



Time for 'Justice'

Research to inform the development of a human rights framework for the design and implementation of an 'Acknowledgement and Accountability Forum' on historic abuse of children in Scotland.

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Glossary of Terms

In the course of undertaking this research, it became evident that frequently-used terms relating to this topic required clarification. This glossary lists and explores these key terms. This glossary is intended to give the reader a flavour of the issues that arose during this research and identifies how terms have been used within this report.

Child: Whilst recognising that the United Nations Convention on the Rights of the Child (UNCRC) asserts that ‘a child means every human being below the age of eighteen years’ (United Nations, 1989: Article 1), it is clear that laws and policies which govern Scottish social services, health and education systems do not necessarily apply this standard age of eighteen to define a child’s independence; indeed, in many current circumstances, the age of majority is established in policy, and often in practice, as sixteen years.

However, the UNCRC also acknowledges that, while this age of eighteen is the international standard, each state will legally determine the child’s age of majority for itself. Hence, there is often a discrepancy between international standards and the domestic legislation, policy and practice of individual countries. In light of the historical nature of this research, it should also be noted that the age of majority has changed over time. As a result of these considerations, the use of the term ‘child’ is used loosely throughout this report.

Additionally, it must also be acknowledged that many adolescents resent being called or thought of as children. Therefore, while the report uses the term ‘child’ often, it does so merely for simplicity’s sake and with a view to the wider UNCRC definition. It makes no wider claim about the boundaries between childhood, adolescence and adulthood.

Child Abuse: The Scottish Office (1998, Annex C) offers the following definition of child abuse, a definition which has been adopted for this research:

Children may be in need of protection where their basic needs are not being met, in a manner appropriate to their stage of development, and they will be at risk from avoidable acts of commission or omission on the part of their parent(s), sibling(s) or other relative(s), or a carer (i.e. the person(s) while not a parent who has actual custody of a child).

In being more specific about the absence of ‘basic needs’ and the risks of ‘avoidable acts’ that justify protection, the Scottish Office (1998, Annex C) categorises child abuse into five types:

- physical injury;
- sexual abuse;
- non-organic failure to thrive;
- emotional abuse; and
- physical neglect.

It is important to note that these 'types' are currently under review.

Historic Abuse: The following discussion of 'historic abuse' was taken from the Lothian and Borders Joint Police/Social Work Protocol. It is the definition contained within this discussion which has been applied in this research:

Historic Abuse will include all allegations of maltreatment whether of serious neglect or of a sexual or of a physical nature which took place before the victim(s) was/were aged 16 years (or aged 18 in some circumstances) and which are made after a significant time has elapsed. Often the complainant will be an adult but some cases will apply to older children making allegations of abuse in early childhood (Lothian and Borders Police et al., 2001: 5).

Despite this definition, we found the term 'historic abuse' limiting in several ways. Firstly, Hawthorn (2006) has observed that what constitutes neglect or abuse is a changing standard which cannot be applied to past experiences without viewing the behaviour concerned through the lens of expectations at that time. This element of 'the historic' is an important variable, given the changes in societal expectations, legal obligations and accepted standards of care that have occurred in recent decades. It is this historical variability which makes the term 'historic abuse' 'value laden and imprecise' (Hawthorn, 2006: 1)

Additionally, the time parameters related to the word 'historic' are vague, with the risk that the lapse of 'significant time' referred to in the above definition may unintentionally imply the exclusion of certain individuals. Whilst we note this problem, it is not the role of this research to define here what constitutes 'historic'.

Finally, in the engagement with participants we used the term 'past abuse' interchangeably with 'historic abuse' in order to compensate for the inexactness of the term 'historic abuse'. However, we became aware during the research that the term 'past abuse' carries the risk that some people who have experienced institutional abuse will view the term 'past abuse' as referring only to abuse within the family.

Institutional Child Abuse: Sen et al., (2007 in Shaw, 2007: 180) state 'the most simple definition of institutional child abuse is any kind of child abuse described in the five categories above [the Scottish Office 1998 definition], which occurs within an institutional setting'.

Further, Shaw (2007: 24) refers to the commonly-known description of institutional child abuse offered by Gil (1982), which makes a distinction between three forms of abuse:

- overt or direct abuse of a child by a care worker;
- programme abuse of children due to approaches taken in that setting; and

- system abuse, where the care system has failed to meet children's needs.

'Survivor-led' process or 'survivor leadership': The lack of a clear definition of the increasingly more commonly used term, 'survivor-led', became a matter of concern for the research group. The following is an attempt at giving a clearer meaning to this term.

For a process to be genuinely 'survivor-led', the leadership of this process, within which survivors should be centrally involved, should ensure a consultation procedure which includes input from survivors of abuse. This input from survivors must be taken seriously at a high level; it must not be tokenistic. A 'survivor-led' process values and brings to the foreground survivors' experiences, perspectives and views, alongside their agenda (where such an agenda can be established from what will inevitably be disparate perspectives and experiences). Such a process integrates the active involvement of survivors at all stages with that of the policy and practice leadership.

This does not imply the exclusion of those who have not experienced abuse; rather, it points out that what is essential to a 'survivor-led' process is the integration of survivors' views across and throughout its full spectrum.

Executive Summary

Goals

As noted in the introduction to this report (see below), the research group behind the project reported herein consisted of two organisations, the Scottish Institute for Residential Child Care (SIRCC) and the Care Leavers' Association (CLA). These two bodies brought a wealth of experience and research expertise to the task and ensured that care leavers who were not from Scotland, and hence had no possible conflict of interest in relation to the Forum, were central to the conduct of the research. The researchers responded to a call from the Scottish Human Rights Commission (SHRC) in September 2009 for a research project that would provide information through which they could inform the Scottish Government about human rights concerns relevant to producing an effective 'Acknowledgement and Accountability Forum'.

The need for such a Forum arises directly from the widely-acknowledged experience of significant abuse in the Scottish child care system in past decades. The uncovering of that abuse during the past ten years has led to an accepted need to address a wide range of outstanding issues for both survivors of that abuse and the wider child care system and indeed, for Scotland itself as a nation.

Methods and Timeframe

The research was conducted within a very short space of time. Effectively, it ran from late October 2009 to mid-December 2009, with the bulk of the fieldwork being conducted in November 2009. This fieldwork consisted of 1) interviews with ten Scottish abuse survivors, 2) three focus groups with relevant professions and 3) an email survey to 170 Scottish care leavers. In short, we sought to inform the Scottish Human Rights Commission of the views of survivors and others, through using in-depth interviews and focus groups and ensuring a wide range of participants. This fieldwork was supplemented with relevant literature reviews and commentary. The research team also received suggestions from an Advisory Body that included Scottish care leavers.

Main Messages

These are set out in full in the 'Key Findings' and 'Recommendations' sections at the end of this report. However, their main features can be set out here in summary form (in no particular order):

- The need for survivors to be active participants in the work of the Forum;
- The need to learn lessons from models in other countries and from this research which could inform current and future practice and so protect current and future children in care in Scotland;
- The need to publicise the Forum through a wide range of mechanisms if survivors are to be able to make use of this 'once-in-a-lifetime' opportunity;

- The need for a transparent remit and guidelines for both the Forum and for those who submit evidence to it or come before it. This is needed in order to avoid confusion and uncertainty, and clarify expectations, for all participants;
- The need for flexibility in the conduct of the Forum so that it can best facilitate the engagement of survivors in what for many will be a challenging but potentially life-changing experience;
- That the Forum needs adequate support structures in place for survivors, before, during and after their appearance at the Forum;
- The need for the Forum to ensure forms of justice and accountability for survivors, rather than merely acknowledgement of their experience;
- That the Forum should have any necessary legal powers to ensure such justice and accountability;
- That the Forum should have a wide-ranging view of the areas of abuse it deals with and not restrict itself solely to residential care.
- That the Forum should seek to protect and balance the human rights and justice issues of all stakeholders in the process;
- That the Forum should ensure that the needs of survivors, in particular, are met through this process.

The Future

In the final stages of the research project, the Scottish Government announced the establishment of a Pilot Forum. Alongside this, there are a number of events planned to facilitate engagement with various stakeholders. Such engagement is clearly welcome. However, there are a number of recommendations and lessons from this research that the Pilot Forum (and any subsequent Forums) clearly need to adopt:

- The need to build upon previous responses to historic abuse in other countries in ways that take account of the Scottish context;
- The need to learn lessons from the Pilot Forum in order to produce a road-tested and robust subsequent Forum;
- The need to ensure that the process produces the genuine accountability that survivors clearly expect and require;
- The need to involve survivors and survivor groups throughout the process.

1. Introduction

In 2002, Chris Daly raised a petition to the Scottish Executive (PE535) calling for an independent inquiry into the historic abuse of children in Scotland. This led to the setting up of a reference group in 2003, in order to explore the role of a truth and reconciliation process that was identified as an important step in dealing with historic abuse. In 2004, there was an apology for such abuse by the then First Minister, Jack McConnell. In 2005, Tom Shaw led the Historic Abuse Systemic Review. This covered the period 1950 – 1995 and was completed in 2007. In 2006, a sub-group of the reference group that was set up in 2003 identified the need for a service for survivors. This led to the funding of 'In Care Survivor Scotland' in 2008, under the umbrella of 'Open Secret'. It is important to see this current report in this context. Eight years on from the initial petition, it is clear that this process has been seen by many as a long road to acknowledging the need to address outstanding human rights issues in relation to the historic abuse of children in care in Scotland.

On the 1st October 2009 the Scottish Human Rights Commission (SHRC) confirmed joint funding for the Scottish Institute of Residential Child Care (SIRCC) and the Care Leavers' Association (CLA) to undertake:

Research to inform the development of a human rights framework for the design and implementation of an 'Acknowledgement and Accountability Forum' on historic abuse of children in Scotland

The Scottish Institute of Residential Child Care (SIRCC) is a partnership of the University of Strathclyde, Robert Gordon University, Langside College and Who Cares? Scotland, a partnership which commenced in 2000. SIRCC seeks to influence and improve the quality of care and outcomes for children and young people living in residential care in Scotland. It seeks to do this by providing learning and development opportunities. These opportunities include: supporting organisational development and workforce planning, and establishing a sound evidence-base which incorporates the views and experiences of young people. SIRCC's activities seek to respect and value children and young people and the workers caring for them in residential establishments.

The Care Leavers' Association (CLA) is a national charity run by care leavers and for care leavers of all ages above 18. The CLA has grown steadily in recent years. It has contact details for over 5,000 care leavers over the age of 18, whom it regularly consults and informs. The CLA is the only UK organisation to provide information and support to adult care leavers; other agencies cease direct support after a care leaver has reached, at most, the age of 25. The scope and reach of the CLA is wide and extends to publications, conferences, research, direct links with policy-makers and think tanks, campaigns, the development of information sources, direct support for individual care leavers and projects with young people in care and care leavers.

A partnership between these two organisations brings together a rich and unique mix of experience within the care system. These experiences include: addressing

historic abuse and developing extensive research knowledge and expertise in this field. This unique partnership also means that this was the first research project on this subject that has care leavers and survivors at the centre of the research team.

A draft report for this research was provided on the 15th December 2009 with a final completion date of 15th January 2010. In addition, the research team were asked to provide a map of potential stakeholders (see Appendix 1). This was a very tight timeframe for such research. However, there was recognition that it was essential to try to ensure that the SHRC was informed by the views of a wide range of stakeholders – most importantly, by the views of survivors – on the best way in which a Forum could respond to the requirement to create an accessible, fair and meaningful process.

At the end of November 2009 (after the research had been completed but before this report had been submitted or any of its findings had been taken into account), Scottish Ministers released a document which outlined some of the parameters of a Pilot Forum (at the time of writing this document can be found at www.survivorscotland.org.uk/news-and-events/news.html). We took note of this document and compared it with our own findings. As can be seen throughout this document, this research highlights some of the difficulties with the current parameters of the Pilot Forum. These difficulties are (in no particular order):

- The degree to which the decision-making on the Pilot Forum has been survivor-led is unclear, and no one who has disclosed that they are a survivor is included on the panel of Forum members;
- The Pilot Forum appears to have adopted a model from outside Scotland without making changes to take into account the particularities of the Scottish context of abuse of children in care;
- The Pilot will only seek out 100 participants for this Pilot Forum and how these are to be 'selected' is currently unknown;
- There does not seem to be any provision for discussion about what is to take place after the Pilot;
- The documents suggest that there is no component for ensuring accountability. This component is something that one would expect in a body entitled 'Pilot Acknowledgement and Accountability Forum';
- The Pilot appears only to focus on those who were abused in residential care.

