

Restricted- Advice to Ministers

From: Jean MacLellan
Adult Care and Support Division
2 October 2008

Minister for Public Health
Minister for Children and Early Years
Cabinet Secretary for Justice

**PROPOSAL TO DEVELOP AN ACKNOWLEDGEMENT AND ACCOUNTABILITY
FORUM FOR ADULT SURVIVORS OF CHILDHOOD ABUSE - CONSULTATION**

Purpose

1. To seek Ministers' agreement to issue the attached draft discussion paper for consultation.

Priority

2. Routine. Ministerial clearance by close of play on Tuesday 7 October would be helpful to respond to a related Parliamentary Question.

Background

3. During a business debate in Parliament on 7 February 2008, Scottish Ministers announced their commitment to the scoping of a Scottish Truth and Reconciliation forum, initially to support adults who had suffered childhood abuse whilst in care. In the draft discussion paper, this has been re-named as an Acknowledgement and Accountability Forum, in response to discussions with the SurvivorScotland Reference Group.

4. The idea had been initially considered by Ministers when they met on 18 December 2007 and it had then been agreed to scope the potential for the introduction of a truth and reconciliation model in Scotland, as a means of responding constructively to the recommendations in Tom Shaw's report and to the implications of the 2007 Scottish Law Commission Report on Personal Injury Actions: Limitation and Prescribed Claims.

5. Following discussions with the SurvivorScotland Reference Group and others, we are proposing a slightly modified proposal to that announced by Ministers. The feedback we have received is that a paper which proposed a truth and reconciliation forum or model would suggest that the Scottish Government has pre-determined the outcome. This is of course not the case. The consultation paper therefore does not propose a specific model, nor does it commit Ministers to taking forward such a forum. Instead it identifies the need to engage in different ways with survivors to establish if and what a confidential forum could offer and how it might relate to the formal criminal and civil justice systems and the wider legal framework (e.g. ECHR considerations). It also tries to set out the possible advantages of such an approach. Further discussion around the policy is detailed at Annex A. The draft has been developed in consultation with the Reference Group, colleagues in Children, Young People and Social Care Division, Civil Law Division, Crown Office and solicitors.

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Recommendation

6. Ministers are invited to agree to the publication of the attached draft discussion paper for consultation.

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 Adult Care and Support Division
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2 October 2008

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety Cabinet Secretary for Health Cabinet Secretary for Education and Lifelong Learning Lord Advocate					

Communications Health
 Communications Education
 Communications Justice
 Noel Dolan
 Graeme Dickson
 Jeannie Hunter
 Bette Francis
 Olivia McLeod
 Jackie Brock
 PS/COPFS
 Paul Cackette, LSLA
 DG Justice and Communities
 John McFarlane, Special Adviser
 Ken Thomson, Director, Constitution, Law and Courts
 Richard Dennis, Civil Law Division
 Paul Allen, Civil Law Division
 Anne Hampson, Civil Law Division
 Lachlan Stuart, Legal System Division
 PS/Solicitor
 Paul Johnston, SGLD
 Catherine Scott, SGLD
 Gillian Russell, SGLD
 Kenny Hannaway, SGLD

**ANNEX A
PROPOSAL TO DEVELOP AN ACKNOWLEDGEMENT AND ACCOUNTABILITY
FORUM FOR ADULT SURVIVORS OF CHILDHOOD ABUSE - CONSULTATION**

Relationship to current policy/practice

Commentary from informal discussions with survivors indicates that many are not interested in financial compensation, but in receiving support that enables them to lead fulfilling lives. SurvivorScotland, the National Strategy for Adult Survivors of Childhood Sexual Abuse is being very well received by victims and those who support them, however, some of those who were abused whilst in care continue to believe that Government (whom they advocate is a reflection of society as a whole), is ignoring their ongoing suffering. A minority have gone on to take court action with varying degrees of success. Their dissatisfaction is compounded to a degree by the 2007 Scottish Law Commission ("SLC") report on prescription and limitation of personal injury claims and adds to the sense that some correspondents with Government have that the judicial system and its processes disadvantage them.

