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SHRC

Scottish
Human Rights
Commission

**SHRC InterAction on Historic Abuse of
Children in Care**

**Report of InterAction Event
on 27 October 2014**

Mitchell Library, Glasgow

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InterAction Event on 27th October 2014

1. Introduction

The purpose of the InterAction Event on the 27th October was to share the commitments to the implementation of the InterAction Action Plan and to take this forward via further group discussion. There were 53 participants including representatives of victims/survivors, agencies that have historically provided residential care or foster care for children, the Scottish Government, professionals currently involved in the care of children, faith based organisations and academics. In addition, the Cabinet Secretary for Education, Michael Russell, the Minister for Children and Young People, Aileen Campbell, the Minister for Community Safety and Legal Affairs, Roseanna Cunningham, and the Minister for Public Health, Michael Matheson, attended for part of the InterAction Event. This report provides a summary of the Interaction event on 27th October 2014, the presentations at the event, and the content of the group discussions.

The event began with a welcome by the Chair of the Scottish Human Rights Commission (SHRC), Professor Alan Miller. This was followed by a summary of consultation responses on the InterAction Action Plan by Duncan Wilson (SHRC), and Moyra Hawthorn (CELCIS/University of Strathclyde) provided feedback from the Open Event for victims/survivors which took place on the 27th August 2014. The Cabinet Secretary for Education, Mr Michael Russell then gave a statement outlining the Scottish Government's commitments to the Action Plan.

Participants in the InterAction Event then broke into groups in order to discuss the Scottish Government commitments and to give their responses. Each group had a facilitator who summarised the discussions within the group. The main points from the group discussions were brought together and presented to the full meeting by Duncan Wilson (SHRC).

In conclusion, Professor Alan Miller (SHRC Chair) presented his reflections on the InterAction Process, the outcomes of the InterAction Event and next steps in the process.

2. Welcome, Aims and Introductions

Professor Alan Miller, Chair of the Scottish Human Rights Commission (SHRC) warmly welcomed to the third full InterAction Event.

He pointed out that the event marked a milestone in the journey to achieve justice for survivors of Historic Child Abuse. It must not be forgotten that the longest journey is that which has been made by survivors and a tribute was paid to their dignity and resilience throughout the process. A tribute was also paid to those individuals representing the organisations which have shown a willingness to take on responsibility, despite the fact that it must have been very challenging to engage in the process.

Participants were reminded of the core values of the InterAction and asked that the necessary mutual respect continue to be shown throughout the day.

It was noted that the InterAction was being held in a building of historical significance – the Mitchell Library. The library was set up to hold ‘works of permanent value’ and it can be said that the work of the InterAction very much follows in this vein. Prof Miller shared that he had just returned from South Africa which is undergoing a time of national reflection, following twenty years of democracy and post-apartheid development. Part of that reflection centred on the *Truth and Reconciliation Commission* and its significant contribution towards acknowledgement and engagement in South Africa. There is, however, a clear recognition of the importance now for greater accountability so that progress can be made towards social justice and equality in relation to jobs, homes, water and public spending.

For our journey in Scotland, the need for accountability has been recognised through the InterAction *Action Plan on Justice for Victims of Historic Abuse of Children in Care*. Prof Miller noted the dynamic way in which the Action Plan had been drafted and that it remains person centred and unique to the Scottish context.

Prof Miller welcomed the willingness of the Scottish Government to engage with the process and expressed gratitude that four Ministers had made the commitment to attend. He also thanked those Scottish Government representatives who had been involved on the journey with other participants.

It was pointed out that there would be varying timeframes for the delivery of different components of the Action Plan. However, the hope for today is a public commitment from the Scottish Government and a convincing plan of action to realise the outcomes of the Action Plan. This must be transparent and measurable and survivor-centred.

3. Overview of Action Plan and Consultation

Moyra Hawthorn and Duncan Wilson briefly described the history of the InterAction process and the development of the Action Plan.

