

## Consultation Questionnaire

### Q1. Do you agree or disagree with the purpose of a National Confidential Forum?

Agree  Disagree  No preference

Who Cares? Scotland welcomes the Scottish Government's intention to establish a National Confidential Forum giving adults who spent time in Residential Care an opportunity to describe their experiences, based on the conclusions of *Time To Be Heard: A Pilot Forum an Independent Report* by Tom Shaw.

Who Cares? Scotland agrees with the purpose of the national Confidential Forum that "Lessons learned from the past can help to prevent abuse in the future, inform improvements for the health and wellbeing of children in residential care today and protect their rights more effectively in the future."

Consistently research, policy documents and official inquiries recommend the provision of specialist independent advocacy services for looked after children and young people in the prevention of abuse.

Recently TTBH noted that: *"children must be able to raise concerns with confidence that doing so will not make things worse and with some hope it will make things better. The role of independent advocates is essential to that goal and should be promoted extended and safe guarded"* p109

Similarly, The Edinburgh Inquiry<sup>ii</sup> and the Kent Report<sup>iii</sup> both recount the importance of independence in safeguarding young people. The Edinburgh Inquiry concluded that:

*"...in order to provide an effective safeguard for children and young people living away from home, the crucial factor is that there is somebody independent of the unit or carer who is known and trusted by the child and has the potential to respond appropriately to concerns displayed or expressed."* p240

The Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit recommended that: *"the Scottish government should review the funding of children's advocacy services to ensure all looked after children have access to an independent, quality service."* p146

Who Cares ? Scotland understands the valuable role professional independent advocacy plays in ensuring Looked After Young People have their voices heard and are certain that a legislative right to independent advocacy for every looked after child is a must, it is only through supporting young people to be heard that we can protect and promote their other rights.

### Q2. Do you agree or disagree that the Forum should operate independently from Government?

Agree  Disagree  No preference

Who Cares? Scotland agree that the Forum should be independent from Government. The Scottish Government is a significant stakeholder in relation to the provision of state care with corporate parenting responsibilities; we therefore consider it important that the National Confidential Forum should operate independently from Scottish Government.

The dynamics of power which are central to an abusive relationship can have long-standing psychological and emotional consequences for the Survivors of abuse, resulting in issues of mistrust with authority experienced by Survivors. This approach may further assist in addressing these issues.

**Q3. Should the Forum**

**(a) be integrated into another public body ?**

Agree  Disagree  No preference

**(b) be a separate unit within another public body?**

Agree  Disagree  No preference

As noted above, Who Cares? Scotland agree it is important that the Forum is as independent as possible, not only from Scottish Government but also from any other public body. To this end we believe that the Forum should be a free-standing organisation. We do not consider that it would be beneficial for the Forum to be integrated into another public body.

If however the Forum needs to be linked to another public body, it is important that its independence is recognised by operating as a distinct forum with its functions clearly separated from the current work of the public body, with clear and transparent governance arrangements in place to underline the Forum's independence.

**Q4. Do you agree or disagree that all adults who were placed in residential care by the State should be eligible to take part in the National Confidential Forum?**

Agree  Disagree  No preference

Who Cares? Scotland agree that all adults who were in residential care should be eligible to take part in the National Confidential Forum. However, we consider that other groups should also be eligible to take part in the Forum. We consider that adults who were placed in foster care and in a range of other institutional settings; residential schools and children's homes, residential educational provision for children with special needs, long-stay hospital provision for children with acute medical and/or mental health needs, secure accommodation should also be eligible to take part in the Forum.

In addition, all those in residential and foster care under private arrangements

should be eligible where the State had a regulatory function in monitoring and inspecting placements. This recognises the changes in legislation and types of placements which have taken place over the past century (Kendrick and Hawthorn, 2012).

