time scale. In any event, requiring people to talk about distressing private experiences in public would deter some from coming forward. My solution is to ask

survivors to give evidence in private sessions as a first step, on the basis that their evidence will be made public. Where survivors are anxious also to give evidence in public, we will try to accommodate them wherever possible, but we can offer no guarantees. The Inquiry has the enormous difficulty that it simply does not know how many survivors will want to come forward and help with its work.

So, the Scottish Inquiry will start off by taking the testimony of survivors of abuse in private sessions. The sessions will take place in hotel rooms which are small, quiet and comfortable. This will enable the Inquiry to go to survivors across Scotland, and that includes the islands. It will also take evidence from survivors in England, and (if they step forward) it may even take evidence from survivors abroad. We know, for example, that children were sent from Scottish institutions to Australia, Canada, and New Zealand, and there may be some people who are alive and who recall what happened in Scotland before they set off. They may think that they suffered emotional abuse because they were sent so far away from home. In short, you do not have to live in Scotland in order to participate in this Inquiry, but the institution where you had the bad experiences must have been located in Scotland, or a Scottish authority must have had legal responsibility for arranging your care elsewhere. You may have had the traumatic experiences when you were outside the grounds of the institution, or simply at a time when you were living with a foster family: that does not matter. The key is this: if you were in the care of the state in any sense, then we would like to hear from you. In addition, we would like to hear from people who attend or attended private boarding schools.

If you are willing to help, how will this work? Firstly, we are asking survivors of abuse to contact the Inquiry- by post, by phone or by e-mail. Our phone line, which is free from within the UK, will be open after this Easter weekend. We will ask you to fill in a short form with contact details, and to identify the institution where you were abused. We will NOT, repeat NOT, ask you anything about the abuse itself at that stage. You don't have to sign the form. Someone will fill it in for you, if you phone the Inquiry and ask for help. From then onwards, we will refer to you as an applicant, rather than as a survivor. We will see you as an applicant because you have applied to assist the Inquiry.

We have recruited a small dedicated team of highly experienced witness support staff, who have been given specialist training about the difficulties experienced by people who are remembering their own abuse in childhood. The Inquiry team will have regular access to the advice of clinical psychologists, and other professionals with expertise in trauma. Where necessary, we will make it possible for an applicant to speak to one of the specialists. But, please be clear: we cannot offer actual treatment. Every survivor who steps forward will be assisted, directly or indirectly, from the time the form is submitted, and that may be some time before they actually give evidence in a private session. Our witness support team will contact applicants after they have done so, and check that they are OK. We will try to advise applicants - and any other witnesses who seek help - where that help can be found, locally within Scotland. Our team will endeavour to set up an initial appointment, if requested to do so.

We have no idea how many survivors will make contact after today, and I am sorry if there is a delay before we can see you. Private Sessions have already started for the elderly and ill, and they will be scheduled for everyone else from late April. You will

be given at least 2 weeks' notice of your private session, and we will try to arrange a date to suit you. You can bring along one friend or family member for moral support, and that person can either wait in an adjoining room, or sit beside you throughout. You can bring along rough notes to remind you what you want to say, documents from your past, or photographs. You decide.

The private session itself will be conducted by a qualified and experienced lawyer, and attended by someone whose role will be to take full notes. Both will have had specialist training for their roles. The private session will be audio recorded, and the tape (like everything else containing your sensitive personal information) will be carefully stored, and destroyed at the end of the Inquiry. You will be asked straightforward questions, and given time to think. You can end the session at any time, or ask for a comfort break.

Afterwards, the Inquiry will create a written Witness Statement, and send a draft to you to think about. You can change it, or add to it, in any way. Then we will ask you to send it back to the Inquiry, and it will become your official testimony, unless you later give evidence at a public hearing. If you have trouble reading; if you want help because of some disability; if you would like to give evidence in Gaelic; whatever it is, tell our witness support team in advance. We will always remember that you are doing this because you want to help a public inquiry, not because you have to.

To protect applicants, we will not use their actual names in the paperwork or at public hearings. We understand that some applicants may ask for their names to appear in the public record, and if that is the case we will restore their actual names to the Witness Statements towards the end of the Inquiry. Anonymised Witness Statements will be published on the website from time to time, and published as part of the final report. People who are named as abusers in private session testimony will have their names redacted, or blacked out, when the Witness Statements are published. This is a matter of fairness, as the private session process has not allowed them to defend themselves. All the available evidence would need to be considered at a public hearing before the Inquiry would consider publicising those names.

I will break here to allow my colleague Mr Glenn Houston to introduce himself.

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So far, I have addressed the survivors who will become applicants. The Inquiry's consultation process reached out to many others, including religious groups and some representatives of people who have been falsely accused of abuse. What they asked was basically that we be fair. We will certainly strive to do this. In general, we will be particularly careful to avoid tarnishing the reputations of individuals and of institutions without due process in public hearings. We are publishing various rules on our website today, which provide for applications for anonymity. There are many situations where redaction of documents will be necessary to protect the rights of people other than applicants or abusers. In the end, our findings about the facts in any particular situation will depend on the whole evidence before the Inquiry, and that will come from many sources, including police records and convictions.

I said that we needed to take two paths towards collecting evidence. The first will be the private sessions. The second will be public hearings. Some applicants will be asked to give evidence in public at those hearings, and, if they agree to do so, their evidence will be tested. We will not compel applicants to speak publicly about their own experiences of abuse. Other witnesses will be called in to public hearings, and tested. We will bring experts along to public hearings. Like other Inquiries into abuse, we will examine modules of evidence in separate hearings – 3 weeks here, 6 weeks there. The themes for the modules or chapters will be selected as we go along, firstly from listening to the applicants, particularly when several complain of abuse at the same place at roughly the same time. There will certainly be a module which concentrates on foster care. Not all modules will concentrate on institutions. We may identify a notorious abuser, for example, and follow his career in a module which centres on that person. We will be open to submissions about what the modules should be.