There have been two previous full InterAction Events. In addition to these, there were a series of 'mini-InterActions' on the subjects of: Acknowledgement and Apology, Inquiry, Reparation, and Access to Justice.

There have also been a number of open events for victims/survivors of abuse, including an event focused on the issue of Inquiry. There was a consultation on the draft *Action Plan on Justice for Victims of Historic Abuse of Children in Care*.

Participants were reminded of the key outcomes and components of the Action Plan.

Responses to the consultation on the Action Plan were summarised:

- There was support for effective apologies and an Apology Law
- Approximately half of the responses from survivors supported a public Inquiry; other responses called for further work on this.
- There was strong support for removal of the Time Bar.
- There should be a consistent approach to investigation and prosecution in cases of historic child abuse.
- There was support for a national support fund and this should be linked to wider issues of care and support.
- Access to records continues to be an important issue for survivors.
- The different needs and wishes of victims/survivors needs to be respected and they need to be involved in decisions at a personal and strategic level.
- All forms of care need to be included in the responses to historical abuse, not just residential and institutional care.

Feedback from the Open Event on Inquiry was summarised:

- All survivors who attended the event supported the call for an Inquiry.
- An inquiry would allow survivors' experiences to be publically heard and acknowledged.
- An inquiry would enhance public awareness of abuse in care.
- It would highlight the long term consequences for the mental health of survivors of abuse
- It would enhance understanding of causal and systemic factors in historic abuse.
- It would examine the numbers of children who have been abused in care in the past.
- An inquiry should be fully independent and inquisitorial and not adversarial.
- An inquiry should include all forms of care, foster care as well as residential care.
- An inquiry should cover a timescale that covers all survivors' experiences

4. Statement on Scottish Government Commitments

Mr Michael Russell, Cabinet Secretary for Education, thanked the InterAction participants for inviting him to the InterAction along with the Ministers for Public Health, Community Safety and Legal Affairs, and Children and Young People. He also thanked SHRC, CELCIS and all the InterAction participants for their work, paying special tribute to survivors who have engaged in the InterAction.

Mr Russell confirmed that Scottish Government is committed to improving the lives of survivors and to continuing to work to ensure that lessons are learned and improvements made and that past abuse is never forgotten. Survivors must be given vital support to move on with their lives and £6.2 million has been invested through the SurvivorScotland Strategy to raise awareness, provide training and fund specialist support for survivors.

Ministerial colleagues were privileged to meet with a number of survivors earlier this year to discuss how to move forward and to ensure that the Survivor Strategy is delivering what we expect it to. The group spoke eloquently and bravely about the pain and trauma of their experiences and set out their wishes and concerns clearly. The response on behalf of the Scottish Government today will build upon the previous apology made by then First Minister Jack McConnell in 2004 and reiterate commitment to supporting survivors.

National Survivor Support Fund

Mr Russell confirmed that the Scottish Government will work to develop a National Survivor Support Fund which will provide support to help survivors deal with the legacy of their abuse and build more positive lives.

A number of existing models will be considered. Officials met with counterparts in Ireland last week to explore the Caranua model, and survivors have indicated they were interested in this model. Thought would need to be given on how this might work in the Scottish context. The Scottish Government will work with survivors and organisations to shape and develop how a Scottish support fund will operate. The Action Plan sets out many positive measures and the Scottish Government will continue to work with survivors to ensure they know about the improved support and how to access it. This will be done through the proposed survivor support fund. The National Confidential Forum will also play a role in assisting people who choose to come to share their experience of institutional care to locate further support if they wish it.

The SurvivorScotland Strategy was launched almost ten years ago and the Scottish Government seeks the help of survivors in reviewing it, considering what has worked well, what still needs to be achieved and create a new plan of action that recognises the developments made, including the outcome of this InterAction process, and sets a clear agenda for the future.

Commemoration

Another Action Plan recommendation was that there should be some form of official commemoration. Mr Russell stated that the Scottish Government is committed to funding an appropriate commemoration, guided by the views of survivors.

Effective Apologies and Apology Law.