It is considered therefore that a pragmatic and useful way forward may then be to extend the existing SurvivorScotland Strategy to ultimately include a means of openly discussing and resolving historic abuse. This would actively demonstrate the Government's commitment to helping those who were abused to move beyond the experiences without those people having to become immersed in protracted and expensive litigation. It could become the response to both survivor disappointments with the formal criminal and civil justice systems (e.g. the time bar position with reparation claims) and survivor expectations of action in response to Tom Shaw's report. It would also assist in responding to any findings arising from the ongoing Kerelaw Inquiry. The Strategy also has the benefit of proactively putting in place some of the supports that victims of abuse have been offered in other countries as an outcome of appearances at hearings.

It is evident from the literature on such policies that there are contrasting views on this type of intervention. Most are supportive. Some recognise the clear benefits for those individuals who are able to move on with their lives and to contribute to society and to the economy rather than being dependent on services.

Sensitivity

SGLD have highlighted some of the risks involved in setting up such a forum, but these are illustrated to an extent in the paper and can be further discussed when the outcome of the consultation is clear.

During the course of the previous administration, the then First Minister made a public apology on behalf of the Scottish people by way of redress. This gesture was welcomed but seen as insufficient by survivors.

Although many are therefore likely to welcome the chance of the principal perpetrators (in the form of employers) having the opportunity to be open in

acknowledging the past, there are still others who remain adamant that what it is required is a public inquiry. A focus on the future is more likely to bring new benefits. We are now in a position to build on and progress the lessons and recommendations which have emerged from a number of reviews and inquiries over recent years into the abuse of children, for example within in-care and institutions. It is preferable to make progress on the recommendations on the Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995, which was published in November 2007 and which has provided a robust and systematic analysis of how abuse can occur in residential child care and how former resident's needs can be better met.

It should also be noted that an independent inquiry into abuse at Kerelaw Residential School and Secure Care provision was commissioned by the Scottish Government and Glasgow City Council and is expected to report at the end of 2008.

In addition, many survivors of in-care and institutional abuse believe that the law on time-bar acts as an unfair barrier where individuals wish to pursue actions claiming compensation for personal injury relating to events that took place a number of years ago. It was against that background that the SLC was asked to review the law in this area. After thorough deliberation, the SLC published its report on Personal Injury Actions: Limitation and Prescribed Claims in December 2007. The report does not make any specific recommendations for survivors of in-care and institutional abuse in relation to the limitation period. It rejects the proposition that such cases should be treated as a special category and excluded from the normal limitation rules. Rather, it recommends the continuation of non time-limited judicial discretion for all personal injury claims falling outwith the limitation period, which is currently three years, and proposes legislative change to provide judges with statutory guidance on the factors to be considered when exercising this discretion.

The SLC also considered a particular category of cases: in 1984, the 20 year negative prescription period for personal injury actions was abolished, which meant that certain personal injury claims (i.e. those relating to events that took place before 1964) were extinguished. The SLC recommended that such claims should not be revived, on the basis that to make provision that was retrospective to this extent would be undesirable in principle, would present difficulties in practice, and might be contrary to the European Convention on Human Rights. For the same reasons, the SLC recommended that a special category of claim in respect of victims of institutional childhood abuse, as a device to revive those particular claims, should not be created.

The recommendations in the Report in relation to prescribed claims have been accepted; the remaining recommendations are still under consideration.

