

PE1717/D

Petitioner submission of 9 October 2019

- **Petition PE01717:** asking the Scottish Government to make a stance against the intolerable suffering that child sexual abuse inflicts on the victims. Therefore putting the well-being of our Nation above perceived issues of GDPR by supporting maimed survivors and making inroads into preventing further child sexual abuse.

DESIRED OUTCOMES

1. 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.
2. Mandatory Reporting of known or suspected abuse needs to be part of a functioning safeguarding framework within Scotland.
3. Scottish Independent Victim's Commission.
4. Long term retention and effective management of relevant records.
5. The scrapping of corroboration and an end to the not proven verdict.
6. Mandatory inclusion of all Judiciary, COPFS, solicitor's, solicitor advocates, advocates, sheriffs and clergy onto the regulated roles of the Disclosure Scotland Act.
7. A fully independent inquiry into the Judiciary of Scotland by an external body.

Explanatory notes/ further reading:

World Health Organisation:

https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap3.pdf

- **Outcome 1** - The initial consultation that took place with survivors of non recent child sexual abuse has yet to publish the summary of the requests made by the attendees. It is widely known that they called for a broader remit to include all victims of child sexual abuse. Unfortunately an "error 404 - not found" appears when searching for the summary of responses and when you click on the following link:

<https://consult.gov.scot/health-and-social-care/inquiry-into-historical-child-abuse/>

"We would like to have responses by 26 March 2015. The Scottish Government does not intend to publish any individual responses, however, a summary of responses will be made available in Spring 2015. This summary report will

include statistical information such as number of responses, as well as an overview of responses, by topic.

Consultation on the Public Inquiry into Historical Child Abuse in Scotland and other Scottish Government Commitments to Survivors of Historical Child Abuse (includes consultation responses)". Excerpt taken from the above link.

In approaching the Scottish Human Rights Commission prior to giving evidence in April at the Scottish Parliament Petition's Committee, the response I received stated, "Whilst our historic work in this area has focused on children in care, the framework can be applied in the wider context. You may wish to refer the Public Petitions Committee to this document."

Further justification of the need for this inquiry has been evident in the approaches and revelations that have been made to myself by individuals and those working within third sector organisations.

Another factor that must be taken into consideration is the current shroud that envelopes the dispute surrounding the chair of the Scottish Child Abuse Inquiry, Lady Smith who is the respondent in an Employment Tribunal claim made by Advocate John Halley. This, coupled with the articles that were included in the suggested reading within my response to the Deputy First Minister and Cabinet Secretary for Education and Skills, are all pertinent in consideration of the status quo.

- **Outcome 2 - Mandatory Reporting** - The following presentations were delivered to the Independent Inquiry Child Sexual Abuse (England & Wales):
<https://www.iicsa.org.uk/key-documents/11005/view/professor-ben-mathews-presentation-1.pdf> <https://www.iicsa.org.uk/key-documents/11027/view/professor-ben-mathews-presentation-2.pdf>
- **Outcome 3 - Scottish Independent Victim's Commission**. The key concepts that need to be addressed is the notion of "independent" and "victim".
<https://www.legislation.gov.uk/asp/2014/1/contents>
I would like therefore to add clarity as to what the term victim constitutes as, extracted from -
<https://www.ohchr.org/Documents/Publications/training9chapter15en.pdf>
Human Rights in the Administration of Justice: A manual on Human Rights for Judges, Lawyers and Prosecutors.

“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.”

The Deputy First Minister (DFM) in his response to this petition included a link to the draft work plan of the Victims Taskforce at:

<https://www.gov.scot/groups/victims-taskforce/>

This I have read and I would like to take this opportunity to extract the following from the Victims Taskforce papers.

The Lord Advocate said:

"The provision of appropriate and meaningful support to the victims of crime is part of a modern criminal justice system. Prosecutors can only do their job of delivering justice if victims and witnesses are willing to come forward and give evidence.

"The Taskforce represents an opportunity to improve the experience of victims, to reassure them that the system will provide support and give them confidence to come forward, speak up and make sure their voices are heard."

Extract as taken from The Victims and Witnesses (Scotland) Act 2014:

(2)The principles are—

(a)that victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner,

(b)that victims should, as far as is reasonably practicable, be able to understand information they are given and be understood in any information they provide,

(c)that victims should have their needs taken into consideration,

(d)that, when dealing with victims who are children, the best interests of the child should be considered, taking into account the child's age, maturity, views, needs and concerns, and

(e)that victims should be protected from—

(i)secondary and repeat victimisation,

(ii)intimidation, and

(iii)retaliation.

Those who are fighting tirelessly in an endeavour to address failings in the system are equally being re-victimised. Choosing not to be complicit when failures in the systems present themselves to you should be encouraged.