Effective apologies and Apology Law is another important recommendation that needs to be considered. There is currently a proposal by Margaret Mitchell, MSP, to introduce a members Bill on apology law. Mr Russell commended Ms Mitchell for taking this work forward and indicated his support for the principle of the bill. Ms Mitchell is at the stage of formalising the instructions for the Bill which will be drafted by the Non-executive Bill Unit of the Scottish Parliament. As the proposals become clearer, consideration will be given to what resources can be committed to that work.

Civil Justice and Time Bar.

Mr Russell acknowledged the importance of the issue of 'time bar' for the InterAction participants. The Scottish Government considers that it is in the public interest to have an effective framework that allows civil law cases to be resolved quickly and fairly. It was also acknowledged that even getting to the position of raising an action in the courts is not easy – it takes time, courage and support.

The courts are currently able to waive the time bar where it is appropriate to do so. The Scottish Government is committed to working with survivors and key stakeholders across the legal sector to understand why that discretion is not being used. The Scottish Government is also committed to examining the barriers to obtaining legal aid.

Once this work has been carried out the Scottish Government will consider what further support can be offered to help address these issues. A specialist service for female victims of sexual offences is already being developed and we will look at how that might guide us in offering similar support to survivors of abuse.

Consistent approach to investigating historic child abuse cases.

Mr Russell stated that the Scottish Government is working with the Crown Office and Procurator Fiscal Service to make sure they engage with survivors so that they know when and how to access support such as advocacy and counselling.

The creation of Police Scotland is helping to develop a greater consistency in tackling and investigating a range of crimes, including child abuse. In many cases, Police Scotland now has specialist liaison officers for victims of, for example, sexual crimes. In evidence to the Parliament, Police Scotland also confirmed it has started developing a National Child Abuse Investigation Unit that would provide expertise in current and historic cases. The Scottish Government will work with Police Scotland to ensure that the Unit is aware of, and responsive to, the particular needs of victims of historic abuse.

Public Inquiry.

On the issue of public inquiry, Mr Russell made it clear that it had not been ruled out. He highlighted that there have already been a number of investigations and reviews which have had led to significant improvements in the care sector. He is committed to listening to both sides of the argument regarding the need for an inquiry.

Records and Access to Records

Mr Russell stated that, as a direct result of the Shaw Review, legislation was introduced in 2011 through the Public Records (Scotland) Act which is aimed at improving record keeping across the public sector.

Recognition was given to the essential role records play in mapping personal histories and helping care leavers become comfortable with their identities. The 'Reclaiming Lost Childhoods' project being led by CELCIS and supported by In Care Survivor Service Scotland, the National Records of Scotland and others, has explored and tried to understand the barriers and issues in finding and accessing records. The Scottish Government will continue to work with this initiative and with the National Records of Scotland and make sure that the particular needs of survivors of historic abuse in accessing their personal records remains at the forefront of our thinking.

National Confidential Forum.

The National Confidential Forum expects to start taking applications for its hearings before the end of 2014. Reports of the Forum will be published as part of the national record. The Forum gives validation, but, importantly, it will also direct those taking part to specialist support available.

In closing, Mr Russell thanked those present once again for their significant contribution to the InterAction and the development of the Action Plan.

5. Summary of Group Discussions

Duncan Wilson summarised the discussions and points made in the small groups

Generally, InterAction participants were pleased with the commitments made by the Scottish Government.

There was, however, some concern about the lack of clear or explicit timescales and the perceived lack of detail behind some of the commitments. Questions were raised about what resources would be allocated to the commitments.

There was a strong desire to keep the momentum going and to seize the opportunity to continue to work together to realise the outcomes of the Action Plan.

Inquiry.

While some survivors had hoped for more, they were pleased that Inquiry remained on the table and wanted to take up the opportunity to discuss with Ministers what added value an Inquiry could make. It would therefore be helpful to have timescales for making a decision in order to give a clear deadline for collating this information.