Options considered

At a joint Ministerial meeting on 18 December 2007 it was agreed that while a change in the law to exclude such cases from the limitation regime would enable survivors to take their cases to court, there may be insufficient evidence still available to enable the court to reach a conclusion. Witnesses may be missing or may have died. Documents may be unavailable. Judges may therefore dismiss cases due to

lack of existing evidence and victims will be no nearer to feeling they have achieved some kind of redress. Nevertheless, Ministers recognised the importance of ensuring survivors have the opportunity to bear witness to abuse which has occurred. Ministers favoured an approach based on a truth and reconciliation model and an announcement to this effect was made in a Statement to Parliament on 7 February, on support for survivors of historic in-care and institutional abuse.

Ministers agree that a next step could be to consult and engage with survivors to scope and pilot a Forum in co-operation with one of the key institutions that has a history of in-care abuse.

Financial implications

We have secured £500K per annum over the next 3 years, and this would be sufficient to negotiate and set up an initial pilot and two others. It is possible part of this funding could be added to existing Adult Survivors' Development Fund recipients for them to provide the necessary additional counselling etc.

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2 October 2008

DEVELOPING AN ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM FOR ADULT SURVIVORS OF CHILDHOOD ABUSE –A DISCUSSION PAPER

Background

During a business debate in Parliament on 7 February 2008, Scottish Ministers announced their commitment to the scoping of a Scottish Truth and Reconciliation forum (currently re-named as an Acknowledgement and Accountability Forum), initially to address issues *for adults* who had suffered childhood abuse whilst in care. The parliamentary statement also set out the progress being made by the Scottish Government to improve the support that is available for survivors of in care and institutional abuse, and re-emphasised a collective determination to work closely with its partners to achieve real change.

Plans were unveiled in the parliamentary statement for a national service framework to support survivors of historic in care abuse, improvements to the residential child care system (including better staff training and development), and a review of the law to address shortcomings in public records held on children in care. The specific remit of the joint Scottish Government and Glasgow City Council Inquiry into abuse at Kerelaw residential school was also detailed.

All of this work is underpinned by the National Strategy for Adult Survivors of Childhood Sexual Abuse, SurvivorScotland, www.survivorscotland.org.uk, which seeks to address the effects, particularly of sexual abuse, while recognising that this often also encompasses a range of other forms of abuse. Its remit covers historical abuse, and it aims to enhance the health and wellbeing of survivors through improved self-care, community, primary and tertiary care.

This paper has been developed with the National Reference Group, set up to implement the recommendations of SurvivorScotland. Members include those who are adult survivors, and their views and experiences are invaluable in informing implementation of the strategy. Discussion has indicated that the title 'Acknowledgement and Accountability' may be a more accurate reflection of what is needed of any forum, although other suggestions are welcome.

Why is such an approach being considered for survivors in Scotland?

It is needed to acknowledge the pain experienced by survivors and to give some of them the opportunity to recount those experiences in order to secure public recognition and to assist, where possible, with their own individual recovery. Such an approach could also be useful in ensuring that some

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survivors receive practical help to assist them to recover as far as they are able, given the unique nature of each person's experience and response.

Recognition of the abuse of looked after children whilst in care has certainly increased since the 1990s as a result of the many large scale investigations and inquiries that have taken place. In his statement of 1st December 2004 the then First Minister gave 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. Most recently Tom Shaw's report has been instrumental in enabling understanding of the scale of the problem and the effects this has had on in-care survivors. This report can be found at <http://www.scotland.gov.uk/Publications/2007/11/20104729/>

SurvivorScotland was developed to bring about a series of changes, and make a real difference for everyone who has been affected by childhood abuse. Scoping the possibility of having a forum is part of its work. It would be naïve to suggest that such an approach would benefit everyone, or that recovery is possible for everyone, as each person's experience and response are unique. Through working closely with survivors on this programme, however, some survivors have indicated that an important part of recovery from the trauma they have experienced, would be to tell their story, be believed, and have the pain that was caused fully acknowledged.