Further evidence as outlined in the current research and studies by Professor Thanos Karatzias, add further to the argument of the damage caused to vulnerable victims by these defective areas within the Laws of Scotland.

<https://www.napier.ac.uk/research-and-innovation/research-search/outputs/differentiating-symptom-profiles-of-icd-11-ptsd-complex-ptsd-and-borderline-personality>

Outcome 4 – Long term retention and effective management of relevant records
A key issue that has hampered individual investigations and reviews of historic abuse is the lack of corroborative evidence, the most significant for Scotland being Sir Tom Shaw’s Historical Abuse Systemic Review.

"The review depended on the availability of records to fulfil the remit. In practice, however, many aspects of records - from their accessibility to their very existence - proved extremely challenging" Chapter 5 Records of residential schools and children's homes in Scotland p122,

<https://www2.gov.scot/resource/doc/203922/0054353.pdf>

Shaw’s recommendation that “The government should commission a review of public records legislation which should lead to new legislation being drafted to meet records and information needs in Scotland.” Ibid p156 led to the creation of the Public Records (Scotland) Act 2011,

<https://www.legislation.gov.uk/asp/2011/12/contents>, providing a far more robust legislative framework than existed before.

However more needs to be done to provide robust methods of practical implementation, particularly given the challenges of record keeping in the digital age, to ensure the protection of children today and in the future, so they are not failed as those in the past have been.

We need to remove barriers related to long term retention, access and lawful inter-agency sharing of relevant records to support re-opening of child abuse allegation cases, regardless of how long ago those allegations were made. Legislation, statutory and sector guidance needs to be consistent and widened to cover all children, not just those in statutory and residential care. Advice regarding records management should apply to all institutions with responsibility to care for children, regulatory bodies who were involved in the investigation of allegations of child sexual abuse, including , the police, third sector and other bodies who provide support to the victim.

This would not only support those who suffered abuse, but also those wrongly accused of abuse to get justice and some kind of closure by providing corroborating evidence.

Recommendations

Guidance and best practice recommendations in this area should be made a part the role of the Keeper of the Records of Scotland in developing and refreshing

his statutory guidance under Part 1, Section 9 of the Act following the recent update of the Model Records Management Plan -

<https://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources/model-records-management-plan>.

Guidance aimed specifically at records created in response to allegations of child sexual abuse should include advice on keeping case records, what classes of records to keep, how long to retain records and how best to preserve them, how to meet data protection obligations for long term retention of such sensitive data and how best to manage records held by multiple agencies, over time, particularly if any of the involved organisations cease to exist in the meantime. The Keeper should be directed to work with records and archive professional bodies to co-develop this guidance and improve upon that which currently exists. An example here would be the retention schedules guidance produced by the Scottish Council on Archives.

<https://www.scottisharchives.org.uk/resources/scarrs/>

In the longer term, enabling legislation should be developed to create the role of independent Victim's Commissioner. The Commissioner should have a statutory obligation to liaise with the Keeper over appropriate advice and guidance to relevant agencies and third parties on records management, including robust retention decision making processes to support current and historic records.

Consideration should also be given to extending the coverage of the Freedom of Information (Scotland) Act 2002 to include records held by third party agencies for publicly funded victim support services.

http://www.legislation.gov.uk/asp/2002/13/pdfs/asp_20020013_en.pdf, Part 1 Section 5 Further power to designate Scottish public authorities.

- **Outcome 5** - Scrapping corroboration - The World Health Organisation and included in my response to DFM cite the following: The Convention on the Rights of the Child recognises and urges respect for the human rights of children. In particular, Article 19 calls for legislative, administrative, social and educational actions to protect children from all forms of violence, including abuse and neglect.

The findings of the Lord Bonyon Review have yet to be published at the time of submission of this article. At this opportune moment, consideration may be given to the following: a three judge panel for all sexual offences, thereby ensuring a fairer trial in the hands of professionals, in contrast to suggestions of increased

jury members. The dangers inherent within any size of jury can be likened to a postcode lottery with regards to intellect, the influence that potentially could be exerted on the jury from outside sources and the limited understanding that surround CSA. The complexities surrounding child sexual abuse and the impact it has on a victim, are little understood by the average member of society. Pitting this lack of knowledge of CSA in a court setting is rife with dangers. A skilled defence lawyer could easily sway the judgement of a jury.

The global understanding of adverse childhood experiences, is still in its early stages. Therefore consideration should be given to those who are in a position of power over the vulnerable victims of CSA. I firmly believe that an awareness raising programme needs to be implemented as a statutory guideline for those who are making judgements, be it the judiciary or the jury.