The proposed eligibility for the National Confidential Forum, that of all adults who were in residential care, opens participation to young adults who may still be in care, or have more recently left care, as the Adult Care and Protection Act defines an adult an individual aged 16 or over. Consideration must be given to the support requirements and implications of testimony from this group. Through our ongoing work with looked after young people up to the age of 25, we are aware that instances of abuse are not confined to historic settings.

**Q5. Do you agree or disagree that the process should be the same for all participants, regardless of whether they regard themselves as survivors of abuse in residential childcare?**

Agree  Disagree  No preference

As noted in Q1, we agree with the purpose of the National Confidential Forum, as set out in the consultation document that 'The Forum will be designed to give adults who spent time in residential care as children the opportunity to describe their experiences in residential care'.

Time to Be Heard was established to hear the experiences of adults who had experienced care in Quarriers and 'especially abusive experiences' (Shaw, 2011, p.5). This, then, sets the framework for the Shaw's recommendation of a differentiated approach to those who regard themselves as survivors and those who do not. However the purpose as set out in the consultation document does not make reference to those who regard themselves as survivors, and as such, there is no justification for taking a different approach for those who have positive experiences of care.

Equally, the broader stated purpose allows the inclusion of individuals who may not define themselves as survivors. The fact that individuals do not define themselves as survivors of abuse does not mean that they have not experienced abuse. Whether adults who have experienced care as children consider themselves survivors of abuse can be dependent on what we define as abuse, particularly in the context of historic abuse in care.

The consultation document draws on the Scottish Office guidance of 1998 and refers to : sexual abuse ; physical abuse ; failure to thrive ; emotional abuse and physical neglect. However, there are also broader issues relevant to historic abuse. These have been defined as 'programme abuse' and 'system abuse' (Gil, 1982) 'Programme abuse' involves extreme or unfair policies, or inhumane or abusive techniques and regimes. An example in the UK, was the use of 'pindown' in Staffordshire children's homes which involved a restrictive regime involving persistent isolation with no visits, removal of ordinary clothing and enforced wearing of night clothes, non-attendance at school, and no access to writing or

reading materials, television or radio (Levy and Kahan, 1991). 'System abuse' is the most difficult to define but involves the long term negative consequences of the failures of the child welfare system itself leading to poor outcomes for children and young people (Kendrick, 1998).

For these reasons, Who Cares ? Scotland considers that the process should be the same for all participants, with their testimony given equal value and respect, regardless of whether they regard themselves as survivors of abuse in care.

Hawthorn, M. and Kendrick, A. (2011) *Time to Be Heard Pilot Forum Evaluation : A Chance to Say More*, Glasgow : Scottish Institute for Residential Child Care.

**Q6. Do you agree or disagree that people who were in the following types of residential care should be included:**

- residential schools and children's homes
- residential educational provision for children with special needs
- long-stay hospital provision for children with acute medical and/or mental health needs
- secure accommodation

Agree  Disagree  No preference

As noted in response to Q4, Who Cares? Scotland agrees that all adults who were in residential care should be eligible to take part in the National Confidential Forum, including adults who were placed in foster care and the range of other institutional settings listed.

**Q7. What other support do you consider that participants would benefit from before, during and after the Forum?**

Who Cares? Scotland believes that the support mechanisms put in place for Time to Be Heard should be used as a model for the National Confidential Forum.

Additionally, we know from our work with children and young people that it is not enough to only provide the opportunity for them to air their views and feelings; instead they need to be fully supported in doing this to truly empower them to do so and with professionals that they feel safe with.

Whilst for some, they will feel able to be open and honest with those in authority around them; however this is not always the case. In such cases, it is constructive to engage the services of an independent advocate to ensure that their views and wishes are represented fully. We would see this as a supportive, additional option for adults engaging with Forum.

**Q8. Do you think that the participants should be protected from legal action in connection with their work for the Forum?**

Yes  No  No preference

Who cares? Scotland agrees there will be a need, in principle, for those individuals working on the Forum to have protection, and for there to be potential restrictions on disclosure of confidential information. Similarly, the nature of the confidentiality given to participants in the National Confidential Forum will need to be considered in relation to their protection and the duties which would be placed on a Public Body in relation to the ongoing protection of Children and young people currently within the care system.