Others have suggested that they would use such a forum to talk through the consequences of trauma, for example not being able to concentrate on school work, with a view to considering what could be done to assist them in practical ways. So for some people, it might mean getting funding to access educational opportunities. For others, it might mean getting access to counselling or therapy. For yet others, recognition of the harm is not about financial compensation. In the words of one survivor of in-care abuse: "*... for me money is totally irrelevant here, it really doesn't come into it.....I always ask what good will that do ...how can money possibly cure the wasted years or the horrors that will live with me and these people all our lives?*"

Another reason for considering such an approach is to give the institutions and the staff concerned the chance to speak openly and honestly so that they can move on. It is also important to be able to learn from mistakes of the past and inform good practice for the future.

What a Scottish model would not do

Some survivors have indicated that for them the criminal and civil justice systems in Scotland have not, at times, been able to deliver positive outcomes for survivors of institutional abuse.

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Some factors that may contribute to such a feeling are-

- the criminal justice system is about prosecution in the public interest and is not directly aimed at redress for individuals;
- civil justice tends to focus on financial compensation;
- both systems are aimed at determining particular issues and may not cover or determine all of the issues that survivors wish to be dealt with in relation to their experience;
- the adversarial nature of the criminal and civil justice systems is generally not conducive to encouraging organisations to work with, or in the interests of, survivors on the key issues of change and improvement.

These factors can undermine effective communication and understanding, and in some cases prevent mutually acceptable remedies being achieved. Whilst the criminal and civil justice systems have an important role to play, the interests of survivors, of current service users, of organisations and institutions, of government and of the people of Scotland, may ultimately be served by introducing an additional mechanism for the discussion of survivors' experiences that both helps survivors and goes some way to helping prevent children from having similar experiences in the future.

Whatever the elements of an Acknowledgement and Accountability approach in Scotland, any such support would **not** be offered **instead of** an individual's right to seek financial compensation through, for example, the criminal injuries compensation scheme or the courts system. It might serve as an alternative to those who have said that taking action to bring a civil case, even with support, is not a viable option for them because of the stress involved in such an undertaking.

Any forum is not intended as a way of bypassing legal justice either for those who have been abused or the alleged perpetrator.

In summary, survivors of abuse will have had, and continue to have, their own routes to personal reparation. Acknowledgement and Accountability would be another choice which will be open to individuals to make.

What are the challenges and opportunities for the institutions involved?

A major challenge is that any forum would need to be operated in a reconciliatory manner for both survivors and institutions. For this to happen there will have to be clear boundaries on what the forum does and the pursuit of legal remedies through the courts.

Another challenge is the view that some survivors have that institutions are unwilling to participate in this type of forum, or that they are prevented from doing so because such involvement may lead to further litigation. Yet many institutions provide high quality support for residents, and have acted on the findings of inquiries that have reported down the years. For these institutions, the challenge is to cope with negative views about their efforts.

There could be real benefits for institutions that willingly come forward to participate in a forum. It should enable them to learn from the past and in doing so to look to the future with confidence. The creation of a public and historical record from which agencies, policy makers and the public could all learn, could contribute directly to clear and measurable improvements in safeguarding children and young people in public care.

Applying the lessons learnt from models in other countries to the Scottish context

Annex A outlines several models from other countries, some of which might contribute to the design of a Scottish Acknowledgement and Accountability Forum. There are also, as the Annex explains, different interpretations attached to words such as "truth," "justice" or "reconciliation". It is essential that respondents consider the advantages and disadvantages of the models described before answering the consultation questions.

The New Zealand experience, for example, may provide useful pointers here. Participants in the New Zealand Forum who were admitted to hospital as children or as adolescents described sexual and physical abuse and of becoming the target of sexual abuse from staff or other residents. Many said they had been discharged without the skills needed to deal with adulthood and that they were adversely affected by their experiences.

The official acknowledgement by the New Zealand State of the importance of the issue was valued from the outset; but the Forum itself stopped short of being a Commission of Inquiry that would have had the power to test and evaluate evidence. So it was not about compensation or liability. It concluded its business by writing a report in the form of a position statement but did not include recommendations. Those that participated in the New Zealand forum did so because they wanted to be taken seriously and knew that they were talking in an affirming environment, which was not checking for authenticity, but to make sense of what had happened. The focus was on their experience, their perceptions of how they were treated, and the impact of those experiences and perceptions on their lives.