We shall return to these points in the recommendations of this report.

This report is divided into eight sections, including this Introduction. Outwith the sections on key messages and recommendations, there are five main chapters. The first is an historical and contextual account of child care in Scotland, which outlines important developments and raises central questions in order to facilitate better understanding of the context of historic abuse of children in care in Scotland. From this, the report moves on to review models of acknowledgement, accountability and redress in Ireland, Canada and Australia and consider, their lessons for Scotland. Then, before providing a clear methodological and ethical outline for the research, a

summary of the main points from the Scottish Government consultation on the initial thoughts about an 'Acknowledgement and Accountability Forum' is presented.

This research builds upon many of the points raised by the earlier Scottish Government consultation exercise in relation to the Forum. However, this research adds much more depth and greater representativeness and raises a number of issues not considered by that consultation exercise.

Following the 'Methodology and Ethics' section, the heart of the report lies in the 'Findings and Discussion' section. This section is divided into three subsections, each focusing on the three different research methods and the responses that resulted from each (1. interviews with survivors; 2. focus groups with organisations and frontline staff; and 3. an email survey to Scottish care leavers).

Finally, it is important to point out that throughout this report reference is made to 'survivors'. Whilst the more neutral term 'care leaver' was used when carrying out the research, the research team found that all those involved in the research recognised the term 'care leaver' but wanted to use the term 'survivor' to represent their identity.

2. Scotland: Key Historical and Contextual Elements of Child Care

This section outlines some of the most important developments in child care in Scotland that are essential for an understanding of the social and policy context surrounding many of those that were in care as children and who may have access to the Forum. This section is a supplement to Chapter 1 in Shaw (2007). It is important to appreciate this wider context, since it is central to understanding perceptions of abuse in care and how these have changed over time. The research team recognises that there is a lack of attention paid throughout this section (and, indeed, this report) to the experience of abuse within other types of care (for example, kinship care and foster care) outside of residential care. This is something that is highlighted in the recommendations of this report.

Despite increasing awareness and analysis of the abuse of children since the 1960s (Kempe et al., 1962), accounts of neglect and abuse by former residents (Magnusson, 1984; Sunday Mail, 1984), and known convictions of foster carers and staff (Abrams, 1998), it was not until the 1990s that the abuse of children and young people living away from home by those responsible for their care became the subject of significant public concern in the UK (Butler and Drakeford, 2003). One exception was the work by Oswin (1973) in respect of disabled children in long-stay hospitals.

There has since been an acceptance of the existence of such abuse and an apology by Scotland's First Minister, Jack McConnell, with such abuse being described as 'deplorable, unacceptable and inexcusable' (2004: 3). Since that apology, there has been significant planning and provision designed to address the needs of survivors of institutional abuse in Scotland. This provision has been coordinated and funded by the Scottish Government.

Many former residents of Scottish child care institutions are still seeking to understand their childhood experiences. Some of these experiences date as far back as the first half of the twentieth century (Hawthorn, unpublished). Also, knowledge of the history of the Scottish child care system is not widespread. However, in order adequately to understand what has happened in Scotland, it is important to consider the historic context of residential care, social policy and the value placed on children within the Scottish child care system.

Residential Child Care Provision before 1948: The modern child care system has its origins, as does so much of modern social policy, in the period of the industrial revolution. The Poor Law (Scotland) Act (1845) adapted the Elizabethan Poor Law legislation of 1601 to contemporary industrial conditions. Scottish authorities, however, were reluctant to keep children in the 'poorhouses' that were set up to deter public use of the welfare system. This resulted in many children being 'boarded out' with foster families and thus being separated, often permanently, from their natural parents (Abrams, 1998). For children not boarded out, a range of provision was developed – including reformatories, industrial schools or training ships for 'imbeciles', older or 'unruly' children' (Abrams 1998: 26; Mahood, 1995).

Moreover, charitable provision for orphaned, destitute and neglected children was set up by religious organisations and by private individuals such as the Reverend Charles Jupp (Aberlour Orphanage) and William Quarrier (The Orphan Homes of Scotland) (Abrams, 1998). Quarrier declared that he was providing an 'alternative to the institutionalised care of the workhouse' (Milligan and Stevens, 2006: 12). Abrams (1998) notes that children's homes were a 'last resort for parents in desperate circumstances'. Nevertheless, parents also believed that their children would be well looked after. Many hoped that they could take their children home once family circumstances improved. Some of these children were, however, subsequently sent to colonies in the former British Empire, often without the consent of their parents. In some cases, their parents were told that they had died (Humphreys, 1995). Such schemes continued in Scotland until the late 1960s. Abrams (1998: 29) argues that, while there are similarities with the rest of Britain, 'Scotland's uniquely traumatic experience of industrialisation and urbanisation' presents 'a distinctive picture'.

Social Policy before-1948: There was increasing public and political concern about child welfare during the 19th and early 20th centuries. This initially focussed on restricting the employment of children. Compulsory education for primary-aged children followed in the 1860s and 1870s. The first cruelty to children legislation appeared towards the end of the 19th century and there was further legislation arising from concerns such as the high level of volunteers found to be unfit for recruitment for the Boer War (Middleton, 1971). This led to several official reports into the effects of the poor nutrition and poor living conditions of many children and their families (Abrams, 1998; Middleton, 1971).

Despite many legislative changes (Hendricks, 2003), and the development of social services aimed at helping families under stress (Middleton, 1971), indications are that during the early 20th century and interwar years, the 'Poor Law ethos' of encouraging family self-sufficiency through the maintenance of harsh and rigorous conditions in the workhouse was still pervasive, even after the end of the Poor Law system in 1929. It was at this point that the Local Government Act of 1929 handed the responsibilities of the Poor Law over to local authorities (Corby, Doig and Roberts, 2001; Middleton, 1971). There was, however, little interest in, or change within, residential childcare until Marjory Allen's letter to *The Times* in July 1944, in which she was critical of the large poorly furnished 'orphanages' and the lack of stimulation and personal relationships available to the children living within them. She demanded that the government take steps to improve their condition. While Allen's campaign was underway, a 12 year old boy, Denis O'Neill, died in foster care in England, having been starved and beaten to death by his foster-parents. This resulted in the Monckton inquiry, which in turn brought about the Curtis Committee investigation into state child care in England and Wales (Milligan and Stevens, 2006: 14-15).

While these events were taking place in England, in Scotland similar concerns were raised. In 1945, foster carers John and Margaret Walton were prosecuted and found guilty of wilful assault and ill-treatment of a foster child. They received prison sentences of nine and twelve months respectively (Abrams, 1998). In residential

care, a housemaster resigned in the 1940s when his violent and unorthodox treatment of boys was exposed by one of his colleagues (Abrams, 1998). As a result, the Clyde Report was commissioned in Scotland. These developments led to the 1948 Children Act, which resulted in major developments in children's services. These included the establishment of Children's Departments in every local authority, the first training of residential workers, and the appointment of Children's Officers on a nationwide scale.

This is a very brief summary of a complex period of social history. It must be noted that there is a significant lack of research covering this period. This is particularly important, since this is the period during which many of the individuals who have recently come forward reporting abuse were children in residential care.

Social Policy since 1948: Due to the number of factors at play, it is difficult to isolate the driving forces for change after the end of the Second World War. Hendricks (2003) suggests, for example, that an increased understanding of child psychology, the greater realisation (through the experience of evacuation) of the poor health and emotional well-being of many children and the wider political debate which brought about 'The Welfare State' were the most significant factors. These led to a universal right to various health and social welfare provisions. As a result, the existing Poor Law 'ceased to have effect' (National Assistance Act, 1948).

Since that period, significant shifts in political and social thought and values have moved to a more globalised economy in the latter part of the 20th century. These have resulted in much debate and change within Government policy in respect of child welfare and child poverty. For children living away from home, legislation such as the Social Work Scotland Act 1968 and the Children 'Scotland' Act 1995 has sought explicitly to diminish the need to receive children into care or to keep them there.

Residential Child Care Provision since 1948: The post-war years have been described as a 'period of sustained optimism' (Crimmens and Milligen, 2005: 20), with post-war childcare legislation 'taking us out of the austere and chilly climate of the Poor Law in relation to needy children and into a potentially warmer and kindlier setting' (Kahan, 1999: 1). Increasing awareness in the interwar years of the emotional and psychological needs of children, evidenced by the growth in the number of child guidance clinics (Hendricks, 2003), led to improved understanding of what was needed for the healthy emotional development of children. Central influences here were the early work of John Bowlby and Anna Freud.

The last four decades have seen considerable changes in Scotland; not only a major reduction in the numbers of children in residential care, but also increased recognition of the rights of children and their parents and considerable research into what produces best outcomes. For example, the first 'Who Cares?' conference for young people and their supporters in the 1970s led to the setting up of self-advocacy organisations across the UK. Some of these changes both reflected and have been enshrined in the United Nations Convention on the Rights of the Child (United

Nations, 1989). This Convention has underpinned subsequent legislation such as the Children (Scotland) Act (1995). From the 1970s onwards, legislation required social workers to include the views of young people and their parents in care planning and from the late 1970s onwards children and parents were usually invited to reviews and case conferences. Since the 1990s, serious concerns about standards in residential child care have been driving an agenda for change in Scotland.

A major watershed was the Skinner Report (1992), parallel to the Utting Report (1991) on services in England and Wales. There has also been recognition of the complexity of the residential worker's task and the vulnerability of young people who are 'looked after and accommodated' in Scotland. This has partly been promoted by adults who have come forward reporting childhood experiences of abuse while in residential and foster care (Black and Williams, 2002; Kent, 1997; Marshall, Jamieson and Finlayson, 1999). Developments in Scotland have included a critical review of residential provision and efforts to ensure an appropriately qualified workforce (Kent, 1997; Skinner, 1992). Since the establishment of a Scottish Parliament in 1999, further developments have included improvements in the education and training of staff and of the regulation of services and the workforce through the Regulation of Care Act (2002). All of these developments have been part of a move towards achieving a professional workforce fit for the complex task of supporting children and young people living away from home.

If the Acknowledgement and Accountability Forum is to consider effectively conduct before 1950, which the research team certainly suggests it should do, this section is important to this endeavour.

3. Models of Accountability, Acknowledgement and Redress: A Brief Survey

Dealing with past abuse within the child care system is a challenge for many jurisdictions. The most high-profile national investigations have been conducted in Ireland, Australia and Canada. These provide useful points of comparison for Scotland. In reviewing these investigations, most attention is devoted to the largest of them, in Ireland (which has had a particular influence on Scotland's response, as is clear from recent documentation announcing the establishment of the Pilot Forum). In what follows, we consider each of the main features of such investigations.

Form of Inquiry: This has varied, partly reflecting the varied scale of such investigations. The Irish Commission, dealing with a complex set of issues on a large scale, developed a multi-faceted response. For example, the Commission itself was not involved in deciding on redress. That function was delegated to a separate Residential Institutions Redress Board. This board provided *ex-gratia* awards based on facts discovered in a non-adversarial context (the inquiry) and conditional on the recipient not pursuing future civil actions on the same basis. Moreover, the Commission itself heard evidence through two separate committees: 1) the Investigation Committee, and 2) the Confidential Committee. This was because it saw itself as having two goals: 1) investigating and reporting on what had happened in past decades and 2) addressing the therapeutic needs of survivors. Complainants chose to appear before one or the other Committee but, generally speaking, could not appear before both. The Confidential Committee had a primarily therapeutic function for those who were not seeking further investigation of their own abuse. This function was a new departure for such bodies.

Apologies: Again, Ireland provides the most high-profile model. The apology of the Irish Prime Minister in 1999, at the start of the process of dealing with widespread past abuse in Irish institutional care, was followed by an apology at the end of the process (following the long-delayed report of the Ryan Commission) by the Irish President, Mary McAleese, in 2009. The initial apology provided an extremely firm basis for a full investigation and redress since it implied a clear acceptance of guilt and responsibility on the part of the Irish State. However, it clearly made sense that a further apology be given once the investigation had been concluded and the full scale of what had happened in Ireland had been revealed. Such apologies are now a routine and accepted part of the process of investigating past abuse. In Australia, apologies for widespread abuse within institutions have been issued by a number of State governments at various times (most States having now done so) and by the Federal Government in relation to child migrants and aboriginal Australians. However, the wording of apologies can be controversial (the Ryan Report was particularly critical of the 'guarded, conditional and unclear' apology by the Christian Brothers in Ireland).

