

Ministear airson Slàinte Poblach  
Minister for Public Health  
Micheal Matheson BPA  
Michael Matheson MSP

F/T: 0845 774 1741  
E: scottish.ministers@scotland.gsi.gov.uk



Duncan McNeil, Convener  
Health and Sport Committee  
MG.17  
The Scottish Parliament  
Edinburgh  
EH99 1SP



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*Dear Duncan,*

**VICTIMS AND WITNESSES (SCOTLAND) BILL: NATIONAL CONFIDENTIAL FORUM: STAGE 1 REPORT**

I write in response to the Health and Sport Committee's Stage 1 Report on the provisions in the Victims and Witnesses(Scotland) Bill to establish the National Confidential Forum, published on 27 May 2013.

I would like to thank the Committee for its careful consideration of these provisions in the Bill and all of those who contributed to that consideration by giving evidence.

I welcome the Committee's recommendation to the Parliament that the Bill, in respect of the provisions to establish the National Confidential Forum, should proceed to Stage 2.

A number of important points have been raised in the Committee's Stage 1 Report and I would like to take the opportunity to respond to these prior to the Stage 1 debate in the Parliament on 19 June 2013. My response is set out in the Annex to this letter.

*Best wishes*

**Michael Matheson**

## 1. Functions of the National Confidential Forum

**92. The Committee notes that the evaluation of the Time to be Heard pilot indicated the therapeutic value of an acknowledgement forum in giving people the opportunity to be heard, believed and perhaps even to attain a sense of validation in a safe, confidential and non-judgemental setting.**

**97. The Committee considers that the Scottish Government's participation in the InterAction process, consultation on the time-bar on civil litigation, work that has been undertaken on restorative justice, and emphasis on the Survivor Strategy are all welcome developments. It is imperative, however, that this momentum is maintained and that all the policy strands be pulled together if the best interests of survivors are to be served.**

I note the Committee's comments, both in relation to the principal function proposed for the National Confidential Forum (NCF) and in reflecting the evidence from some witnesses that the functions of the NCF do not go far enough.

The overarching policy objective of the part of the Bill concerned with the NCF is to enhance the health and wellbeing of people placed in institutional care as children, including survivors of abuse and neglect, through the provision of confidential acknowledgment. It is a public health initiative, established in direct response to calls from survivors of child abuse in institutional care over many years for their experiences to be heard and acknowledged – and based on the positive evaluation of the Time to be Heard Pilot Forum (TTBH).

I would like to reiterate that I do not consider the provision of confidential acknowledgement by the NCF to be secondary to justice remedies nor contingent on the implementation of the recommendations set out in the Human Rights Framework. I am pleased that the Committee has recognised our participation in the InterAction process, in which we plan to continue to engage in the hope that a clear and realistic way forward can be agreed by all of the parties engaged in that process.

**98. As was highlighted by some witnesses, the links between the NCF and care providers is a matter that has not really been addressed. The Committee suggests this could merit further consideration by the Scottish Government. Evidently, such a connection will not always be helpful, welcome or appropriate - particularly in relation to individual survivors and their vulnerability - but the wider point, in the context of policy learning and prevention of the same mistakes being made in current care settings, could usefully be explored.**

I would agree with the Committee's view that a connection between the NCF and care providers will "not always be helpful, welcome or appropriate, particularly in relation to individual survivors".

The Scottish Government has given a great deal of thought to the connection between the NCF and care providers, particularly following the experience of TTBH involving Quarriers. However, there is not provision to this effect in the Bill as this is not necessary nor, for the reasons the Committee sets out, always desirable.

As you know, part of the TTBH experience included a restorative justice pilot, funded by the Scottish Government and delivered by SACRO. This was intended to offer a further opportunity for participants in TTBH to explore with Quarriers harm done and how this could be repaired. The evaluation of this pilot project, I think yields interesting learning for care providers in terms of engaging with former residents who experienced abuse while in their care.

In terms of policy learning and the prevention of a repetition of the mistakes of the past, the Historical Abuse Review Systemic Review, which we commissioned in 2006, sets out a series of recommendations both in relation to supporting former residents of care and in relation to current and future provision. Over the last six years, the Scottish Government has taken forward these recommendations, almost all of which are now implemented.

Notable achievements in implementing the Review recommendations include; the passage of the Public Records (Scotland) Act 2011 to address the poor record keeping which has created difficulties for former residents of residential schools and children's homes in tracing their records; the establishment of the National Residential Child Care Initiative which has resulted in better guidance on safer recruitment practices and a requirement for all staff to register with the Scottish Social Services Council; and the establishment, in 2010, of In Care Survivors Service Scotland, the only dedicated support service for adults who have experienced childhood abuse in care and their families.

