Consultation Questionnaire

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

Agree ☒ Disagree ☐ No preference ☐

Comments

We agree that the forum must be primarily about collecting and reporting on individual experiences of residential childcare. It cannot be a mechanism for restorative justice. Individuals invited to relate their experiences to the forum must have a clear understanding of this. It could be a source of frustration for some people. Good information sent to potential attendees and a reminder at the start of each session will help. The question that may arise is: if the forum is not the route for restorative justice, what is the route? The SG should be prepared to respond to that.

We think it is right that there will be no identification of individuals, staff or services in the report. In our experience, this does not necessarily prevent this information entering the public domain in other ways when the report is released. We comment on this further in our answer to Q8.

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

Agree ☒ Disagree ☐ No preference ☐

Comments

Many institutions where abuse may have taken place would have been under governmental control. While this may have been some time ago and under different governmental systems, it would still be essential that the forum is clearly perceived as independent of government.

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 ☒

Comments

We note that there is no option of a separate stand-alone project. In this case, there would need to be a "best fit" test as to which existing public body has an overall ethos, culture and functions that are most similar to the purpose of the forum. If it is to be a "separate unit within another public body", why not set it up as an independent stand-alone unit?

We consider that there are existing organisations which, if given extra resources, have the overall ethos to support and govern this work. Health and social care regulators, statutory human rights organisations and independent safeguarding organisations should be considered.

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 ☐

Comments

Strongly agree

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 ☐

Comments

This will give a more comprehensive view of the experiences of individuals cared for in these settings. It is likely, of course, that individuals who wish to describe experiences of abuse are more likely to come forward

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 ☐

Comments

We strongly agree that all should be included. Failure to do so would discriminate against hearing the experiences of children with particular disabilities requiring hospital care – a matter to be considered in the equality impact assessment. The process must comply with equality legislation. It could also be perceived as singling out one sector of care and therefore could be criticised as unfair.

Some Scottish children were placed in specialist accommodation outside Scotland because of special needs. While the care setting was outside Scotland, the placing authority was Scottish. We consider that people in this category should also have the opportunity of giving evidence to the forum.

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

Comments

Our greatest concern is the risk of the process causing further trauma. The very nature of the task of recounting experiences of abuse could do this, as could clumsy questioning. The option of one-to-one support from an experienced counsellor should be available after the event – a matter to consider when calculating the cost. It would be hard to predict the need for this.

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 ☐

Comments

There are three levels of protection possible: one for the forum itself or for the organisation hosting the forum, one for individual forum members and one for individuals who make allegations of abuse to the forum.

The forum or host organisation should, in our view, have qualified immunity from defamation. The same should apply to individual members. Immunity should not be absolute. We recommend something along the lines of the Mental Welfare Commission's qualified immunity under S20 of the Mental Health (Care and Treatment) (Scotland) Act 2003. A similar clause (where malicious intent has to be shown) would provide appropriate immunity for the host organisation, the forum and its members. However, it would be right that the forum and its members are held to account for any breach of confidentiality.

Example. The forum publishes a report that identifies that Ms X states that she was sexually abused by care worker Y in residential home Z. The name of the care worker and residential home enter the public domain.

If the forum or a member of the forum can be shown to have placed that information in the public domain, there should be no immunity from prosecution.

If the information was released by another party, e.g. Ms X or someone who knows her, the forum and its members should be immune from defamation.

The SG may wish to consider immunity for any person giving evidence to the forum. We would suggest absolute immunity from acts of defamation for any participant's evidence to the forum. There is a possibility of an inadvertent breach of confidentiality by a forum member or member of support staff. An immunity clause would protect the attendee. This would not, of course, cover any statements made by attendees outside the

confidential nature of the forum.

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 ☐

Comments
The consultation paper made no reference to this, but we would assume that aids and interpretation for people who require communication assistance will be provided (e.g. people who sign or whose first language is other than English).

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

Yes ☐ No ☒

Comments

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 it 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 disproportionally 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
Validation of distressing experiences

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
See our earlier comments. Failure to include individuals who were in hospital care as children and/or to provide interpretation and communication aids would discriminate against people with disabilities and people from certain races.