Who should get compensation? In Ireland, there were disputes about who was entitled to compensation. The mechanisms of the Redress Board, involving a process of interrogation and a points-based evaluation system, also came under criticism. In

Southern Australia, survivors who spoke to their Commission were told that they could apply for compensation immediately without having to go to trial (the government set up a specific compensation fund, drawing on the Irish model). The best-known exploration of the problems of developing the right redress and compensation arrangements lies in the Kaufman Report from 2002 (Kaufman, 2002), which investigated compensation arrangements during the 1990s in Nova Scotia, Canada. This report claimed that these arrangements were

so flawed that it left in its wake true victims of abuse who are now assumed by many to have defrauded the government, employees who have been branded as abusers without appropriate recourse, and a public confused and unenlightened about the extent to which young people were or were not abused while in the care of the province of Nova Scotia (Kaufman, 2002: 3)

Whilst noting that support service provision was relatively straightforward, Kaufman was critical of the perceived lack of safeguards for distinguishing between true and false claims of abuse and raised a number of concerns related to the human rights of both victims and alleged abusers.

Support for Survivors: Various methods for providing support have been considered or promoted, often recognising that survivors have a variety of responses and needs; in short, they remain unique individuals with varied responses to abusive experiences. These methods include a national counselling service, family tracing assistance and educational grants for those deprived of educational opportunities in the past (all of these were considered in Ireland, prior to their Commission being established). In New South Wales, Australia, compensation and support included help with education, counselling, access to personal records and tracing family members, and help for the care-leaver-run organisation, Care Leavers of Australia Network (CLAN).

Accountability: The accountability of institutions is a legally complex area but there has been increasing recognition that institutions can be vicariously liable for the actions of their employees due to being directly responsible for the organisation's systems and procedures, or lack of them (Hall, 2000). The inquiry process itself partly reflects this recognition, in that it involves an acceptance that, as the Law Commission of Canada (2000: 1) put it: 'Classical legal processes – criminal prosecutions of wrongdoers and civil actions to recover damages – seem inadequate to address fully the consequences of past institutional child abuse'. Thus a focus on accountability is a key feature of the process. In Ireland, The Irish State accepted responsibility, along with the religious orders, due to its retention of an inspection and monitoring responsibility with respect to care within institutions in which it had clearly failed. Compensation arrangements reflected this acceptance. The Forde Commission Inquiry Report (1999) into abuse in Queensland, Australia, focused on state responsibility through the concept of 'systemic abuse' due to an absence of adequate state funding. Both approaches recognise that responsibility can go beyond those immediately providing care.

Legal versus Therapeutic Approaches: Different jurisdictions have offered radically different approaches to balancing legal and therapeutic goals. For example, the Irish Investigation Committee had semi-judicial powers that supported its investigatory role (it could subpoena witnesses and order the disclosure of documents). It was to receive evidence under oath. In contrast, the Canadian Truth and Reconciliation Commission (2007) has an explicitly therapeutic, educational role and its terms of reference establish that it 'shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process' (Schedule N: 2b). The outcomes of the Canadian process remain to be seen, but given the criticisms that have since been levelled at the much stronger Irish process by some survivors, it is clear that use of the therapeutic model alone is open to criticism from many survivors that it will fail to achieve justice.

The length of time that investigations can take: Survivors are often old. This can be a pressing issue. For example, the Irish Commission took six years to complete its deliberations and a further three to issue a report (its original target had been two years). The Irish Confidential Committee sought to address this issue by giving preference to older survivors (several of whom were already in their 70s). However, other jurisdictions, with smaller numbers (e.g. Queensland in Australia) have acted much more swiftly. Time is an important factor to focus on given that Scotland has already taken nearly eight years to get to the point of setting up a Forum.

Involving and Empowering Survivors: This has been facilitated in various ways. The Irish Commission regularly drew on the views of survivor-led organisations. In Australia, the Senate Inquiry partly resulted from lobbying by CLAN, who also benefitted as a result of further funding following the New South Wales Inquiry. Legal representation for survivors in redress claims is a related and important issue. Claims for such representation, by lawyers on behalf of the survivors in Ireland, led to considerable initial delays in the work of the Irish Commission. A further small but potentially significant gesture was the decision of the Southern Australian government to give a free copy of their report to everyone who gave evidence to their commission. In the case of the current Canadian Truth and Reconciliation Commission, survivors of the Indian schools system have a formal role in the process through the establishment of a Survivors Committee of ten members to advise the Commission on its work. It can therefore be argued that it is now standard practice to engage with survivors and survivor groups both prior to and during the inquiry process.

Publicity: In order to reach survivors, work clearly needs to be put into publicising the work of investigatory bodies. In Ireland, a publicity campaign sought to encourage survivors to come forward before the Commission first held a public hearing in 2000. This is particularly relevant to survivors who are not known to agencies in the field – such as those who have never come forward – and who therefore may not be aware of the existence of a commission, inquiry or forum.

Knowing how extensive an investigation will be: In Ireland, the Investigation Committee faced a major workload problem in dealing with the level of complaints.

Religious institutions had agreed, early on, to contribute to the overall compensation package on the condition of legal indemnity from further compensation claims. This agreement turned out to be very costly for the Irish State and the issue is currently being re-addressed by means of further payments from the religious institutions. The initial sum of more than 127 million Euro committed to by the religious institutions was based on an estimated 50/50 split with the government. It assumed that 2,000 to 4,000 claims would be made. However, by late 2006 there were over 14,000 applications by almost half of the eligible former residents of the institutions. As a result, the Irish State has thus far picked up the vast bulk of the costs of compensation.

Naming and Shaming – Confidentiality: The Irish Commission was presented early on with the issue of how to deal with the problem of producing a report into alleged abuse while dealing with different views on the rights of the accused. The Christian Brothers, in particular, blocked participation by its members until it won agreement, through a 2005 Act of Parliament, that alleged abusers would not be named unless they had already been convicted of that abuse. The new Commission, under Justice Ryan from 2004, had accepted this solution in order to avoid further delays and legal challenges. In adopting this approach, Ryan drew on the experience of the Forde Inquiry in Australia and the Waterhouse Inquiry (2000) in North Wales. In both of those cases, ‘naming and shaming’ was explicitly ruled out except where criminal convictions had either happened or where offences were sufficiently established by the investigation as to justify passing the details on to the police. Thereafter, Ryan chose to focus on institutions rather than individuals. However, the decision not to ‘name names’ led to criticism by many survivors since it protected alleged abusers from subsequent prosecution on the basis of the findings. As a result of this agreement, the work of the Commission was held in private when engaged in adversarial hearings, with selected complainants being heard and cross-examined. The public elements of the Inquiry came at the start, when reviewing the history and background of the abuse cases, and at the end, when revisiting and clarifying general issues.

Who sits on these bodies: In the Irish case, three Commissioners were ever present: the Chair, a clinical psychologist and a specialist in child sexual abuse (the last eventually being replaced by a solicitor). It is notable that the Confidential Committee was chaired by a Childcare Director, Nora Gibbons. In the case of Canada, the Truth and Reconciliation Commission are advised by a 10-member Survivor’s Committee. A secondary issue is who works for these bodies. In Ireland, the secondment of staff to the Commission from government departments that were not trusted by some survivors led to the government later withdrawing and replacing those staff.

Who should testify? In the Irish case, the Commission’s legal team decided which complainants would go through to the investigation phase and which were to be offered the opportunity, instead, to testify to the Confidential Committee. However, survivors objected to the Investigation Committee practice of ‘sampling’ those to go

forward and testify against an order or institution. They suggested that it was unfair on certain groups who did not have this opportunity.

Learning Lessons: Prior to the establishment of the Commission, the Irish government drew on the experience of post-apartheid South Africa's 'Truth and Reconciliation Commission' for ideas. They also sought to learn from some of the Australian experience, from the Waterhouse Report into abuse in North Wales and on the experience of the Canadians in developing their compensation schemes.

Impact: The long legacy of these inquiries provides a major resource to draw on in developing effective processes for Scotland. There also needs to be an acknowledgement of any knowledge gaps that have not yet been filled by research. In particular, evaluation of the processes and impact on stakeholders, especially the impact on survivors, is conspicuous by its absence in the research and policy literature.

4. Summary of Government Consultation on the Forum

Prior to this research, the Scottish Government spent time carrying out a consultation process on the Forum. They did this via a questionnaire that was distributed to individuals and organisations and made available online. In October 2008 this call for consultation was issued and resulted in 51 responses from individuals and organisations. During the period February – April 2009 a further 36 responses were received. Nineteen of these responses were from survivors, whilst the other 17 identified themselves as adults who had spent time in local authority care as children. This later data was gained with the help of four survivor agencies within Scotland.

A discussion paper which formed a part of the call for consultation summarised the process leading up to the consultation and highlighted the following main points:

- The Government saw that Scottish survivors needed to secure public recognition and to ensure that they received practical help;
- It was suggested that the Forum could provide a number of practical resolutions for survivors as well as being a place where people could talk about their trauma;
- That the Forum could be somewhere not only for institutions to be accountable but also where there could be messages for current practice;
- That the Forum would be a site of reconciliation for both survivors and institutions;
- It was recognised that institutions may find it difficult to engage with the Forum due to the prospect of subsequent litigation;
- It was acknowledged that some survivors thought that the criminal justice process had failed them and that this could be an alternative process for achieving justice;
- The Forum must have safeguards to protect against unproven or false allegations;
- That any model needs to be survivor-led;
- Any Forum needs to be conducted in line with best human rights policy and practice, including safeguarding the dignity and privacy rights of all (survivors, institutions and individual accused).

The information gathered by the consultation process covered a wide range of issues, some of which – as will become apparent later – have been reiterated and developed by this research.

The main points from the consultation were:

- The need for in-depth discussions regarding what constituted an ‘Acknowledgement and Accountability Forum’, including discussion of the name itself;
- Many respondents felt that the Forum could provide justice and closure for all of those involved;

- All agreed with acknowledging past abuse, but many questioned how accountability would be achieved;
- Survivors highlighted the time bar on bringing legal claims and the consequent lack of routes to legal justice for them;
- Survivors suggested that all survivors should play a key role in the shaping of the Forum, making decisions about who should be on the Forum. Also that a survivor should take a place on the Forum when it is up and running;
- There was a number of different suggestions about how organisations and their employees may be able to engage with the Forum;
- Respondents believed that there should be a public record, messages for current practice and a wide variety of remedies for individual survivors focusing on counselling, training, education and financial compensation;
- There were a variety of suggested ways for engaging with and encouraging survivors to access the Forum, including, television, radio, leaflets, posters and media campaigns;
- Survivors argued that there needs to be a wider acknowledgement in society about the abuse that occurred and that the abuse of children in care continues to be an issue that needs to be addressed;
- A Pilot Forum was identified by some survivors as meeting a need to iron out any teething problems;
- There was an acknowledgement from some that no matter what the Forum looks like some survivors will not want to access the Forum or will not be happy with how it works.

This section has brought together key findings from the consultation conducted in 2008 and in early 2009. It has identified some of the issues that have been reiterated in this research and report.

5. Methodology and Ethics

The University of Strathclyde's ethical committee gave full ethical approval at the beginning of November 2009 for the research proper, leaving a four-week period, until the 30th November, for completion of this research.

The research consisted of several elements:

- A review of the relevant practice and policy contexts;
- Interviews with 10 survivors of historic abuse within Scotland (see Appendices 2 and 3 for the participant's information sheet, consent form and questions);
- The conducting of three focus groups (four were initially planned: 1) one with a group of residential service providers on the MSc in Advanced Residential Child Care that is provided by the Scottish Institute for Residential Child Care, 2) one with a group of individuals from the Association of Directors of Social Work residential child care subcommittee of the children and families standing committee (ADSW), 3) one with a group of providers from the voluntary sector and 4) one with In Care Survivor Scotland¹) (see Appendices 4 and 5 for the participant's information sheet, consent form and questions);
- An email survey² to 170 Scottish care leavers (see Appendix 6 for participants information sheet, consent form and questions).