The Committee may also be interested to know that the members of the NCF Reference Group have agreed (in June 2013) to develop guidance for care providers to inform their responses to former residents who choose to participate in the NCF. The representative from the Church of Scotland who gave evidence to the Committee at Stage 1 on this point sits on our reference group and intends take part in this process.

## **2. Eligibility to participate in the NCF**

**135. The Committee recognises that the focus of the NCF is on historic abuse and the right of adult survivors to be heard. It also appreciates the need for a cut-off to be applied at a specific age and that the Scottish Government gave consideration to ages 16, 18 and 21.**

I am pleased to see that the Committee has recognised the desirability of including in the Bill an age threshold for participation in the NCF. As the Committee is aware, this is in addition to the requirement that participants must have left institutional care when applying to participate in the NCF. In combination, these provisions will enable the NCF to only hear past experiences of care, which is particularly important as the NCF will not have a defined historical period from which it will hear such experiences.

In setting a minimum age threshold for participation in the NCF of 18 years of age, we considered different age options in light of the legitimate goals of the legislation. A threshold of 18 years of age is considered to be reasonable and proportionate as young people in Scotland are much more likely to no longer be in institutional care at 18 years of age, than at 16 and 17 years of age. As the Committee recognises, the focus of the NCF will be on historic abuse and, as such, the age of participants is likely to be significantly older than 16, 18 or 21 years of age. This was certainly the case in Ireland.

I have not seen any specific evidence that young people leaving institutional care at 16 and 17 years of age will seek, almost immediately on leaving that care, to participate in the NCF. Indeed, stakeholders have told us that participating in the NCF would not be a priority for most young people leaving care.

I am, however, aware that the possibility of a 16 or 17 year old care leaver seeking to participate in the NCF exists. On that basis I have asked my officials to explore the possibility of an amendment to the Bill which would enable 16 and 17 year olds, who have left institutional care, to apply to participate in the NCF.

**137. It is also welcome that the Scottish Government has commissioned CELCIS to carry out a piece of work on the suitability of an acknowledgment forum for people who might have experienced abuse in foster care. The Committee was pleased to hear the Minister's expectation that a pragmatic approach would be taken by the NCF should foster care be broached by participants in the Forum.**

**142. Given the evidence from a series of witnesses – among them a TTBH Commissioner, CELCIS, ICSSS, the Care Inspectorate, Who Cares? Scotland, Aberlour Child Care Trust, Barnardo's Scotland, and the Care Leavers Association – the Committee recommends that further consideration be given to including foster care in the eligibility criteria for participation in the NCF.**

I would like to reassure the Committee that we have considered fully the purpose and effect of provision in the Bill to focus the scope of the NCF on past experiences of institutional care.

The rationale for the focus of the NCF on institutional care is based on positive evidence that this model works for people placed in institutional forms of care as children. There is no evidence to inform a widening of the scope of the NCF beyond institutional care to foster care or indeed to other forms of care.

The rationale for the focus of the NCF on institutional care is also based on a need to develop a specific response to the distinct development and characteristics of institutional forms of care in Scotland, particularly that provided on an historical basis. It was evident in testimonies given by people who participated in TTBH that there were implications for many former residents of the experience of having been placed in an institution as a child – both for those who had been abused and those who had not.

I believe that it is important that we respond, specifically and appropriately, to the calls from former residents of institutional care that their particular experiences be recognised and acknowledged.

In addition, where abuse is perpetrated in an institutional context this can compound the trauma caused by that abuse and can have particular implications for disclosure. The confidential, non-judgemental context of the NCF is particularly valuable to survivors of historic institutional abuse given those implications.

I would also observe that the more specific arguments for extending the scope of the NCF to foster care made by some stakeholders (namely, that abuse occurs in this setting and that significant numbers of children have been placed in this type of care) are not unique to foster care. As such, an extension of the scope of the NCF on the basis of these arguments would, by the same token, enable a widening of the scope of the NCF to further care categories – and indeed to children not placed in care. This could present a significant risk to the NCF in terms of its capacity, expertise and resources.

All of this is not to say that confidential acknowledgement of the experience of being placed in foster care as a child would definitely not be of value and benefit. That is why we are funding ICSSS and CELCIS to undertake a piece of work to hear the views of people placed in foster care themselves as to the value and potential benefit to them of acknowledgement and what specific form this might take.

I note the recommendation made by the Committee that the Scottish Government give further consideration to widening the scope of the NCF to include foster care. While I am not persuaded by the arguments to widen the scope of the NCF in this particular way, I have asked my officials to continue to work with relevant stakeholders to ensure that the views of people placed in all forms of care as children continue to be fed into the implementation of the SurvivorScotland Strategy.