Legal representation is important. This Inquiry is not a criminal trial, and it is not a court case, with one side pitted against the other. Counsel to the Inquiry will lead evidence from witnesses at public hearings, and he will put contradictory evidence to the witnesses, some of his questions having been suggested by other lawyers. However, the Inquiry will certainly pay for a lawyer for a living person who is accused of abuse and who is called to give evidence at a public hearing, provided he has no means to pay for himself. We will pay for a lawyer in other circumstances, when we see that as necessary in the interests of fairness. In private sessions, there is no need for an applicant to have his own lawyer present when giving evidence to a lawyer appointed by the Inquiry, who is totally neutral. However, I am satisfied that applicants (or survivors) as groups do need to have the opportunity to make representations to the Inquiry. I intend to grant core participant status to some survivor groups, provided that they meet certain criteria, and the Inquiry will pay for legal representation for those groups. Generally, I would expect at least one lawyer representing a survivor group to participate in each public hearing module, assuming the module had some relevance to that group. Some of the qualifying groups will be able to instruct counsel or a solicitor advocate, if they wish. Details are on the website.

Some of the findings which the Inquiry makes are likely to derive from academic research. We intend to commission a literature review as soon as possible, and we will work to identify the areas where original research is necessary. An obvious example is how we should answer this question: how can we measure the prevalence of abuse? At the end of this year, I anticipate that we will ask universities and research organisations whether they can assist, on an open tendering basis. Our time limit means that we cannot be too ambitious, but we do ask academics to keep an eye on our website. If they can already identify a research need, we would be pleased if they would e-mail us.

This brings me to introducing Prof Michael Lamb.

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In addition to involving academics, the Inquiry certainly intends to seek the advice of child protection professionals, doctors, and others. Their practical experience will inform our approach to making recommendations for the future. I will make a further public statement about this in a year or so.

The scale and reach of this Inquiry is huge: in addition to looking forward into the 2020s, we are asked to look back over at least 7 decades. The management of documents alone will be a daunting task: I have identified over 290 organisations which may hold relevant documents, and asked them to preserve their documents for the Inquiry. The Jersey Inquiry, looking at an island with a population of only about 100,000, has already gathered more documents amounting to more than 1 million pages. One institution, when asked to produce the paperwork for only 4 children by the Northern Ireland Inquiry, found 30,000 pages. Given the size of the Scottish population, it is therefore likely that we will receive many millions of pages. The Inquiry has had to go through a lengthy procurement process to obtain sophisticated documents management systems (plural). Many pages will have to be redacted to preserve sensitive personal data. I have been very careful not to ask any organisation to send us everything they have, as we would be overwhelmed. Please do not send us any documents until we identify exactly what we need. I would like to thank all the organisations which have made careful preparations for responding to the Inquiry's document requests.

Before a public hearing module can start, the relevant documents have to be traced, stored, read by the lawyers for the Inquiry and read by other lawyers, acting for example for an institution under investigation. The documents will usually throw up new names and new lines of enquiry. I estimate that preparation for every public hearing module will take many months. Provided we have sufficient resources, we will prepare for more than one module at the same time.

Inevitably, there is a risk that our investigations will impinge on current police investigations: we are working out the best way to deal with these issues, both with the police and with the Lord Advocate. We will take care not to impede any possible prosecution. It is a key principle for this Inquiry that no child will remain at risk, if we are told about a current risk of harm to a child. We will always report current child protection issues to the relevant authorities.

The fact that we have working relationships with Crown Office and Police Scotland will not mean that we hold back from investigating them, if the evidence warrants it. We do not know where our investigations will take us, but we will not hesitate to make findings about failures in any part of the state, where the evidence justifies criticism.

Our focus is on systemic failures to protect children from abuse. This means that there will be individual cases of abuse which we believe are very well founded, and which in an ideal world we would like to follow up, but which we will not investigate. We cannot possibly investigate all the accounts which we will receive, and I hope that the public will understand this.

Finally, I can announce the theme for the first public hearing module: The current provision of psychological support for abuse survivors in Scotland. The Inquiry will examine what is known about the effects of abuse on a child's psychological

development; what experts say is the best intervention or treatment for children, and (separately) for adults long after the abuse has ended; and the extent to which that treatment is available in Scotland. We aim to provide an interim report on that module next year. We have chosen this theme because it may enable us to make recommendations which would improve the situation for survivors long before publication of our final Report. It is likely that we will take the same approach to other modules.

The public hearing on psychological support for abuse survivors will take place in temporary premises in Glasgow, and transcripts of the evidence will appear on our website. Documents examined there will be placed on our website. While members of the public are welcome to attend our public hearings, it is important to appreciate that you will be able to follow what is said anywhere, if you have a computer. That module is scheduled to last several weeks. It will start in November 2016.

To sum up: I am asking survivors to help us, by telling us what happened to them. There is no immediate deadline for this- you can come forward months from now, if you like. We will always respect your dignity.

In our final report, we intend to provide an evidence-based analysis of what went wrong for so many children in Scotland, for so many decades. The people who were abused are entitled to answers: how is it possible that so many institutions and authorities were blind to their suffering? Where was the protection of the law when they were raped or assaulted? Why did no one in authority listen to them?

Where lessons can be learned, we will make recommendations for the future. Some children will always end up in the care of the state, or will live in institutions of one kind or another: our aim must be to make them safe. This Inquiry is not just for survivors of abuse in the past: it is also for some Scottish children yet to be born.

Susan O'Brien QC

23 March 2016