For the interviews with survivors, participants were selected from groups of survivors that the research team had worked with before. In recognizing that this is a very sensitive area of work, the research team wanted to ensure that survivors had support networks in place. This was the reason for selecting people that the research team had previously worked with. Three hours was provided for each interview, although most interviews averaged an hour and a half in length. Time was also allowed for follow-up contact after the research. There were three survivors who had to rearrange meetings a number of times due to physical and/or mental ill-health, but interviews did take place with two of those three (the other survivor, due to ill-health, chose to submit his responses and consent to the research via email). For those who could not travel the interviewers travelled to them. Survivors are referred to throughout the findings presented in this report by their age and gender as it was felt that the Scottish Government's consultation process had lacked an adequate sense of individual experiences and voice throughout.

Due to the tight timescales, and only having space to interview ten people, it was not possible to make an invitation to interview widely available. Ten survivors were selected from this predetermined group of twenty survivors and these reflected a range of age, gender and where they had spent time in care as children. For ethical and legal reasons it was not possible to interview survivors whose cases were currently going through the court system.

¹ This focus group did not take place due to organizational difficulties.

² This email survey was an additional method not included within the original research proposal.

In addition, contact was sought with Kerelaw Inquiry survivors who may have been interested in taking part in this research. Unfortunately none of the contact details from this Inquiry had been kept. Despite further attempts to reach such survivors, it was not possible to find this information in time for the end of this research.

Whilst three focus groups were successfully undertaken, there were initial concerns that the short notice given to potential attendees would make it difficult for some to attend physically. To overcome this, all individuals who could not attend a focus group (either because they had informed us that they were not able to or had not responded at all) were invited to respond to the set of questions via email. Given the short timescale for the research, all efforts were made to make the research as accessible as possible. Although an email was sent to 1) all staff members of In Care Survivor Scotland, 2) all those registered on the Association of Directors of Social Work subcommittee and 3) key senior individuals in the voluntary sector, we did not receive any email responses³.

With two exceptions⁴, all interviews and focus groups were recorded on a dictaphone and two members of the research team analysed the data.

The Care Leavers' Association also had a network of 170 Scottish care leavers who were reachable by email. Although this was not in the original bid for this project, this was clearly a unique extra opportunity to engage with potential survivors who were not yet known to any agency and had therefore not yet had an opportunity to contribute to the debate on historic abuse in Scotland. Such individuals are important to reach but are, by definition, the most difficult to contact. The research team also recognised that this was an opportunity for adult care leavers from Scotland who may not have directly experienced abuse but who may well have witnessed it or know of others who experienced such abuse (including siblings, for example) to contribute to this research. A series of six non-invasive questions were asked in relation to the proposed Acknowledgement and Accountability Forum. Unfortunately, due to wider time constraints, individuals only had a week to respond to this email. Nevertheless, the six responses we received added considerably to knowledge of the issues of concern to Scottish care leavers. It is also important to acknowledge that there are still many individuals who do not have access to the internet and would therefore be difficult to contact by email for any involvement in relation to the Forum.

Also, to guide and inform the research team, an Advisory Group was set up consisting of:

- Mr Henry Aiken (Scottish Survivor)
- Ms Helen Holland (Scottish Survivor)
- Prof. Andrew Kendrick (Head of School, Glasgow School of Social Work)
- Dr Ian Milligan (Assistant Director, SIRCC)

³ An email was not sent to students on the MSc in Advanced Residential Child Care as all were in attendance at the focus group session.

⁴ One survivor did not agree to have the interview recorded and one other survivor submitted his responses via email.

- Dr Alan Macquarrie (Library and Information Officer, SIRCC)

Their input and support proved invaluable, particularly in light of the time constraints that the research team were operating under. The two Scottish survivors also provided valuable feedback on the final draft of this report.

6. Findings and Discussion

Within this section, there are three subsections that address the three different research methods that were employed: 1) interviews with survivors; 2) focus groups with organisations and frontline staff; and 3) an email survey to 170 Scottish care leavers. All but one of the interviewees experienced abuse in residential care (this one participant experienced abuse in foster care).

As with any academic research undertaking in this field, it is not the role of researchers to determine who has or has not been abused in the care system and in what ways. Therefore the report presents what participants of this research have said as the straightforward record of their experiences and has recorded it at such.

Subsection A: Interviews with survivors

In what follows, the responses of the ten survivors who were interviewed are identified only by gender and age, in order to preserve their anonymity. Each interview aimed to explore in more depth the issues raised by a number of sources, including the previous consultation exercise. By going beyond the questionnaire approach we sought to provide more meaningful insights into the prospects of a Forum from the perspective of survivors.

What do you think the name “Acknowledgement and Accountability” Forum means? All but one of the survivors saw the Forum as a space for reparation, restoration and reconciliation as well as a place in which their experiences could be heard and noted down for public record. One person summed up the views of several in stating:

‘I think this Forum is appropriate as it will act as a medium for both sides to air their views’ (Male, 52)

‘Acknowledgement’ was not a contested term for any of the survivors interviews. One survivor summed up the views of many by stating that acknowledgement was to:

‘acknowledge the truth and injustice [of historic abuse]’ (Female, 73).

The importance of accountability was raised by eight respondents. They believed that the Forum would not have the powers to make individuals or organisations as well as the Scottish Government accountable. Accountability, for one person;

‘signified an admission that there were events or actions that took place as a result there was a violation of our human right’ (Male, over 60)

Five survivors did not believe that the institutions would be made accountable through this process. Survivors questioned whether the Forum would be another ‘stop-gap’ for justice, rather than a source of it, and whether the Forum would know what was in the best interests of survivors.

The concept of accountability was raised and discussed. All survivors questioned the extent to which accountability could be achieved. These discussions focused on how much power the Forum would have in order to make individuals, organisations and the Scottish Government accountable. One respondent questioned how accountability would be defined:

'It's a wide ranging accountability for me... does the government have a different meaning to what we would want it to mean?' (Male, unknown)

There were a number of different names that were proposed as an alternative to that of an 'Acknowledgement and Accountability Forum' if neither 'acknowledgement' and/or 'accountability' was at the core.

What purpose do you think this Forum should have? One person summed up the purpose of the Forum to him as being:

'to establish a personal, a factual and social gathering of the truth with a view to restoration, justice, understanding and reconciliation. It should have a clearly defined remit but one that allows for the many different survivors that will attend it' (Male, 60)

The clarity and flexibility of the Forum (i.e. the need for both) was also identified as an issue by six other survivors.

Survivors wanted the Forum to achieve a number of things. The following points were identified as important to its content and purpose (in no particular order):

- One person was clear that she would like the approach to her to be made by the agency responsible for her care (Female, 75);
- For the Forum to allow each individual survivor to determine how they contribute to it;
- For the Forum to be a body of reconciliation, mediation, healing, understanding that would allow survivors, agencies, the religious orders and individuals to move on;
- For the Forum to ensure that other groups and individuals can hear and understand what is going on for survivors, including the police, medical professionals and the institutions;
- For the Forum to have the powers to implement and enforce its decisions;
- The effectiveness of such powers would require working closely with institutions to ensure that they come forward;
- For the Forum to provide a public space where people can acknowledge what has happened;
- For the Forum to provide a space where survivors can tell/report their experiences;
- For the Forum to provide 'justice' for those who are unable to get this through the courts.

All survivors acknowledged that these goals would require working with institutions to help them – or in some cases to make them – come forward.

How do you think this Forum should be run? All survivors reiterated the points that they had already made above. In relation to the day-to-day running of the Forum, four survivors highlighted the difficulties of the Forum being located in the central belt of Glasgow and Edinburgh. This, they argued, would create difficulties for people travelling quite long distances (Female, 50; Female, 75; Male, 65 and Male, 67). This was seen as being particularly important for older survivors. In addition to this, three survivors (Male, unknown; Female, 75; Male, 50) pointed out that there may be some survivors who no longer live in Scotland but now live as far away as Canada and Australia. They wondered how these people could have access to the Forum.

All survivors discussed how institutions would have access to the Forum on a day-to-day basis. It was made clear by seven survivors that they did not want to be in the same room as the institutions at the same time, but all recognised that institutions would have to be involved in some way in order for the purposes of the Forum to be fulfilled. One respondent made the following suggestion, which summed up what three other survivors were saying:

'Other people may want it but I don't [want individuals from organisations in the room]. It is only my view. I just feel after 16 years that the whole system is so corrupt' (Female, 73)

Although most of the survivors found it difficult to talk about their experiences and the requirements of the Forum, these survivors did talk about equality of treatment and the difficulties for both survivors and organizations in engaging in this process. One survivor summed this up in the following statement:

'I think the biggest things for the organisations is for the organisations to be able to move forward with a clean slate... at the moment there is always that dark cloud...' (Female, 50).

What training and support does this Forum need in order to do its job properly?

Nine survivors identified in-depth training that should be provided by survivors and survivor organisations, counselling support and/or clinical supervision for them during and after each 'case'. The need for training by psychology and social work practitioners was also identified (Female, 75). It was also noted by two people that help, advice or input from those who had sat on a Forum for historic abuse survivors in other countries would also be useful (Male, over 60, and Female, 50).

Should the hearings from the Forum be held in public or in private?

All of the survivors we spoke to had spoken about their experiences of abuse in care (to a greater or lesser extent) through a number of different channels including research and the media. This meant that some of their experiences may already be public. Nevertheless, all participants of this research were able to relay a number of different complexities and difficulties in the Forum hearings taking place in public or in private.

All but two survivors (Female, 75 and Male, 52) were very keen that the Forum should be held in public, with varying degrees of what 'in public' meant. All but two

survivors (Female, 75 and Male, 52, who did not comment) thought that the Forum being held in public meant that there was as much transparency as possible. All but three survivors felt that to allow people to come forward the public or private status of the Forum must be dependent on the needs of each individual survivor. For example, it was suggested that survivors should have the option of their full name being in the public record or not, whilst still being able to attend and engage with the Forum.

Can you see any problems that the Forum might have in doing its work? If so, what are they? All felt that the Forum would not have any difficulties doing its work if there was a clear process and remit from the outset. If there was an unclear remit, the following subsequent difficulties were suggested:

- That the Forum would find it difficult to make institutions and individuals accountable, which would result in complaints;
- That the Forum would not be able to carry out its work due to a lack of skills to engage with all types of care, types of abuse and age ranges;
- That survivors might feel that the Forum would be 'stuck in the middle' whilst neither the survivors nor the institutions were having their needs met.

There was also a lot of empathy for organizations and the difficulties and complexities of coming forward and engaging in the process. One survivor stated:

'If you want it dealt with once and for all you have to take part. I think anybody in this day and age who genuinely wants people to be able to move on [and they] have a compassionate heart... I think it's a case of at the moment there is so much fear surrounding everything, both from survivors and the organisations because nobody knows what to expect... There will be people going in that are angry with the institutions but they are not angry with the person that is there representing institutions. It's just that they need to get everything out and see it as a one-off opportunity to be able to do that' (Female, 50)

What information about the Forum do you think care leavers need to have? There was detailed feedback about the information that survivors would need in order to be able to access the Forum. Overall, it was suggested that information needed to be made accessible and easily available in relation to every step of the 'process': before, during and after. There needed to be (in no particular order):

- A clear purpose for the Forum;
- A code of conduct for all involved;
- Clear information about who can have access to the Forum and for what reason;
- An awareness of how their information will be used before, during and after the Forum;
- Support available during the process of taking a case to the Forum;
- Knowledge of the remit of the Forum;
- Knowledge of the timescales for the Forum;
- Knowledge of what to expect from the Forum (both on the day and with respect to outcomes);

- Knowledge of what ‘evidence’ survivors would need to bring to the Forum, if any.

How should this Forum be advertised so that care leavers know what the Forum is for? A wide-ranging list was provided by survivors, with the goal being that of reaching as many survivors as possible. It was acknowledged that some methods for doing so would have to be visual or auditory, given that some survivors may not have any or high levels of literacy. It was also acknowledged that some survivors live outside Scotland and they would also have to be reached in some way. Here is the list of possible methods for reaching survivors that people suggested (in no particular order):

- Media-related channels (i.e. docu-dramas on television, newspapers (generally tabloid or local papers, not broadsheets), the internet and links on various sites (as well as on more common sites such as Facebook, Twitter and Bebo), pod-casts on the internet, radio, sites such as the Care Leavers’ Association website and television);
- In public spaces (i.e. GP practices, police stations, hospitals, hotels, public toilets (in particular on the back of toilet doors), public houses, local community centres and on public transport);
- Through professional or support services survivors may access (i.e. lawyers/solicitors, local support groups, survivor support services, other non-survivor support groups (such as homelessness organizations, probation and mental health services, as well as through the Samaritans, NSPCC and Childline) and the Salvation Army);
- In prisons or other ‘institutions’ such as psychiatric wards;
- It was also suggested by one survivor that ‘there is also a role for the Churches to advertise’ (Male, over 60);
- Letters sent to all those in care during a particular time period;
- The Scottish Government to make a public announcement;
- The Scottish Human Rights Commission to make a public announcement.