Access to services and support

In other models, information, access to relevant services and agencies, including provision for access to counselling, was offered in lieu of compensation. The underpinning aspiration in these arrangements was that individuals could be supported to move on in their lives so that they would be able to enjoy the same benefits as other citizens such as meaningful relationships and employment. Commentary from informal discussion with survivors indicates that many endorse this perspective.

The models present many different opportunities for restoration. Some involve financial compensation which can enable survivors to put in place the material conditions to support recovery and growth. Other opportunities exist in relation to provision 'in kind' including counselling, supporting educational provision and training etc. All of these might play a part in achieving a satisfactory resolution for all parties.

For many survivors however, the real issues affecting their capacity to recover are less tangible. These have been referred to above, but are nonetheless vitally important particularly for agencies and institutions to understand properly and to acknowledge fully. Issues of accountability, transparency, open acknowledgement and commitment to improvement have great significance for survivors.

Survivor involvement

It is clear that any model will have to be not only survivor-led, but have at its heart a robust support system. This paper is only the start of the process, which will involve close liaison and alternative forms of discussion such as workshops or focus groups, with survivors and the organisations that represent them. As indicated earlier, the aim is to have facilitated survivor consultation as part of the process for designing any model for Scotland. Access to short, medium and long term therapy and counselling through every stage will also be considered, as will access to education and training to compensate for lost opportunity and to increase the likelihood of gaining employment. Enabling people on their journey of recovery through these and other appropriate means, could form part of any suggested compensation scheme.

It is equally clear that Scotland should not sign up to an approach that may leave individuals exposed or adversely affected by any scheme that may evolve. The Kaufman Report into the redress scheme in Nova Scotia, found that it "left in its wake true victims of abuse who are now assumed by many to have defrauded the Government, employees who have been branded as abusers without appropriate recourse and a public confused and unenlightened

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about the extent to which young people were or were not abused". The rights of staff and others to a fair hearing must form an essential part of any arrangements (drawing specifically on the European Convention on Human Rights), as should the rights under ECHR of survivors and staff in relation to family and private life.

Next steps

It is envisaged that the Scottish Government will take the lead role in facilitating and supporting the necessary developmental work, if it is agreed to progress an initial test or pilot of the Acknowledgement and Accountability forum. Experiences in other areas have shown that it is important for success that Government and its officials should be accountable for design and implementation. But the Forum itself should be independent of Government, and the validation process (that is the process by which it is decided who should be entitled to give evidence and who may be called to respond to survivors' testimony), needs to be managed by people independent of Government. Government must also deal with any financial implications and should build in, from the outset, mechanisms to permit ongoing assessment and improvement. However, wherever possible, changes mid-stream should be avoided since these could compound the harm to those affected. People who were abused should be respected, included in the design and implementation of any redress process and have access to comprehensive information so they can make informed choices about their participation in the process.

As a starting point, any validation process will not be required where there have been findings made in previous judicial or administrative proceedings. It must include safeguards to protect against unproven accusations and appropriate measures to respect the dignity and privacy interests of both claimants and alleged abusers. And, where abuse has occurred, we must ensure that those who are responsible for abuse, are held legally accountable where possible.