### **3. Support to participants**

<p><b>200. Given that support is so crucial for the health and wellbeing of those who suffered childhood abuse, the Committee seeks also an undertaking from the Scottish Government that it will ensure the availability of services for those who choose to participate in the Forum – so as to be supported before, during and after taking part – and more widely still to all adult survivors who may require psychological or counselling support.</b></p>
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I can assure the Committee that, as with the support arrangements underpinning TTBH, support to participants before, during and after participation in the NCF will be offered. The nature and duration of this support will be the choice of the participant. There will also be comprehensive information available prior to people applying to take part in the NCF and suitably qualified and experienced support staff will be in place to offer guidance and signposting.

As part of the wider SurvivorScotland Strategy the Scottish Government funds a range of support and counselling services for survivors of childhood abuse including a Scotland-wide agency specifically for survivors of in care abuse, In Care Survivors

Service Scotland (ICSSS), and services in rural and remote areas. The Scottish Government will be working closely with these services, and all stakeholders, in the run up to the establishment of the NCF to determine the shape and balance of support which should be available for people before, during and after participation in the NCF

The Scottish Government has also provided funding to a range of stakeholders to explore what particular barriers people might face in terms of participation in the NCF – and the support they might need to enable their full and effective participation in the Forum. For example, we have funded the Scottish Council for Learning Disability and Enable to engage with people with learning disabilities to both raise awareness of the NCF and to identify any particular access or support needs. Learning from all of these funded projects will feed into the operational planning for the establishment of the NCF.

**197. The extent of the knowledge and expertise required of mental health professionals to engage with survivors was a question that arose from some of the evidence. This has a degree of resonance with some recent work the Committee has undertaken on Post-traumatic Stress Disorder. It would be welcome, therefore, if the Scottish Government could elaborate on any plans to further develop or “up-skill” the people who will be working closely in support of survivors, whether those taking part in the NCF or otherwise.**

I would refer the Committee to my recent letter, dated 19 June 2013, in response to the Committee’s queries set out in your letter to me of 3 June 2013, following its roundtable discussion on trauma.

#### **4. Confidentiality**

**231. On balance, the Committee considers the confidentiality aspects as set out in the Bill to be sensible, proportionate and intended to weigh the emotional and therapeutic benefits of participation with the public interest and safety, should information come to light that indicates an immediate or current risk.**

**232. The Committee believes the parameters of confidentiality ought to be set out as clearly as possible. This will certainly be a sensitive subject for survivors but no-one should be expected to take part in the Forum without a proper understanding of the process, including its benefits, outcomes and consequences.**

I welcome the Committee’s view of the provisions in the Bill to balance confidentiality and disclosure as “sensible” and “proportionate”.

The provisions in the Bill, in relation to the disclosure of information by the NCF, must strike a proportionate balance between the rights of those making allegations in hearings of the NCF and those against whom allegations are made and the rights of persons against whom allegations may be made. I am satisfied that the provisions in the Bill strike an appropriate and proportionate balance between those different

rights and indeed that all of the provisions in respect of the NCF are ECHR compliant.

## **5. Status**

**254. The Committee recognises that the NCF must have operational autonomy if it is to perform its role effectively and with credibility, especially in the eyes of the survivor community.**

**255. It is reassured that most of the witnesses were comfortable with what is proposed or, in more positive terms, considered the MWC to be “a good location”. The potential for stigmatisation arising from the mental health tag and how that might put off would-be participants arose, but was generally not seen as problematic, provided its independence could be guaranteed and the NCF was badged in its own right.**

**256. The memorandum of understanding will be vital in ensuring the Forum can carry out its core work as it sees fit while benefitting from the infrastructure, governance and expertise of the MWC. The Committee welcomes the Minister’s undertaking to forward that information once the document has been finalised.**

I am pleased at the response by the Committee and stakeholders to the proposal that the Mental Welfare Commission host the NCF. There are clear benefits to the establishment and operation of the NCF in this arrangement, which will enable both accountability in terms of the discharge of the NCF functions and a high level of operational independence for the NCF itself.

As I intimated at the Committee session on 30 April 2013, I am very happy to share the Memorandum of Understanding between the Scottish Government and the Commission when it is finalised , following the appointment of the Head of the NCF.

## **6. Reports**

**285. People who were abused in care and have perhaps carried the feeling they did “not count” want their testimony to the Forum to matter; the Committee was told that survivors who come forward to participate expect to recognise their testimony in the reports of the NCF. It is acknowledged, as the Minister said, that this is likely an operational matter for the NCF, but the Committee suggests that the coding of testimony as practised in the Irish model (the Ryan report – highlighted by the SHRC) could be explored.**

I note the Committee’s suggestion that methods by which the testimony of participants in the NCF is able to be recognised in reports be explored. I want to assure the Committee that the Scottish Government will be encouraging the NCF to put in place a system whereby testimony can be recognised, in accordance with the obligations in the Bill to anonymise information.