Two survivors (Male, over 60 and Female, 75) outlined the use of a national helpline that people could ring. They saw this as valuable for two reasons. Firstly, to enable survivors to see whether the Forum is for them (for example, it was noted that some people may come forward who have been abused but not in a setting which is relevant to the Forum). Secondly, in response to a helpline call an information pack could be sent out and/or a support worker assigned to help them understand the pack and support them through the process (Male, over 60).

How could the Forum reach out to care leavers who are hard to reach and might not want to come forward? Advertisements and full support services were identified as two main ways in which this could be achieved. It was also suggested that investment in a survivor group so that people could gain support from one another before, during and after the process, would be helpful. However, one survivor (Male, unknown) argued that this could be seen as ‘collusion’. It was also acknowledged that some people may never come forward for a variety of reasons and that:

'you cannot make someone come forward until they are ready to seek help themselves' (Male, 52)

It was also stated that

"If you're asking survivors to come forward and speak about their experiences which are obviously for a lot of them quite traumatic experiences then there needs to be a reason for the survivor to do that i.e. are they going to be given specialist or long-term counseling?" (Female, 50).

This survivor went on to highlight the long-term and ongoing effect of abuse which may be a reason why some individuals may find it difficult to come forward:

"Because the actual physical acts of abuse stopped doesn't mean the abuse didn't continue... the abuse has continued psychologically for some people. It's that psychological repairing that is going to take time" (Female, 50).

Finally, it was noted, that there are a large number of survivors out there who have not told people that they were in care, never mind that they were also abused in care. This may make it impossible for them to access the Forum.

What will make care leavers confident about speaking to the Forum? The majority of survivors interviewed for this research had in the past already spoken about this and similar issues, either in public or for the purposes of research. However, the research team and the survivors acknowledge the difficulty in doing this, for themselves and possibly much more so for others. Two survivors suggested that it was important not to have too many people in the room whilst survivors were recalling their experiences and to allow each survivor the option of choosing who is in the room. Both options were seen helping people to feel confident about speaking out. One survivor (Male, over 60) suggested that cases could be made via video-link, as with children in a court setting. It was also noted that the use of a support worker before, during and after the process would also be important for those speaking and being questioned by the Forum. Finally, it was also noted by one interviewee (Female, 75) that being able to write her experiences down rather than having to say them out loud would help her to share those experiences.

Are there any forms of care or types of abuse that should not be covered by the Forum? Interviewees gave a firm 'no', suggesting, indeed, quite the opposite. Everyone voiced the view that all types of child care (including residential schools and homes, foster care and kinship care), all types of abuse and all age groups needed to be dealt with by the Forum. It was suggested that this should be made explicit in all information given out. If not, it was claimed, most people would believe that the Forum is only concerned with abuse in residential care. It was also suggested that the terms 'historic' and 'institutional' abuse needed to be defined as well as 'survivor' and 'care leaver', since :

'you need to identify all categories as people might not know what a survivor or a care leaver is or they might not know what historic abuse or institutional abuse is' (Male, over 60)

How should any organisations or individuals accused of past abuse be able to access the Forum? The interviewees involved in this research made a number of points on this subject. They felt that both individuals and institutions should be invited to give their understanding of a situation. It was also suggested that if institutions or individual accused refused to attend then they should be mandated to appear and to account for their actions or inactions. Although individuals should be held accountable, so should overarching institutions. They should be given the option to come forward and then, if they refuse be mandated to come forward. Some suggested that a lack of voluntary attendance at the Forum could be seen as a sign of guilt and these non-attendees should be 'named and shamed'. This was seen as being one of the reasons why it should be a public forum. The fear of repercussions from organisations and from insurance companies was identified as a reason why some individuals and organizations might not come forward. Also, it was noted that it could be difficult for people to come forward from institutions if they were not necessarily abusive themselves but had witnessed abuse. It was argued that as survivors came forward and identified individuals or institutions, those individuals or institutions should be called to give their side of things or explain how they saw their role in developing a remedy. This, some argued, should be made as open and as healing a process for all parties as possible.

It was also recognised by some that some of the survivor's abusers may have been other children in care and there were questions raised about how the Forum would work in this situation (Female, 75; Male, 65 and Male, 67). One survivor (Female, 75) described how some children experienced abuse and then went on to abuse other children or, later, to work in the establishment, treating the children they looked after as they had been treated. She recognised that they might find it difficult to come forward but that they had a right to be heard. All survivors did not recognise the difference between those that individually abused them and the organisation, nor between the organisation of the past and the organisation of the present. Eight survivors did not want to sit in the same room as the representatives of the organisation involved, even though such individuals might not have been working for the organisation at the time of the abuse. It was also recognised by four survivors that their abusers were no longer living and that this was one of the reasons why they sought accountability from institutions.

Which types of professions should work for the Forum? There was some difficulty in people relaying who they felt should sit on the Forum and who they felt should be in the room when the Forum was in session. However, all were adamant that no member of an organisation or institution providing child care, past or present, should sit on the Forum. Although there were a number of suggestions as to who should sit on the Forum (bullet-pointed below), nine survivors suggested that they felt that they, as survivors, should be involved in the selection procedure for the

membership of the Forum. Suggestions for membership of the Forum included the following (in no particular order):

- Academics;
- An independent Chair;
- At least one survivor should sit on the Forum;
- Care leavers who have not experienced abuse should also be on the Forum;
- Legal professionals;
- Medical professionals e.g. GPs, hospital staff, psychiatrists and psychologists;
- The police, particularly those who have been in the service for quite some time and would better understand the context of many survivor's experiences in care.

It was noted that survivors might want different people for their attendance at the Forum for different reasons and that there should be a pool of fully-trained people to call upon.

Which professional groups should not be represented on the Forum? With the exception of one (Female, 75), it was strongly argued that survivors did

'not think that social workers or organisations/care homes should work with the Forum because survivors associate their abuse with these professions' (Male, 52)

How do you think the Forum should balance the needs of care leavers and the rights of organisations and individuals who are accused of past abuse? It was suggested that, under a human rights framework, everyone needs to be treated equally and fairly but that this process should be survivor-led and their needs should take precedence over the interests of organisations/individuals involved in abuse, as long as it does not contravene the human rights of these latter people/organisations. It was suggested that there needs to be a clear remit and role outlined for the Forum so that the Forum can better understand its role in relation to both the survivors and the accused.

All survivors spoke of the need for transparency and clarity. They also spoke about fairness and equal treatment for both survivors and those that have or may have abused. They took the view that there were those who had not been abused but were falsely accusing individuals or organisations for reasons known only to them. It was recognised that if the Forum found this to be the case it should be fully noted. However, given that this is not a legal process there was some discussion about whether the use of the terms 'guilty' and 'innocent' was appropriate here.

What remedies would you like to see from the Forum? For example, decisions about compensation, a public acknowledgement of past abuse, funding for counselling or education for survivors, a memorial, a public record of the proceedings, an apology? All of the above suggestions were welcomed by the interviewee in this research, apart from one survivor who did not see the need for a memorial and stated :

'a memorial? no one's died' (Male, unknown)

Others said that an unmarked memorial would be a place where they could gather and it would be a mark of remembrance and acknowledgement. All agreed that there should be a long list of remedies that each individual survivor could choose from, depending upon their circumstances and needs. In addition, the following suggestions were made:

- If possible, an explanation for the abuse that occurred;
- Money for access to support services, such as drug or alcohol rehabilitation services;
- Money for access to private health care because of ill health that has stemmed from the abuse;
- Support for a group where survivors can support one another and campaign for their rights;
- Money for travel to (re)connect with family members;
- Access to their files. Some believed that these files were being kept from them on purpose (Male, 52; Female, 73; Female, 75 and Female, 55);
- Support for reunions;
- Practical and financial help with tracing family members.

Some difficulties did emerge in relation to an apology. All but one survivor (Male, unknown) thought that an apology should be written or at least presented to survivors for their input before it was announced. Two survivors (Male, over 60) enquired about how an apology would work on an individual level or whether the Forum would wait until they had heard from so many from a particular institution before it mandated a public apology.

Under this section it was suggested by three survivors (Male, over 60; Female, 50 and Female, 73) that there were also repercussions for other people from the survivors experience of abuse. Those experiencing these repercussions included: 1) fellow young people in care, including siblings, who were not abused but who witnessed the abuse and 2) families that have been created since the abuse, for example, the survivor's partners and children. Survivors questioned how the Forum might engage with these people and if any remedies would be available to them.

From the remedies you would like, what would make them effective for you? i.e, what TYPE of support, or apology or public acknowledgement? The focus of these discussions were on two things 1) that people should be able to choose the type of counselling/support they required rather than this being left to the government and 2) although a private apology would be good, if unlikely, if only individual cases come forward, how can organisations be mandated to make an overall apology? It was suggested that the Forum needed to monitor the cases coming forward and provide six-monthly evaluations related to efficacy and resolution. It was also suggested that the Forum monitor where people were coming from (geographically), what age groups they were in and where the Forum needed to advertise more. Survivors further suggested that there should not be time limits on access to counselling or education. Two survivors (Male, over 60 and Female, 50) suggested that each of the remedies could be broken down further. For example, educational assistance could

relate to help for tuition, money for books, extra tuition outside of college/class for particular learning difficulties and transport to and from educational resources because of mobility difficulties.

Should the Forum make recommendations for current practice? All survivors stated that the Forum should make recommendations for current practice. It was suggested that the Forum could do this in a number of ways:

- Being clear and making statements that no one, in particular those working for religious institutions and insurance companies, should be able to prevent individuals from being heard (i.e. survivors or those working for organisations);
- Through recommendations on the implementation of improved laws which prevent abuse in the future;
- By using the information gathered from the Forum as training tools for social workers, foster carers and residential staff;
- By ensuring that all outcomes and recommendations should be disseminated to all current practitioners;
- Through the production of key messages, following the analysis conducted by the Forum;
- Issues raised by younger care leavers/survivors should be addressed to ensure that these issues are dealt with within the places where accused individuals may still be working;
- By making statements about accessing files;
- By making statements on appropriate cultures within residential care.

What relationship do you think there should be between the Forum and any legal processes? It was noted by all survivors that they recognised that this was not a legal process but all felt that the Forum should have some legal powers. Survivors suggested that these powers are necessary for implementing the remedies proposed, mandating the institutions and overseeing the Forum's proceedings with the appropriate level of conviction. It was suggested that the Forum should be made aware of the legal proceedings, past and present, for each survivor and that they should work together with the legal process but not be moulded by it. Survivors should be able to access the Forum whether they have had a court conviction or not. Overall, though – and one which one survivor summed up cogently – survivors felt that

'this is personal justice not legal justice' (Male, over 60)

What do you think about the current avenues for accessing justice for survivors of historic/past abuse in Scotland? Five survivors noted being 'disappointed' by the current avenues for accessing justice. Not only did they think that these were too slow, but also that there was a lack of appropriate support before, during and after the processes, that the legal system worked in the favour of the organisations and that the Roman Catholic Church, in particular, was outside of the law. One survivor stated:

'Not one of the organisations, religious or councils, not one of them are above the law, but they think they are because of what they did to us and

they think that we are still nothing. But we are people who want is right'
(Female, 73)

They suggested that the current avenues for justice had done nothing to dissuade them of this view (Female, 50; Male, over 60 and Female, 75). There were three main issues raised in relation to current avenues for justice (in no particular order):

- That the time bar (an ending of opportunities to be able to access legal justice after a certain period of time, up to the discretion of each individual judge) prevented the vast majority of survivors from seeking any legal justice;
- That the majority of cases are heard in a civil court when this is an inappropriate place for such cases;
- That the Criminal Injuries Compensation Act 1964 Act prevented survivors who experienced abuse before this time from seeking any financial compensation.