The benefits of the latter points put quite simply, would be that of fair trials undertaken with the confidence of well informed participants. Thus making inroads into Scotland being a safer place for our children and the vulnerable. Of equal importance the reduction of predators that are still prowling the corridors of our establishments, institutions and streets, looking for their next victim. The not proven verdict is another facilitator in this equation and must be ended in order to enhance our safeguarding policies further in getting it right for every child - GIRFEC, the vulnerable and society at large.

Secondary and repeated victimisation needs to stop.

- **Outcome 6** - Mandatory inclusion onto regulated roles and the requirement for an enhanced disclosure - It should be noted in the subsequent points and in the light of current investigations and allegations that are highlighted in the suggested further reading within my response to DFM the following:<https://www.mygov.scot/pvg-referrals/>

3. When to make a referral to Disclosure Scotland

“The employer must make a referral to Disclosure Scotland explaining what's happened. This only has to be done if the harmful behaviour meant that the person involved:

was dismissed as a result

would have been dismissed but left before they could be

was transferred permanently away from work with children or protected adults”

Within the Disclosure (Scotland) Bill - Policy Memorandum attention must be drawn to “other relevant information” (ORI)

https://www.parliament.scot/S5_Bills/Consumer%20Scotland%20Bill/SPBill50PM S052019.pdf

140. The Scottish Government considers ORI to be important for public protection. It allows for the disclosure of non-conviction information and is a direct response to past tragic cases where information was known about serious offenders but not disclosed. The Bichard Report, following the Soham murders on 4 August 2002, and the Cullen Inquiry that followed the Dunblane massacre on 13 March 1996, both highlighted the importance of managing better what is known about individuals who are of interest to the police and about whom there are valid safeguarding concerns.

141. In response to the Cullen Inquiry, the 1997 Act introduced the ability for Disclosure Scotland to ask the chief officer of any relevant police force to provide information about the applicant for inclusion on the enhanced disclosure. And in enacting the PVG Act (the Scottish Ministers' response to the Bichard Report), the Scottish Parliament provided for the possibility of ORI being disclosed on the PVG scheme record.

I hold firmly that it is the duty of the Scottish Government to restore the Nations faith in the COPFS and the Judiciary of this country. Fundamentally truth begets truth, a concept which we all should strive to hold as the highest honour. Adversity can be faced and overcome, making Scotland a Nation to be proud of. A Nation where we can help all to reach their full potential and become a beacon of hope amidst the unfolding global scandals of child sexual abuse.

As all MSP's are required to be disclosed then it is only fair and just that the same safeguards are afforded to those within the Judiciary, COPFS, solicitor's, solicitor advocates, advocates, sheriffs and clergy.

Consideration may then be given to The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

<http://www.legislation.gov.uk/ssi/2012/162/contents/made>

My interpretation is such that the COPFS are exempt from this Act. However as they are the independent public prosecution service for Scotland, and they are a Ministerial Department of the Scottish Government. The department being headed by Her Majesty's Lord Advocate, who under the Scottish legal system is responsible for prosecution, along with the area procurators fiscal. This then

begs the question as to why they are not included in Regulation 2-Schedule List of public authorities of the above Act?

Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevents executive and legislative encroachment upon those rights. It serves as a foundation for the rule of law and democracy. I therefore ask that those within these offices lead by example and ensure the equality across the nation for the safeguarding of our children and the vulnerable in society

Looking beyond the confines of Scotland, I believe the determination to ensure better protection for children and the vulnerable is being executed with few exceptions in Victoria, Australia.

<https://www.premier.vic.gov.au/ensuring-better-protections-for-all-victorian-children>

https://www.researchgate.net/publication/285627260_Catholic_Church_Responses_to_Clergy-Child_Sexual_Abuse_and_Mandatory_Reporting_Exemptions_in_Victoria_Australia_A_Discursive_Critique

- Outcome 7 - A fully independent inquiry into the Judiciary of Scotland by an external body.

Consideration may be given to the following extract from the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors - International Commission of Jurists. This in my humble opinion would finally cut the Gordian knot and deliver a clean slate for Scotland to move forward with.

<https://www.refworld.org/pdfid/4a7837af2.pdf>

“Judges must conduct themselves according to ethical standards and will be held accountable if they fail to do so. International law clearly establishes that judges can only be removed for serious misconduct or incapacity. Disciplinary proceedings must be conducted by an independent and impartial body and in full respect for procedural guarantees.”

In addition to the desired outcomes, I include links to two extremely well executed concepts. These I believe Scotland would benefit from by emulating the Lighthouse and endorsing a training program from the Beam Project. A training programme that should be extended to all public authorities, to those who will be included in the regulated roles and the relevant bodies within the COPFS, solicitor's, solicitor advocates, advocates and sheriffs.

<https://www.thelighthouse-london.org.uk>

<https://beamproject.co.uk>