**Q9. Do you think there are any barriers that would prevent people who are eligible to take part in the Forum from participating?**

Yes  No

There are a range of barriers which may prevent people who are eligible to take part in the Forum from doing so.

In particular the stigma associated with being in care may be a barrier. Some participants of the Time To Be Heard pilot had not disclosed to anyone that they had been in care as a child; others may yet be reluctant to participate for this reason.

Equally as noted previously, the dynamics of power which are central to an abusive relationship can result in issues of mistrust of authority, for Survivors of abuse, they may therefore be reluctant to engage with Forum.

There may be particular barriers for specific groups of people, as in the Pilot Forum, for whom consideration will need to be given to a range of supports.

Disabled adults who were in care as children.

People with mental health issues.

People who are in prison, hospital or care homes, who may be homeless, and for the gypsy and traveller community.

People with poor literacy skills.

People who may be of advanced age

People who may have a terminal condition

Consideration will also need to be given to those living abroad, particularly those who went abroad as child migrants.

**Q10. Do you wish to add any additional points about the Forum?**

Yes  No

Who Cares? Scotland believes that ongoing involvement of Survivor stakeholder groups is crucial in the development of a National Confidential Forum if it is to have the credibility with those it seeks to engage.

Equally the consultation document acknowledges that the National Confidential Forum is being taken forward separately from the Scottish Human Rights Commission InterAction on Historic Child Abuse, and that Scottish Government is taking part in the InterAction. It is important that Scottish Government and other stakeholders accept that the National Confidential Forum is only one element of the response to the injustice of historic abuse, and will raise further expectations and demands for justice.

# Equality Impact Assessment

## Introduction

The public sector duties require the Scottish Government pay “due regard” to the need to:

- Eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the “protected characteristics” of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

In effect, this means that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies.

A key part of those duties is to impact assess all our policies to ensure that we do not inadvertently create a negative impact for equality groups and also that we actively seek the opportunity to promote equality of opportunity and to foster good relations.

## The Aim of the National Confidential Forum

The aim of the National Confidential Forum is to give adults who spent time in residential care as children the opportunity to talk about their experiences.

In this section of the consultation questions we are particularly interested in finding out your views on whether the National Confidential Forum meets the needs of the following groups:

- Age
- Disability
- Gender
- Sexual Orientation
- Race
- Religion and Belief

Your responses to the questions will help us to carry out a full equality impact assessment for a National Confidential Forum.

## Questions

1. Do you think the creation of a National Confidential Forum will have a disproportionately negatively impact on particular groups of people in our target audience?

Yes  No

Comments

2. Do you think the creation of a National Confidential Forum will have a positive impact on particular groups of people in our target audience?

Yes  No

Comments

3. What negative impacts do you think the National Confidential Forum will have on a particular group?

Comments

4. What positive impacts do you think the National Confidential Forum will have on a particular group?

Comments



5. What changes would you suggest to reduce any negative impact you have identified?

Comments

6. What changes would you suggest to enhance any positive impacts you have identified?

Comments

7. Are there any significant issues we need to consider in relation to:

- Age
- Disability
- Gender
- Sexual Orientation
- Race
- Religion and Belief?

Comments

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<sup>i</sup> Shaw, T. (2011) *Time To Be Heard: A Pilot Forum an Independent Report*. Edinburgh: Scottish Government

<sup>ii</sup> Marshall, K., Jamieson, C. and Finlayson, A. (1999) *Edinburgh's Children: The Report of the Edinburgh Inquiry into the Abuse and Protection of Children in Care*, Edinburgh: City of Edinburgh Council.

<sup>iii</sup> Kent, R. (1997) *Children's Safeguards Review*. Edinburgh: Scottish Office

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