In addition it was suggested by two survivors (Male, 52; Female 50) that insurance companies had also prevented certain avenues of 'justice' for survivors. One respondent stated:

'Up until now the institutions have said we can't apologise and say what we want to say because insurance companies won't let us. Somebody has to take the power to say to these insurance companies that they cannot interfere with this process' (Female, 50)

As highlighted previously, it was noted by a number of survivors that there would be difficulty for those that had moved out of Scotland in seeking to access not only the Forum but any legal remedies available. Also, one survivor raised the issue of child migrants (for example, those sent from Scotland to Canada) and how they might be able to seek justice or remedies back in Scotland (Female, 75).

Is there anything else you would like say about the Forum? At this point in the interview many survivors gave their overall feelings about the Forum. One survivor stated that

'if the Forum is put together and balanced correctly, it may be the best answer for all concerned as it could bring closure for many and a recognition of a dark area in our social history, and it could also save future generations, through teaching, from going through the same as survivors of historical abuse' (Male, 52)

We would like to follow this research with more work on past abuse in care. Would you be willing to take part in a focus group meeting with other care leavers for this research? All respondents said that they would be willing to take part in a focus group.

Throughout each of the interviews with survivors a tremendous amount of information was shared, so much so that it has been impossible to relay everything everyone said throughout interviews that were sometimes up to two hours long.

The main points of these interviews have been identified however, where possible, as many direct quotations as possible have been included in order to give a voice to survivors.

Subsection B: Focus groups with organizations and frontline staff

As outlined in the methodology and ethics section, four focus groups were organised. One of these was with members of the Association of Directors of Social Work, one was with representatives of voluntary organizations and one was conducted with students on an MSc course in Advanced Residential Care who are also managers, supervisors or care workers in residential care. The final focus group was intended to be with 'In Care Survivor Scotland'. Institutions where allegations of abuse have been made and in some cases criminal convictions have been determined were invited to send a representative. Many of these did not attend or reply to an invitation. Due to the tight timeframe of this research, many may not have been able to attend a focus group at such short notice. Therefore individuals were asked to respond to the questions via email if they could not attend the focus group meeting. However, no email responses were sent.

A total of 29 individuals attended the three focus groups. Due to organisational difficulties, the focus group for members of staff from 'In Care Survivor Scotland' did not go ahead and no one from the organization responded to the questions via email.

Due to the complexities of directly citing individuals within a focus group context, their data has been summarized and there are no direct quotations throughout this subsection.

What role do you think social and other services should play in an 'Acknowledgement and Accountability Forum' in dealing with claims of past abuse by and/or within those services? All focus groups stated that this Forum needs to be survivor-led and that different survivors will want different things from the Forum. All three groups also suggested that 'Acknowledgement and Accountability' should mean just that; a place where the abuse of former children in care was acknowledged and where those individuals responsible and the relevant institutions were held accountable for that abuse. It was acknowledged that this was not a legal process but noted that it remained possible that it should be a place where people could find justice for what they had experienced as children. One participant in the ADSW group identified the significance of child care files and the work that can be done in this area to support people making a claim of abuse. In this context, agencies could play a role in signposting survivors to the Forum and, in turn, the Forum could sign-post people on to the agencies for further help.

There was some discussion of whether the Forum would have links with judicial services and whether it would focus on peace and reconciliation, litigation or mediation. It was noted that the balance of these goals will have an impact on what

'Acknowledgement and Accountability' means and what roles people/organisations will play.

What role do you think this Forum should have in relation to improving a) current practice and b) support for younger care leavers? It was noted by all three groups that the Forum could play an important role in sending out messages for current practice that were essential for ensuring that the widespread abuse uncovered never happened again. The voluntary agencies focus group suggested that the Care Commission and other regulators had an important role to play in the Forum and that the Forum could highlight specific training needs for current practitioners. Those who attended the ADSW focus group suggested that there could be an important feedback process to councils, government and institutions that would help with the prevention of future cases of abuse. In relation to current practice, this focus group also identified a role for the Forum in relation to whether those accused are still in practice and, if so, the duty of care that the Forum thus had.

How do you think the Forum can reconcile the needs and rights of abuse survivors from the care system and organisations and individuals that are accused of past abuse? Within all of the focus groups, there were a number of issues relating to the rights of the individual accused and those of the current organisation. The group consisting of the MSc students asked whether current organisations and bodies should be held accountable as they may no longer be run or staffed by the individuals who were the perpetrators of the abuse. It was also noted that there may be some people who are accused who are now deceased and questions about how these people (and, indeed, anyone else) could defend themselves at the Forum. It was also acknowledged that the culpability and accountability level in relation to historic abuse is very wide. For example, it was suggested that some children may have told individuals in charge, visitors to the home, someone at their school, medical professionals and others who had not acted on the allegation(s) made. To what degree are these people accountable? This raises an important issue about the extent of accountability that the Forum should identify and work towards.

One suggestion for how you could reconcile the needs of survivors with the needs of organisations (provided by those that attended the focus group for voluntary organisations) was for there to be a very clear remit and statement of intent from the Forum, so that people could understand the limits of the Forum.

What do you think would prevent organisations or individual professionals accused of past abuse from engaging with the Forum? The following list covers the main responses made by all those who took part in the focus groups (in no particular order):

- A lack of guidance and reassurances that will enable the institutions to engage;
- Individuals being already incarcerated;
- The possibility of being incarcerated;
- Church hierarchies preventing the representatives of religious orders or institutions from coming forward;

- Culpability;
- Guilt;
- The individuals having, or knowing about, documents from the past (i.e. daily records or child care records) which might incriminate them;
- Insurance companies preventing them from engaging, or possibly being unwilling to insure them in the future (though it was suggested that local authorities or the Government could absorb or underwrite this cost for voluntary agencies, or provide other solutions);
- Lack of support for organisations or individuals accused through this process;
- Liability (personal and financial);
- Litigation;
- The prospect of individuals losing their jobs;
- The prospect of the institutions which still provide care to young people losing the ability to do this.

What groups of people (i.e, which professions) do you think should sit on the Forum and why? It was suggested that the following may be able to sit on the Forum (in no particular order):

- A human rights official;
- Former local authority members;
- Former social workers;
- Former voluntary sector members;
- Lawyers;
- Lay people (as with children's panels);
- Medical professionals;
- Mental health professionals;
- Psychologists;
- Recent care leavers;
- Social workers;
- Survivors;
- The current Scottish Commissioner for Children and Young People could also be involved in some way;
- The police;
- Young people in care.

There was an inconclusive discussion about whether these should sit on the Forum or act in an advisory capacity. It was also recognised that it was important to have people on the Forum with some knowledge of the issues rather than trying to represent all areas (such as health and education). In relation to the ethos of the Forum, it was suggested that, regardless of who sat on the Forum it was important that they had authority (to implement decisions and to deal with difficult situations) but also that they should be people who are approachable and able to listen.

Should the Forum be held in public or in private? It was suggested that this would have to be up to the individual survivor. Information would have to be provided to all about the implications and possible consequences of it being held in either a

public or private domain. However, it was suggested that, in order for there to be any messages for current practice or any learning from past experiences, there had to be a public element to this process. Those in the ADSW focus group suggested that the question of openness partly depended on whether people wanted both acknowledgement and accountability or just acknowledgement from the Forum.

What information/'evidence' should be submitted to the Forum in order for it to carry out its duties? All groups suggested that this was dependent on the role of the Forum, whether it was focused on reconciliation or accountability. It was suggested that there would need to be some discussion of when/if a public record would be made available as this might encourage false allegations to be raised from an early reading of what others have said to the Forum. There were concerns raised about the standard of proof and the standard of evidence that might be required by the Forum, and all groups recommended that this needed to be made clear by the Forum from the start. It was also suggested by a member of the ADSW group that the Forum might be given devolved powers to request information although information could be made available by using Freedom of Information legislation and the Data Protection Act.

What relationship do you think there should be between the Forum and any legal processes? In the ADSW group it was suggested that accountability was problematic without there being a legal process involved. It was also recommended by this group that a legal representative could be in the room advising the panel then and there about any legal issues that arise from either party. A parallel was drawn with the role of the Reporter in respect to Children's Hearing Panels.

What are the implications of adopting a human rights approach? It was suggested that the concept of 'human rights' meant different things to different people. Therefore, information should be provided concerning the rights of individuals and groups (survivors, organisations and individuals accused). Although the term was only used in one focus group, there were elements of a 'restorative justice' model being put forward which, it was suggested, would support everyone's human rights. It was argued that through the adoption of a human rights framework all those using the Forum would feel that there was an equality of access. Adopting a human rights framework also meant that an accused individual could raise an action against the relevant survivor(s) or that either could raise one against the Forum. Some suggested that there needs to be a clear understanding of human rights due to differences between the implementation of European and United Nations declarations on human rights.

Is there anything else you would like to discuss in relation to this Forum? It was suggested by many that it was important that everyone is given support before, during and after this process.

Subsection C: An email survey to 170 Scottish care leavers

This email went out to 170 Scottish care leavers, who were encouraged to pass it on to anyone else they knew who had spent time in care in Scotland as children. Although not part of the original bid and despite the tight time-frame, the chance to undertake this email survey represented a unique opportunity to allow those who had never been engaged in this process, and who may no longer live in Scotland, to contribute to the debate. It was important, in particular, that those who had never been able, or felt able, to discuss past abuse in care in Scotland should nevertheless be invited to give their views. Clearly the Forum needs to reach out to those people and this was one way of finding out how it may do so.

Six responses were received to the email questions (this meant that we engaged with a total of 16 care leavers from Scotland throughout this research). This total is not entirely surprising. Firstly, in contacting all those on the Care Leavers' Association contact list that had spent time in care in Scotland as children, we had no way of knowing in advance what percentage had experienced abuse in the care system in Scotland in the past. Those who had not experienced abuse may have ruled themselves out of responding because of this. Also, those who had not been able to come forward to the police or to support agencies in the past would be understandably reluctant to respond to an email. Nevertheless, it was important that they be given the opportunity to do so and the responses we did get made a very worthwhile contribution to the analysis. They represented a new and untapped source of data on this subject.

It was not possible to ascertain from the email survey responses how many had experienced abuse whilst they were in care. However, the research was equally interested in responses from any one who had experienced time in care in Scotland as they could provide relevant ideas and opinions in response to the following questions. Moreover, many care leavers, in Scotland and elsewhere, have very direct experience of having witnessed abuse in care, and the cultures which facilitate abuse, even if they themselves have not directly experienced it. They, too, will have important things to contribute to how a Forum could help to deal with the legacy of that abuse.