It is hoped that the Forum may:

<p>Address the full range of needs of those who were abused, by a range of measures.</p>	<p>This might include compensation, counselling, education and retraining, medical or dental services, acknowledgments and apologies, and establishing a historical record of the abuse.</p>
<p>Recognise and seek to reconcile competing needs and interests.</p>	<p>For example, maintaining the confidentiality of victims, may, at times, conflict with the need to prevent future abuse. Alternatively, a process that does not compound the harm done to abuse victims, may compete with the interest in ensuring that individuals are not falsely stigmatised as abusers. An appropriate balance must be struck.</p>
<p>Where possible recognise the needs of the families and communities of people who were abused and seek ways of addressing those needs</p>	<p>Ensuring appropriate support systems in place for all.</p>
<p>Where it involves a validation process, attempt to minimise the potential harm of the process itself upon those affected.</p>	<p>This means that the emotional, psychological or physical impact of prior abuse felt by victims should not be unnecessarily compounded and those who are innocent of abuse or of wrongdoing should not be unnecessarily harmed.</p>
<p>Be enduring. It should complement what must follow.</p>	<p>This means that, where abuse has occurred, the response should seek to contribute to reconciliation and healing. Whether or not abuse has occurred, the response should recognise the need for its institutions to operate safely and effectively in the future. It should promote a healthy environment at the institutions, both for their residents and for those who work there.</p>
<p>Strive to prevent abuse from occurring in the future</p>	<p>Contribute to public education and awareness.</p>

The following questions seek your views on whether Scotland should adopt an acknowledgement and accountability model and how this might be done.

CONSULTATION QUESTIONS

1. Should Scotland trial an acknowledgement and accountability forum?
2. If so, do you think 'acknowledgement and accountability' is an appropriate title, or would you prefer other terms to be used?
3. If you think it should be adopted, which of the following elements would need to be included in such an approach:
 - ❖ Establishing an historical record as an act of remembrance;
 - ❖ Identifying for current institutions additional ways of safeguarding children and young people in care;
 - ❖ Recognition of levels of accountability from the individual abuser through to Scottish society as a whole;
 - ❖ Acknowledgement and apology;
 - ❖ Acceptance of levels of accountability from the individual abuser through to Scottish society as a whole;
 - ❖ Public recognition of the survivors' experience;
 - ❖ Access for survivors to short, medium and long-term therapy and counselling as necessary;
 - ❖ Access for survivors to education and training to compensate for lost opportunity and to increase the likelihood of gaining employment;
 - ❖ Enhanced access to financial compensation for survivors.
4. Who would be eligible to apply and what criteria might be appropriate for determining which applications should succeed?
5. If you don't think that acknowledgement and accountability is the way forward, what would you like to see in place instead?
6. Available research emphasises the importance of having survivors shaping what a forum would look like and what it would do. Would you agree that this is the case and, if so, how best can this be achieved?
7. What additional involvement should there be to help shape the forum?

8. The experience of other governments indicates that it is also important to involve family members. Do you agree and, if so, how can this be achieved, given that for some survivors, certain family members may be safe and supportive, others unsafe and unsupportive?
9. It is also essential to get accurate staff perspectives. How would we set about doing this?
10. Focusing on the mechanisms and process of the approach, who should lead the work and how should these individuals be appointed?
11. Testing out the approach in one geographical area may be an appropriate way to begin. What are your views on this?
12. Public awareness and understanding is critical. How do we go about achieving this?

Please feel free to add any other information or views that you consider important.

ANNEX A

TRUTH, RECONCILIATION AND REDRESS:

EXAMPLES OF MODELS AND KEY PRINCIPLES

What exactly is a truth and reconciliation commission?

There is no one simple answer. This is because a variety of models of Truth Commissions (TRs), Truth & Reconciliation Commissions (TRCs) or Compensation Board or Redress schemes which incorporate some TRC principles, have been followed in different countries. The very words "Truth" "Justice" and "Reconciliation" can cause disagreement and controversy when people try to decide if they should support something of this kind.

Background

Many Truth Commissions have been established across the world, although a substantial majority have related to armed conflicts or dictatorships, to torture, rape and other abuses in war or civil disturbances. A minority have related to abuses of adults in psychiatric care, or abuses of children and young people in care, or the large-scale removal of children from their own parents and communities (for instance the aboriginal peoples of Australia and Canada).

