

## PE1717/C

Petitioner submission of 9 October 2019

In response to the reply from the Scottish Government.

I am sure the Government, as well as all political parties will want to achieve the safest environments for all our children in Scotland by addressing and closing any gaps within the safeguards that are currently in place. In order to achieve this across all sectors in Scotland, evidence must be collated from all non recent victims of child sexual abuse, not just the evidence being given to the current inquiry. This in turn would take Scotland closer to the Government's commitment of implementing the principles underlying the UNCRC and their recent consultation paper:

“Incorporating the UN Convention on the Rights of the Child into Scots Law: consultation.

Views sought on how best to incorporate 'gold standard' for children's rights into domestic law and improve the lives of children and young people.”

This is open for views and Scottish Government are inviting responses to this consultation by 28 August 2019.

<https://consult.gov.scot/children-and-families/uncrc/>

The following articles of the UNCRC clearly highlight what should be happening. In addition, I believe that these articles clearly support the points that I raised with the Petition Committee and subsequent points that I shall be submitting in the outcomes which I consider achievable. Fundamentally though, I believe everything comes back to Article 3 of the UNCRC.

### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by

competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Current epidemiological studies in relation to the causes of drug abuse would indicate that there is a direct link between drug abuse and CSA. I believe it is not unreasonable to ask the question, are we ignoring a sector of society that is desperately crying out for help?

Recent news reported that Scotland has the highest drug death rate in Europe. This in my opinion gives further weight to the urgency with which we need to address the plight of non-recent CSA - child sexual abuse across all sectors within Scotland. As Scotland is trying to lead the way in becoming an ACE (Adverse Childhood Experience) Aware nation, and the Scottish Parliament has a Cross Party Group on the Prevention of ACE's, I see a commitment to understand the routes of self-destructive behaviour, and a desire to enable prevention.

I would like therefore to add clarity as to what the term victim constitutes as, extracted from - Human Rights in the Administration of Justice: A manual on HumanRights for judges, lawyers and prosecutors. Page 756

## 2.2 The notion of victim

According to paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the term “victims”

“means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”.

This definition covers many categories of harm sustained by people as a consequence of criminal conduct, ranging from physical and psychological injury to financial or other forms of damage to their rights, irrespective of whether the injury or damage concerned was the result of positive conduct or a failure to act.

Quite importantly, according to paragraph 2 of the Declaration a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim”. According to the same article:

“The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

Lastly, as pointed out in subsection 2.1.1 above, the provisions of the Declaration, in full consistency with the principle of equality and the prohibition of discrimination under international human rights law dealt with in Chapter 13 of this Manual, are, according to paragraph 3, applicable to all, without distinction of any kind on the grounds enumerated in the paragraph or on other grounds.

Taking into account the latter points, this leads me to request;

A reconfigured fully inclusive INDEPENDENT child abuse inquiry with terms of reference that permit broader investigation of allegations of child sexual abuse with NO exclusions. Child abuse is a crime no matter where it happens : be it in churches, sports, clubs, schools, informal settings etc., it is in short...child abuse.

I also firmly request that Scotland be appointed an INDEPENDENT Victims Commissioner. There are too many victims striving for justice over failings in the system across many areas. Individuals who have suffered should have time to heal and regain their strength. It is wrong that they should repeatedly have to open old wounds.

A nation of strong adults, supporting our next generation can be achieved. We can make inroads into repairing the damage caused by child sexual abuse, if we give those

that were abused a voice. The healing starts when you are listened to in a compassionate, caring environment.

Further weight to my concerns can be found in the suggested selection of newspaper articles and other materials. Collectively they paint a very disturbing picture across the years. That is why I would urge the Scottish Government and the general public to look at the wider picture and the urgency behind my pleas.

Suggested reading:

- Crown Office to be investigated by child abuse inquiry over alleged failures  
Published 7 May 2019 - Scottish Legal News
- 'Nuclear' warning to Scots child abuse inquiry. Fears over government interference allegedly raised by solicitor to investigation body in 'challenging' meeting. Published 19 May 2019 - The Times
- Prosecution flaws 'should have been investigated' John Halley. Published 5 May 2019 - The Sunday Time
- Child abuse ring and the judiciary: Police send report on sex claims to prosecutors. Published 12 May 2019 - The Scottish Mail on Sunday
- Ex-lawyer faces extradition over 'paedophile network'. Published 24 June 2019 - The Times
- Chair of Scottish abuse inquiry quits over 'government interference'. Published 4 July 2016 -The Guardian
- Panel member quits 'doomed' Scottish Child Abuse Inquiry. 28 June 2016 - Scotland Politics, BBC
- Daughter of Robert Henderson QC awarded £20,000 by CICA over sexual abuse . Published 24 June 2019 - Scottish Legal News
- Mystery probe cops again quiz fraudster who forged former Lord Advocate Andrew Hardie's signature to buy a car 20 years ago. Published 8 January 2017 - The Sun
  - Public Statement by John Halley, Advocate and Part Time Sheriff in Scotland - ResearchGate:  
The Scottish Child Abuse Inquiry ("SCAI") Selkirk, 3 May 2019. I have been absent from work since 28 October 2016. On 10 October 2016, I was diagnosed with bowel cancer. On 31 October 2016, I underwent a right hemicolectomy in surgery lasting some 4 hours at Borders General Hospital, Scotland. Between 6 December 2016 and June 2017, I underwent 8 cycles of chemotherapy. I have been unable to return to work since then.  
Prior to and after my diagnosis of cancer, I have held appointment as Lead Junior Counsel to the SCAI.

In order to ensure necessary safeguarding of our children going forward, Scotland and our survivors of child abuse require the truth.  
This statement constitutes a protected act within the meaning of section 27(2)(c) and (d) of the Equality Act 2010.