It was pointed out that an Inquiry is not a 'clean sheet' and considerable knowledge already exists which could be drawn upon. An Inquiry should have explicit Terms of Reference and have clear timescales for delivery - it should not be 'never-ending'.

There was a strong feeling that part of the added value of an Inquiry would be to reflect the agencies' perspective whilst also contextualising survivors' experiences. Some representatives of provider agencies indicated their support for an Inquiry. Many believed that accountability and forgiveness should be central to an Inquiry and all care settings should be included in its scope.

However, it was recognised that justice for all victims of historic abuse with an increasingly aging profile could not be met through an Inquiry. It was also pointed out that an Inquiry may have a detrimental impact on the ability to recruit and retain residential child care workers. The view that an Inquiry would be costly and time-consuming to set up was expressed.

National Survivor Support Fund and Support Services

There was general agreement that further information was needed about the details, the 'What' and the 'How'. Participants were keen to define the scope of the Support Fund as soon as possible and agree on the principles that will guide decision making and timescales. Many considered that it should not just be a pot of money but about receiving support to access a range of different services.

It was suggested that survivor support services should be person-centred and built around individual need. It could be linked in with existing models such as the Self-Directed Support model. There should be graduated types of support available.

Responsibility for managing a Survivor Support Fund/Service should be shared and not go out to tender to the cheapest bidder. Agencies also sought clarity about how funds would be raised for a Survivor Support Fund, and reparations in particular would need further scoping.

Further clarity was sought on how survivors' voices would be heard going forward.

Other Aspects of the Action Plan.

There was continued concern about the Time Bar and a desire to know whether steps will be taken to address this.

Apology continues to be an important part of a response, but it has to be linked to accountability.

Organisations are willing to contribute to the solutions but cannot sign up to a blank cheque. There is a need to keep focused on the outcomes and lay down specific terms.

It was pointed out that the Action Plan is not a 'pick n mix' of responses. All components are needed in order for justice to be achieved. One aspect of the Action Plan in isolation does not provide an adequate remedy. There needs to be a commitment to review the impact of all actions in 10 years' time.

Survivors should be involved in the development of future services to ensure they are safer.

6. Closing Remarks and Next Steps

Prof Miller closed the InterAction event with some final reflections and an outline of the next steps.

The InterAction participants broadly welcome the Scottish Government's commitments to the Action Plan. Today marked the first time the Scottish Government had made a public commitment to funding a Survivor Support Fund, to giving full consideration to the merits of an Apology Law, to funding an appropriate form of Commemoration and to working with Police Scotland to ensure the National Child Abuse Investigation Unit is responsive to the particular needs of victims of historic abuse.

There remain two areas of the Action Plan where more work and clarity is needed.

The first is the Time Bar, and there should be much more scope for flexibility when judges are exercising their discretionary powers. There will be a debate in Parliament shortly. It may be the case that a test case is needed where the judiciary will be challenged to explain why discretion was not used.

The second area is on the question of an Inquiry into historic abuse of children in care. The InterAction participants hold a range of views on this. Critically there is a window of opportunity in which to respond to the Scottish Government statement. While the Scottish Human Rights Commission has respected the fact that a diverse range of views on Inquiry have been presented as part of the InterAction process, as a human rights body, it has consistently called for a public Inquiry and will continue to do so

It is clear that more 'flesh and bones' are needed on the commitments, and we would like Scottish Government to spell out timescales and resources. Further detail is required on how the Scottish Government will continue to engage with Survivors and other InterAction participants to realise the Actions. We would expect them to publish their approach to this shortly.

Prof. Miller confirmed that an open event for survivors will be held shortly to share the outcomes of today's discussion, and a report of the InterAction Event and the outcomes will be written up and shared.

The main focus for the SHRC now will be to ensure that the commitments made in the Action Plan will be locked into Scotland's National Action Plan for Human Rights (SNAP) which has its own inbuilt monitoring system.

Finally, it was pointed out that the journey so far has created "work of permanent value" and participants were warmly thanked for their invaluable contribution to the day and to the InterAction process over the past two years.