What do you think an 'Acknowledgement and Accountability Forum' means? All six respondents suggested that there was an intimate link between acknowledgement and accountability and that one cannot be possible without the other. It was also suggested by one respondent that

'everyone will take away different things from this Forum and people will want different things from it, this you must allow' (Respondent no. 1)

There were two statements that outlined that the Forum needed to address abuse that had taken place over a number of different decades and may continue to do so. One respondent also claimed that:

'by not coming forward to engage with the claims made institutions are contravening the human rights of care leavers, those people they looked

after as children. Surely human rights legislation makes them accountable to acknowledge and/or engage'(Respondent no. 2)

How should this Forum be run? All respondents stated that there should be at least one care leaver/survivor on the Forum. Respondent no. 4 stated that there should be 'some kind of neutral mediator'. Whilst it was accepted that the remit of the Forum was to acknowledge past abuse and make accountable those who should be held so, it was also suggested that the Forum:

'should lobby politicians, run positive press campaigns supporting care leavers... [and] it should actively support other organisations with similar aims across the country' (Respondent no. 3)

It was suggested by two respondents that the Forum should be afforded 'powers' (Respondent no. 2) in order for the Forum 'to have a strong meaning and purpose'. (Respondent no. 1). One person suggested that the Forum should consist of

'people who have not in the past been dependent on the Scottish Government for their livelihood' (Respondent no. 5)

(i.e. it could not consist of those who are currently or in the past have been employed by the Scottish Government) and went on to say that :

'Abuse survivors need to have their own representatives in order to have some investment in the process' (Respondent no. 5)

What training or support will this Forum need to do its job properly? Responses centred on the need for all involved to have access to a counsellor or someone with mediation or listening skills. Respondent no. 4 suggested that access to information and training about care leavers and what they may be experiencing when accessing the panel might be useful. On a more practical note, it was suggested that:

'Participants may require training in how meetings are run, how matters are recorded and who does what roles... The Forum may require political support and government funding; staffing and office accommodation; support and/or advice from experts in a variety of fields...' (Respondent no. 3)

What information and support will care leavers/survivors need to help them to take part in the Forum? A number of different types of information and support packages were identified. These included: support from family and friends, support before, during and after the process, a clear idea regarding the process of the Forum, varied and accessible information (such as Braille and audio versions of the information), the ability to give their statement via video link or webcams, and expert support from trained counsellors throughout the process. One respondent stated:

'All participants must be informed well before appearing before the Forum as to the exact role the Acknowledgement and Accountability will play in resolving the issues between abuse survivors and the different institutions' (Respondent no. 5)

How should this Forum be advertised so that care leavers/survivors know about it and understand what it is for? Three respondents suggested that the Care Leavers' Association would be a useful place to advertise this information, 'particularly for those who now live outside of Scotland' (Respondent no. 4). To reach a wide variety of audiences, the following were also suggested: TV, Facebook, Bebo, Scottish newspapers and magazines, groups in the voluntary as well as non-voluntary sector as well as those that specifically work with survivors, email distribution lists and key websites and word of mouth. A respondent also stated that:

'it should be advertised in the widest possible manner... then if they don't wish to participate at least they will be aware that there is a body trying to do something' (Respondent no. 6)

Please tell us anything else you would like to about the Forum The three main points that came out of this section were 1) that respondents had a positive regard for the Forum and what they hope it will do, 2) that:

'the forum should not be scared or embarrassed to challenge politicians or call authorities or individuals to account' (Respondent no. 3)

and 3) that there should be a place for younger survivors of abuse within the child care system, as two respondents were concerned that the Forum would only be for older care leavers.

This section has highlighted a number of central issues that reinforce the findings of earlier research carried out by others (and the consultation that took place before this research), but, importantly, does so using the views of individuals who may not have been accessed via any other method before.

Overall the findings in this report provide a rich tapestry of feelings, understanding and expectations in relation to the Acknowledgement and Accountability Forum and offer an important knowledge base for the Scottish Human Rights Commission and the Scottish Government to consider as this work is taken forward.

7. Key Messages

Everyone who was consulted as part of this research was very positive about the Forum, its potential role and the possible outcome if the Forum is conducted properly. The above findings allow us to chart a number of key messages that fit under four main headings. Within this section the aim is to outline those key headings and the specific messages under each one.

The key messages were:

1. That the Forum needs to be as accessible and flexible as possible whilst still being clear and transparent;
2. That the Forum should have a clear survivor-led process, or survivor-leadership;
3. That there are key outcomes that the Forum will need to consider and manage appropriately;
4. That the remit, purpose, aims and objectives of the Forum must be clear from the outset and throughout.

1. That the Forum needs to be as accessible and flexible as possible whilst still being clear and transparent

Under this heading, the key messages were:

- That information and advertising for the Forum should be far-reaching and wide-ranging;
- That support structures should be in place before, during and after the Forum for survivors, individuals accused and institutions;
- That the Forum should address all types of care (residential, kinship and fostercare), all types of abuse (see glossary on pages 6 – 8 of this report) and all age ranges of survivors;
- That there is some hesitancy about how institutions/organisations should/could have access to the Forum;
- That there may be people from outside of Scotland seeking to access the Forum, and the Forum should accommodate this;
- That there needs to be a better understanding of what would facilitate organisations and individual staff coming forward to the Forum;
- That there needs to be an acknowledgement of the different mechanisms needed in order to help people to engage with the Forum.

2. That the Forum should have a clear survivor-led process or survivor-leadership

Under this heading the key messages were:

- That at least one survivor should sit on the Forum;
- That survivors want, and need for a variety of reasons, a number of options in relation to the Forum and how it can best serve their needs. In short, the Forum cannot take the attitude that 'one model fits all'. Whilst a completely different model for each survivor is neither appropriate nor possible, there must be a number of options open to survivors in accessing the Forum;

- That the Forum should be a survivor-led process where survivors are consulted at different stages throughout the Forum, not just during the initial stages. Whilst the research team acknowledge that this is difficult and time-consuming, it is essential for ensuring survivor confidence in the process.

3. That there are key outcomes that the Forum will need to consider and manage appropriately

Under this heading the key messages were:

- That the Forum should have a key role in producing messages for current practice;
- That there are cost implications that the Forum needs to be clear it can meet before outlining them as options. For example, finance for various remedies and for the advertisement of the Forum;
- That there must be a wide variety of remedies made available for survivors;
- That overarching agencies – such as those that are part of the justice system, the religious orders or insurance companies – do not control the processes and procedures of the Forum.

4. That the remit, purpose, aims and objectives of the Forum must be clear from the outset and transparent throughout

- That the Forum must have clear and transparent aims and objectives;
- That the Forum needs to have legal ‘powers’ in order to mandate the attendance or production of information from institutions, to make people accountable and to implement any remedies;
- That a human rights framework must equally balance the needs of survivors, institutions and those accused sensitively and appropriately;
- That any model of practice is adapted to (and not transplanted onto) the specific issues raised by the Scottish context of the historic abuse of children in care;
- That justice outside of the legal context was possible and that people had positive hopes that the Forum would be a place for this;
- That there was difficulty in understanding what people felt their rights were and what they actually were, particularly outside of a judicial process.

In outlining these key messages it is possible to ask: how can these rights best be fulfilled, and what other steps need to be taken to consider and realise their rights?

8. Recommendations

The recommendations are largely informed by this research, but also includes those issues relevant to this Forum from the secondary literature that has been gathered and referred to throughout. In the first instance any recommendations that have been made below, if they are to be effective, must be genuinely accessible with the kinds of support outlined in the findings of this report.

Six key recommendations have been made:

- 1) The key messages from this project (Section 7, above) should inform every stage of the development and operation of the Forum;
- 2) The findings of this research underline the importance of following through on *all* of the recommendations of the Historical Abuse Systemic Review (Shaw, 2007: 153 – 157);
- 3) The work of the Forum needs to be informed by a sound understanding of the complex history of child care and of social and child care policy in Scotland during the 20th century in order to understand the context of survivors experiences and the practice of agencies delivering child care services during the period in question;
- 4) The way forward needs to be succinctly tied into a human rights framework. In particular, the research team recommend that a briefing paper is sent to all potential users of the Forum informing them of their actual, as opposed to assumed, human rights in this context;
- 5) A thorough review of existing avenues for justice is required;
- 6) Whilst some of these findings and key messages are far-reaching, many are modest, and could be put into practice in the Pilot Forum. Based on these findings, the research team strongly recommends that the Scottish Government reconsiders the parameters of the Pilot Forum in relation to the areas of discrepancy between those parameters and the findings of this research. This was raised in the introduction of this report. Most notably, that:
 - The degree to which the decision-making on the Pilot Forum has been survivor-led is unclear, and no one who has disclosed that they are a survivor is included on the panel of Forum members;
 - The Pilot Forum appears to have adopted a model from outside Scotland without making changes to take into account the particularities of the Scottish context of abuse of children in care;
 - The Pilot will only seek out 100 participants for this Pilot Forum and how these are to be 'selected' is currently unknown. We would recommend, from the findings of this research, that this should be an invitation which is widely advertised and circulated, allowing survivors the opportunity to choose for themselves;

- There does not seem to be any provision or discussion about what is to take place after the Pilot. We would recommend, from the findings of this research, that a full Acknowledgement and Accountability Forum does take place with the full input and engagement of survivors, in the first instance, but also with a wide inclusion of individuals and organisations from the child care sector. A full 'Acknowledgement and Accountability Forum' should also take into account any lessons to be learnt from an evaluation of the pilot with due consideration of models in other countries and in a Scottish context;
 - The Pilot documentation suggests that there is no component for ensuring accountability. This component is something that one would expect in a body entitled 'Pilot Acknowledgement and Accountability Forum'. Such accountability is clearly a major expectation of survivors;
 - The Pilot appears to only focus on those who were abused in residential care.
- 7) There needs to be a full and ongoing evaluation of the Pilot Forum in order to understand the impact of the process on both survivors and organisations. This evaluation should then be a key document in the implementation of a full 'Acknowledgement and Accountability Forum'.
- 8) Finally, there should be further research conducted in the following areas:
- The context and experiences of abuse that pre-dates 1950 (i.e. prior to the period covered in the Shaw report);
 - The difficulties preventing those from institutions from coming forward;
 - The needs of survivors and service providers of foster care and kinship care in order better to understand their relationship with, and access to the Forum;
 - The efficacy and impact of the various redress and accountability mechanisms set up in Scotland and other countries in recent decades.

As we have seen throughout this report, engaging with an 'Acknowledgement and Accountability Forum' will be a very individual experience for each survivor and for anyone else who attends. There have been key discussions throughout this report about the remit, purpose and practicalities of running such a Forum. These discussions clearly need to be built upon in order to ensure that the Forum fully addresses the needs of, in the first instance, survivors, and also institutions, for a transparent, equitable and meaningful process. This report recognizes that it will take time to implement a human rights standard of best practice within such a complex context. Nevertheless, it is clearly a time for justice.

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Appendix 1 – Stakeholders’ Map

The concept of ‘Stakeholders’ in relation to the work of the Acknowledgement and Accountability Forum is likely to evolve as consultation takes place. As a preliminary statement, however, it is worth pointing out that it seems likely that there will be groups where the nature of the ‘stakeholding interest’ is different. ‘Stakeholding’ is an elusive and elastic concept and in practice it encompasses broad, narrow, personal, corporate, short-term and long-term forms of engagement. The following is a list of the ‘stakeholders’ involved in this process and was compiled throughout the course of this research.

Directly affected:

- Individuals who experienced abuse while in care as children in Scotland;
- Siblings of those who were in care;
- Those witnessing abuse while in care as children in Scotland;
- Those who abused others while in care as children in Scotland;
- Child migrants from Scotland who were sent overseas;
- Survivor groups who incorporate individuals from the above groups;
- Individuals who provided care during the period in question and who may be the recipients of allegations of abuse;
- Individuals who did not provide direct care during the period in question but who may also be recipients of allegations of abuse (teachers, ancillary workers, visitors, managers, etc.).

Directly interested:

- Agencies (including local authorities) that provided care during the period in question and which may or may not have been the recipients of allegations of past abuse. These agencies may be religious (religious orders and the actual providers of care), voluntary, statutory and private and include those who no longer provide child care services;
- Agencies which have been more recently established and have not been accused of past abuse;
- Agencies where in-care survivors may be currently resident. These include the Prison Service and mental health services.

Support Agencies for Survivors:

- Survivor agencies such as In Care Survivor Service Scotland, KASP, The Child Migrant Trust, the Care Leavers' Association;
- Advocacy agencies, such as Who Cares? Scotland, and mental health charities.

Support Agencies for Professionals:

- Professional bodies;
- Trade Unions;
- Falsely Accused Carers and Teachers (FACT).

Regulation, Inspection and Training:

- Agencies who are responsible for inspection and regulation, though not direct care, during the period in question;
- The Scottish Care Commission;
- The Scottish Social Services Council;
- SIRCC;
- Institutions of further and higher education.

Government and subsidiary agencies:

- The Scottish Government – First Minister and MSPs;
- The Scottish Government:
 - Justice and Care Division;
 - Adult Care and Support Division;
 - Crown Office (in relation to such issues as decisions on prosecution and the time bar).

Those with a pecuniary interest:

- Solicitors;
- Insurance companies.

Those who may be subsequently affected:

- Fostering and adoption agencies (as those abused in foster and adoptive care come forward);
- Those cared for and abused in hospitals during childhood;
- Families and descendents of those abused in care.

Miscellaneous:

- Other services and institutions that care leavers/survivors may access, including mental health, homeless support services and the prison and probation systems.

Appendix 2 – Participant information sheet and consent form for survivors



Hello,

We are writing from the Scottish Institute of Residential Child Care (SIRCC), University of Strathclyde and the Care Leavers' Association to ask you for your help in our research on **Human Rights and Historic Abuse**.

We have been funded by the **Scottish Human Rights Commission** and have been asked to gather research material from care leavers and service providers for an "Acknowledgement and Accountability Forum" on the historic abuse of children in care in Scotland.