Therefore most Commissions have been authorised by Governments, usually those which have replaced tyrannies or military dictatorships, and who wish to make a formal accounting of human rights abuses by earlier political regimes. However, pressure across many countries has increasingly grown for commissions of various kinds to investigate, and make some form of reparation for, large-scale maltreatment of the most vulnerable and stigmatised members of society - particularly children in the care of the State, of the Churches or other institutions.

Key elements of truth and reconciliation programmes

In its pure form a Truth and Reconciliation Commission takes a "restorative justice" approach in attempting to make peace with the past by investigating and publicly acknowledging abuses, torture or other human mistreatment over a set period. The vocabulary surrounding this approach emphasises the importance of ending collective societal denial, using the Commission process to heal the social and political fabric as far as possible, and to bring about lasting cultural change.

It is officially sanctioned, authorised and empowered by the State. This is in order to make access to the process and to the information provided through the process easier; to provide greater security for the information which is generated (e.g. to reduce the likelihood of vigilante reprisals) and most important, to signal that the findings will be taken seriously. Underpinning the process is the belief that the public or official exposure of truth is *itself* a form of justice.

Several different models of commission or redress have been tried, and a few examples are summarised below.

New developments in Canada:

The latest development in Canada is the launch, in June this year, of the independent Truth & Reconciliation Commission in respect of former Indian Residential Schools. (IRS). It will run for five years. Advised by an IRS Survivor Committee and chaired by a senior judge, it will give anyone affected by the IRS experience a chance to come forward with personal experiences in a "safe, respectful and culturally appropriate" setting.

The TRC aims to:

- Research and examine the conditions giving rise to the IRS legacy.
- Create an accurate, public historical record and fill the blank pages of Canada's history.
- Contribute to a process of truth, healing and reconciliation and help to rebuild relationships between Canada's aboriginal and non-aboriginal peoples.

This TRC is determined to make practical steps towards genuine change by preparing a historical record on the policies and operations of the schools, making a report with future recommendations establishing a national research centre, hosting national events to foster awareness and public education, and supporting a commemoration initiative.

However, the TRC is neither a public inquiry nor a formal legal process, does not have subpoena powers to compel attendance, and cannot make findings on individual misconduct unless this is already established by law or by admission. It appears to be set up to allow criminal or civil actions to proceed separately, and must ensure its conduct "does not jeopardise any legal proceeding".

Further information on this initiative is available at the website www.trc-cvr.ca

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South Africa: amnesty as a feature

The most famous example of any "Truth and Reconciliation" programme is the South African one. It was brought about by the National Unity and Reconciliation Act 1995 to investigate the nature, causes and extent of gross violations of human rights during the apartheid era and liberation struggle. It ran from 1996 to 1998, and reported its findings in 2004.

It granted amnesty to those who made full disclosures, giving victims the opportunity to talk through their experiences and to seek reparation. Amnesty is a controversial issue and is not necessarily a feature of other programmes elsewhere. The process consisted of three Committees running in tandem – one cataloguing human rights violations, one making decisions on the granting of amnesty and one making decisions on reparation.

In South Africa, narrative or personal truths, emerging especially through victims' and ' public testimony, sought to ensure that individual as well as collective acts of oppression could never be forgotten. It was in that sense an insurance against "collective amnesia" in the future.

Much of this type of approach, in its purest form, is underpinned by religious belief - particularly the concept of forgiveness. This in turn is associated with Christian approaches. So some of the hearings placed individuals under considerable pressure to express remorse, with some refusing to do so on the basis that their behaviour was what was expected of them in their secular role (such as police or army), at that time and in their culture. That may become a significant consideration in the Scottish context, if such a model was to be used with faith organisations such as the Churches.

Archbishop Desmond Tutu, however, made cultural links as well as religious ones: he pointed out that restorative justice reflected a fundamental, venerable *African* value, of healing social relationships at the expense of exacting vengeance. Other societies may thus be able to identify cultural values which accord with their chosen principles of T&R.

Irish Republic: redress model

Truth and reconciliation models vary over whether or not they include a redress process. Such a process is designed to provide financial and other compensation.

Redress is usually time-limited. It begins with directly engaging with survivors in negotiating the elements of the programme, such as the harms covered, the validation process and the compensation and benefits offered. It is intended to be less formal and costly than judicial options.

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For instance, the Irish Residential Institutions Redress Board in 2002 was brought about by the Residential Institutions Redress Board Act. It set out to make awards to those who claimed to have been abused whilst in care. Individuals had to present their cases to a Board involving both legal and policy experts. It was a non-fault compensation body which did not decide on liability: that means individuals could still take court action for aspects of suffering not covered by the Redress Board award. A sliding scale of payments reflected the range of suffering experienced. This appears to have worked well, and there is no record to date of any significant dissatisfaction with the process or outcomes, either from survivors or staff.

Nova Scotia, Canada: redress model

Again this was not a TRC as such, but a form of redress scheme only.

After public allegations of physical and sexual abuse by former residents of youth detention centres in Nova Scotia grew in the early 1990s, a judicial report found evidence of serious abuses at the Nova Scotia School for Boys. The Justice Department set up an alternative dispute resolution programme and offered out of court settlements to victims of this home and others. However financial compensation was awarded readily on the basis of unsworn statements, and little corroboration, and employees were not allowed to address abuse allegations made against them. There were claims that fraud was going on, and angry protests of injustice among ex- staff, while victims of abuse for their part found very small numbers of staff were ever prosecuted.

Nobody was sure of the truth or extent of actual abuse, while different mass media in Nova Scotia took radically different positions. The government not only paid about 56 million dollars in compensation to claimants, but felt bound to offer compensation to more than 150 former employees as wrongly accused people. The critical Kaufman report remarked that this poorly planned redress scheme "left in its wake true victims of abuse who are now assumed by many to have defrauded the Government, employees who have been branded as abusers without appropriate recourse, and a public confused and unenlightened about the extent to which young people were or were not abused."

New Zealand: a public acknowledgment model

The New Zealand Government adopted, between 2004 and 2007, a "hybrid" model which incorporated elements of both reconciliation and redress.

Its confidential debates allowed former in-patients of psychiatric hospitals, their families and staff members to speak formally about their experiences in psychiatric institutions before November 1992. After some lobbying, Government had decided on this approach, which was accompanied by legislation, creating safeguards to uphold individuals' rights to financial redress for abuse after that date.

Confidential discussions, led by independent panels, were set up with clearly agreed terms of reference signed up to in advance by attendees. These included family and staff members.

As with the Scottish experience, participants admitted to hospital as children or adolescents described sexual and physical abuse and of becoming the target of sexual abuse from staff or other residents. Many said they had been discharged without the skills needed to deal with adulthood and were still paralysed by their experiences.

The official acknowledgement by the State of the importance of the issue was valued from the outset. However, these discussions stopped short of being a Commission of Inquiry with powers to test and evaluate evidence. Thus the Forum was not about financial compensation or liability. The final report was a position statement, but did not include recommendations. Those that came did so because they wanted to be taken seriously and knew that they were talking in an affirming environment which was not "checking" for authenticity but trying to make sense of what had happened. The focus was on conditions, treatment and the impact of the experience on their lives.

Information, access to relevant services and agencies, including provision for access to counselling was offered in lieu of financial compensation. This may have relevance to Scotland given that survivors' support organisations indicate that most survivors' main concern is not for financial compensation, but for full acknowledgment, and support which enables them to lead fulfilling lives.

Many participants told the Forum that they valued the opportunity for their story to be heard by those in authority and in Government, and reported positive personal outcomes. While a minority considered it to be a cynical exercise to avoid a pay-out, others viewed it more positively and many saw it as a way of informing the Government so that - they hoped - history would not repeat itself.