We are interested in carrying out interviews with yourself. Some of the issues we are interested in are:

- What you think the issues around human rights and historic abuse are
- What you think "Acknowledgement and Accountability" means
- What you think a forum on "Acknowledgement and Accountability" Forum should look like .
- Suggestions for how this Forum could be run

We envisage the interview to last no more than an hour during which you will have the option to elaborate on the questions asked, propose your own questions and decline to answer any the researcher puts to you.

The final report will be presented to the Scottish Human Rights Commission in **January 2010**, but we will keep you informed at different stages of the research.

Central to this research is an advisory group that includes care leavers who have knowledge of historic abuse and they have guided this research. Undertaking the interviews will be Zachari Duncalf, a Research Fellow at the Scottish Institute of Residential Child Care and a care leaver who is also working as an Executive Committee Member of the Care Leavers' Association.

If you want more information or are interested in taking part in an interview please get in touch. If you have any transport difficulties we are able to travel to you to carry out the interviews.

Zachari Duncalf – zachari.duncalf@strath.ac.uk

You can also contact the Secretary to the University Ethics Committee on ethics@strath.ac.uk University of Strathclyde, McCance Building, 16 Richmond Street, Glasgow G1 1XQ

www.sircc.org.uk

www.careleavers.com

Consent Form

On the back of this consent form is some information about the research we would like you to be involved in. Please read this carefully and ask us any questions you may have. Then, if you are still interested in taking part, please sign this consent form.

This form is to ensure that all people taking part in the research fully understand the following:

- 1) I understand that this research will be published in reports, journal articles or other forms that will be widely available.

- 2) I understand that my data will be kept confidential and secure and when it is published will always be kept anonymous so that no one can recognise me.

- 3) I understand that, although my information is confidential, and will only be viewed by the research team, if I should tell the researchers anything that may be causing me or someone else harm or putting anyone at risk then this information may be passed on to relevant agencies. Should this situation arise the researchers will discuss this process with you before taking this step.

- 4) I acknowledge that if I share any information about a case of abuse that is currently going through court proceedings that this information and my case may be compromised. I further understand that the researchers cannot use this information in any publication.

- 5) I have been informed that the research data will be kept safe and secure and only the research team will have access to my personal information. I have also been informed that this data will be destroyed after the research has been completed.

- 6) I agree/disagree (please delete one) to my information being recorded on a dictaphone.

- 7) I understand that my participation in this research is entirely voluntary and of my own choice. I understand that if I choose to withdraw all or part of my data at any point in the research then I am free to do so without giving any reasons.

- 8) I am consenting to undertake an interview for this research.

If you agree to all of the above please can you sign and date below.

Signature: _____

Date: _____

Appendix 3 – Research questions for survivors

Here is a list of the research questions I would like to ask you when we meet. You have the right not to answer any of these questions or to choose which you would like to answer first, last etc. Please have a read through and think about them before we meet.

Remit of the forum

1. What do you think the name “Acknowledgement and Accountability” Forum means?
2. What purpose do you think this Forum should have?
3. How do you think this Forum should be run?
4. What training and support does this forum need in order to do its job properly?
5. Should the hearings from the Forum be held in public or in private?
6. Can you see any problems that the Forum might have in doing its work? If so, what are they?

Information and access to the Forum

7. What information about the Forum do you think care leavers need to have?
8. How should this Forum be advertised so that care leavers know what the Forum is for?
9. How could the Forum reach out to care leavers who are hard to reach and might not want to come forward?
10. What will make care leavers confident about speaking to the Forum?

Representation and the Forum

11. Are there any forms of care or types of abuse that should not be covered by the Forum?
12. How should any organisations or individuals accused of past abuse be able to access the Forum?
13. Which types of professions should work for the Forum?
14. Which professional groups should not be represented on the Forum?
15. How do you think the Forum should balance the needs of care leavers and the rights of organisations and individuals who are accused of past abuse?

Decisions and the Forum

16. What remedies would you like to see from the Forum? For example, decisions about compensation, a public acknowledgement of past abuse, funding for counselling or education for survivors, a memorial, a public record of the proceedings, an apology?
17. From the remedies you would like, what would make them effective for you? i.e. what TYPE of support, or apology or public acknowledgement?
18. Should the Forum make recommendations for current practice?
19. What relationship do you think there should be between the Forum and any legal processes?
20. What do you think about the current avenues for accessing justice for survivors of historic/past abuse in Scotland?
21. Is there anything else you would like say about the Forum?
22. We would like to follow this research with more work on past abuse in care. Would you be willing to take part in a focus group meeting with other care leavers for this research?

Appendix 4 – Participant information sheet and consent form for service providers



Hello,

We are writing from the Scottish Institute of Residential Child Care (SIRCC), University of Strathclyde and the Care Leavers' Association to ask you for your help in our research on **Human Rights and Historic Abuse**.

We have been funded by the **Scottish Human Rights Commission** and have been asked to gather research material from care leavers and service providers for an "Acknowledgement and Accountability Forum" on the historic abuse of children in care in Scotland.

We are interested in carrying out a focus group with your organisation and are interested in issues such as:

- What you think the issues around human rights and historic abuse are
- What you think "Acknowledgement and Accountability" means
- What you think a forum on "Acknowledgement and Accountability" Forum should look like
- Suggestions for how this Forum could be run

A focus group generally consists of around 8 – 12 people. We envisage the focus group to last no more than an hour and a half during which you will have the option to elaborate on the questions asked, propose your own questions and decline to answer any the researcher puts to you.

The final report will be presented to the Scottish Human Rights Commission in **January 2010**, but we will keep you informed at different stages of the research.

Central to this research is an advisory group that includes care leavers who have knowledge of historic abuse and they have guided this research. Undertaking the focus group will be Zachari Duncalf, a Research Fellow at the Scottish Institute of Residential Child Care and a care leaver who is also working as an Executive Committee Member of the Care Leavers' Association.

If you want more information or are interested in taking part in this focus group please get in touch.

Zachari Duncalf – zachari.duncalf@strath.ac.uk

You can also contact the Secretary to the University Ethics Committee on ethics@strath.ac.uk University of Strathclyde, McCance Building, 16 Richmond Street, Glasgow G1 1XQ

www.sircc.org.uk

www.careleavers.com

Consent Form

On the back of this consent form is some information about the research we would like you to be involved in. Please read this carefully and ask us any questions you may have. Then, if you are still interested in taking part, please sign this consent form.

This form is to ensure that all people taking part in the research fully understand the following:

- 1) I understand that this research will be published in reports, journal articles or other forms that will be widely available.
- 2) I understand that my data will be kept confidential and secure and when it is published will always be kept anonymous so that no one can recognise me.
- 3) I understand that, although my information is confidential, and will only be viewed by the research team, if I should tell the researchers anything that may be causing me or someone else harm or putting anyone at risk then this information may be passed on to relevant agencies. Should this situation arise the researchers will discuss this process with you before taking this step.
- 4) I acknowledge that if I share any information about a case of abuse that is currently going through court proceedings that this information and my case may be compromised. I further understand that the researchers cannot use this information in any publication.
- 5) I have been informed that the research data will be kept safe and secure and only the research team will have access to my personal information. I have also been informed that this data will be destroyed after the research has been completed.
- 6) I agree/disagree (please delete one) to my information being recorded on a dictaphone.
- 7) I understand that my participation in this research is entirely voluntary and of my own choice. I understand that if I choose to withdraw all or part of my data at any point in the research then I am free to do so without giving any reasons.
- 8) I am consenting to undertake an interview for this research.

If you agree to all of the above please can you sign and date below.

Signature: _____

Date: _____

Appendix 5 – Research questions for service providers

1. What role do you think social and other services should play in an “Acknowledgement and Accountability Forum” in dealing with claims of past abuse by and/or within those services?
2. What role do you think this Forum should have in relation to improving a) current practice and b) support for younger care leavers?
3. How do you think the Forum can reconcile the needs and rights of abuse survivors from the care system and organisations and individuals that are accused of past abuse?
4. What do you think would prevent organisations or individual professionals accused of past abuse from engaging with the Forum?
5. What groups of people (i.e. which professions) do you think should sit on the Forum and why?
6. Should the Forum should be held in public or in private?
7. What information/‘evidence’ should be submitted to the Forum in order for it to carry out its duties?
8. What relationship do you think there should be between the Forum and any legal processes?
9. What are the implications of adopting a human rights approach?
10. Is there anything else you would like to discuss in relation to this Forum?

Appendix 6 – Participant information sheet, questions and consent form for email participants



Participant Information Sheet

Hello,

We are writing to you from the Care Leavers' Association, a charity that is run solely by adults who were in care as children. We are working in partnership with the Scottish Institute for Residential Child Care, at the University of Strathclyde, on research for the Scottish Human Rights Commission.

We are asking for your views about an "Acknowledgement and Accountability Forum" that is being set up by the Scottish government in response to the past abuse of children in care in Scotland. We are writing to you because you are members of the 'Care Leavers' Reunited' website, which is run by us at the Care Leavers' Association. We are contacting all care leavers on that site who, like you, spent time in care in Scotland at some point in their childhood. We want you to have a say in the setting up of the "Acknowledgement and Accountability Forum".

We are interested in getting your views on the following topics:

- What do you think an "Acknowledgement and Accountability Forum" means?
- How should this Forum be run?
- What training or support will this Forum need to do its job properly?
- What information and support will care leavers/survivors would need to help them to take part in the Forum?
- How should this Forum be advertised so that care leavers/survivors know about it and understand what it is for?
- Please tell us anything else you would like to about the Forum

Any information that you give us in response to this email will be kept completely confidential, only myself, Zachari Duncalf (Treasurer of the CLA and Research Fellow at the Scottish Institute of Residential Child Care) will have access to your responses. Your information will also be completely anonymous in the report that we submit to the Scottish Human Rights Commission in January 2010. The Commission will then use the report to help them to set up the Forum in the right way, for the benefit of everyone in Scotland and especially for survivors of past abuse.

Participation is entirely voluntary but all those wishing to respond must read and sign the attached consent form. If you have an electronic signature you use this or you can type your name in the signature box and email the document along with your response. Your response also needs to reach us by 30th November at the latest if we are to be able to include your views in our research.

THIS RESEARCH IS ONLY FOR CARE LEAVERS/SURVIVORS WHO SPENT TIME IN CARE IN SCOTLAND AS CHILDREN TO RESPOND TO. If you know of anyone else who is interested in

this research please forward it on to them.

If you want to say anything else about this research project, or ask us any questions about it, then please do not hesitate to get in touch with me at the following address:
zachari.duncalf@strath.ac.uk

If you want to learn more about the CLA and SIRCC, please look at our websites at the following web addresses:

www.careleavers.com

www.sircc.org.uk

We are looking forward to hearing from you.

Zachari Duncalf

(Treasurer, Care Leavers Association and Research Fellow, Scottish Institute of Residential Child Care)

Consent Form

Please read this carefully and ask us any questions you may have. Then, if you still want to take part, please print your name on this consent form and send it back to us with your responses.

- 9) I understand that this research will be published in reports, journal articles or other forms that will be widely available.
- 10) I understand that my data will be kept confidential and secure and when it is published will always be kept anonymous so that no one can recognise me.
- 11) I understand that, although my information is confidential, and will only be viewed by the research team, if I should tell the researchers anything that may be causing me or someone else harm, or putting anyone at risk, then this information may be passed on to relevant agencies. Should this situation arise, the researchers will discuss this process with you before taking this step.
- 12) I accept that if I share any information about a case of abuse that is currently going through court proceedings then this information and my case may be compromised. I also understand that the researchers cannot use this information in any publication.
- 13) I have been informed that the research data will be kept safe and secure and only the research team will have access to my personal information. I have also been informed that this data will be destroyed after the research has been completed.
- 14) I understand that my participation in this research is entirely voluntary and of my own choice. I understand that if I choose to withdraw all or part of my data at any point in the research then I am free to do so without giving any reasons.

If you agree to all of the above please can you sign your name and the date below.

Print name: _____

Date: _____

Only the CLA has your contact details. If you have any questions about this research then please contact us. However, due to the partnership between SIRCC and the CLA this research has been ethically approved by the University of Strathclyde. You can therefore also contact the Secretary to the University Ethics Committee on ethics@strath.ac.uk
University of Strathclyde, McCance Building, 16 Richmond Street, Glasgow G1 1XQ

www.sircc.org.uk

www.careleavers.com