

Minister for Public Health and Sport
 Minister for Children and Early Years
 Minister for Community Safety
 Lord Advocate

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CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AN ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM (AAF)

Purpose

1. To provide briefing for a meeting scheduled for 30 September to relevant Ministers:

- to decide whether to pilot an acknowledgement and accountability forum for adult survivors who experienced in care abuse as children; and if so
- to agree which model to pursue from a range of options outlined in **Annex A**.

Background

2. This policy cuts across Care and Justice as well as Health and Wellbeing portfolios. The overarching strategy, Survivor Scotland, is outlined in **Annex B**. There are many elements to this. In February 2008, Adam Ingram announced a key component - that of scoping a Scottish Truth and Reconciliation Forum to address the needs of adults who had suffered childhood abuse whilst in care and funding of £375k for 3 years was set aside for this purpose. This was a response to recommendations made in the Historical Abuse Systemic Review chaired by Tom Shaw which was published in 2007.

3. The SurvivorScotland National Reference Group then helped to prepare a consultation paper which issued in October 2008. At its request, the term 'Truth and Reconciliation' was replaced by 'Acknowledgement and Accountability' as the former was thought to be too closely associated with South Africa. **Annex C** describes the consultation process as well as its findings and implications.

4. During the consultation process, officials were approached by the Scottish Human Rights Commission (SHRC) who offered their expertise and so they were commissioned to provide a human rights framework for the Forum which will ensure that the rights of all parties are represented (see **Annex D**). Officials also visited Ireland to hear about the Irish Commission to Inquire into Child Abuse, and have considered other international models. We are aware that the Irish Commission's work is likely to cost about 136m Euros, over 60% of which was spent on legal costs. We are seeking to ensure that we keep within a modest budget and the proposals are designed accordingly.

Discussion

5. The options for a forum are set out in **Annex A**, with the preferred option being a confidential forum where survivors (but not institutions or alleged abusers) would have the opportunity to speak about their experiences in care. They would do so without legal representation and in an informal setting.

6. Informal discussion with the Chief Executive of Quarriers indicates interest in piloting the Forum. Quarriers was one of the largest institutions providing residential care for young people in Scotland since the late 19th century, with 1500 children living in the village at any one time. In total over 30,000 children have been cared for since its inception. They hold records for those 30,000 children and have an active former residents membership, which will hopefully make those abused whilst in care less difficult to reach. Children from across Scotland were placed there so Quarriers' intake can be said to be representative of the country as a whole.

7. There is clear recognition by Quarriers of past abuse. There have been four criminal convictions to date against Quarriers staff and some civil actions against the organisation itself. No independent inquiry has been commissioned, though Quarriers carried out their own internal inquiry following the first criminal conviction in 2001. The Chief Executive gave written evidence to the Public Petitions Committee in 2004 which included an apology to any individual who suffered abuse at Quarriers. Formal Board approval and clearance of complex management issues, such as liability and insurer interest, would need to be worked through in advance.

8. If a confidential forum was pursued, further thought would also need to be given as to how to involve institutions and other parties both in the process and in future funding of the project e.g. local government who placed children.

9. The Chair and Forum members would need to be appointed, supported by an Advisory Group. **Annex E** presents proposals and recommends that Tom Shaw be appointed to chair the pilot Forum to provide continuity and credibility.

10. The Scottish Government's responsibility to protect Scotland's children is another critical consideration with specific relevant responsibilities spread across a range of Ministerial portfolios. The overarching policy rests within Health so **Annex F** outlines the benefits to the nation's health and wellbeing which could arise from a successful forum. **Annex G** considers issues arising specifically for Mr Ewing and the Lord Advocate concerning civil actions, Criminal Injuries Compensation and criminal prosecutions. **Annex H** deals with Mr Ingram's remit - particularly concerning residential child care.

Conclusions

11. It is recommended that Ministers meet and agree:

- that a pilot should be run, possibly from February/March 2010, informed by the SHRC human rights framework
- the model for the pilot - with the Confidential Committee option being the preferred one as outlined in **Annex A**
- the appointment of a Chair, pilot Forum members and an Advisory Group
- the importance of progressing other forms of redress and assistance for in care survivors, including civil and criminal proceedings, the Criminal Injuries Compensation Scheme, educational opportunities, access to records, the In Care Survivors Service and public recognition of survivors' experiences.

12. A draft Agenda is attached at **Annex I**.

Jean MacLellan
Adult Care and Support Division
September 2009

ANNEXES

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ANNEX B	Policy Background
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ANNEX A OPTIONS APPRAISAL FOR PILOT FORUM ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

Introduction

1. In addition to the consultation, we have drawn on the experience of Inquiries and Forums in Australia, Canada, Wales and Ireland, and on the Scottish Inquiries into Kerelaw School (2009), Child Abuse at Care Homes in Fife (2002) and Abuse and Protection of Children in Care in Edinburgh (1999).
2. We found that the work of the *Ryan Commission to Inquire into Child Abuse* (the Irish Commission) was particularly relevant. Their approach was established on a statutory basis and has six components:
 - a Redress Board offering financial compensation to survivors
 - an Education Finance Board providing educational grants for former residents in institutions and their relatives
 - a national counselling service for victims of childhood abuse generally
 - an amendment to the Statute of Limitations to enable victims of childhood sexual abuse to bring civil actions
 - a Confidential Committee providing survivors of abuse in childhood in institutions an opportunity to recount the abuse
 - an Investigation Committee to inquire into abuse of children in care and to determine the systems of management and regulation
3. The Irish Commission recently published its final report, focused on the Confidential and Investigation Committees. This information, combined with an analysis of arrangements elsewhere to assist adult survivors of childhood abuse in care, has provided us with a useful guide to the challenges and opportunities presented by different models for an in care survivors forum. Key issues for the Commission were the hugely escalating costs of their inquiries and the delays in completing the work. The original estimate was 2.5 million Euros over two years; the Auditor-General in Ireland now estimates the cost as 136 million Euros over at least 9 years, **with the majority of that expenditure on legal fees for appearances before the Investigation Committee**, where there were also significant delays.
4. A forum on its own, regardless of its scope or powers, cannot meet all the needs of survivors. Other Annexes present all the various strands of work that currently or in the future will offer opportunities for in care survivors to be recognised and their experiences validated.

Option 1 No Action

5. The option of taking no action, at least for the pilot, is constrained by the commitment made by Ministers to the Scottish Parliament in February 2008. The pilot will be seen by survivors and others as an essential part of the scoping exercise that Mr Ingram promised to undertake at that time. Funding is available, some expenditure has already been incurred and the remainder has been ring-fenced for that activity. A detailed budget has been designed for the pilot which can comfortably be met within the current dedicated resources. However, there are clearly issues surrounding further options after the pilot is completed. Decisions

regarding expenditure which would be incurred in the establishment of a comprehensive forum will fall within the next Spending Review period.

Advantages

- ✓ No complications arising from forum proceedings
- ✓ Legal proceedings still possible¹

Disadvantages

- ✓ Government commitment not met
- ✓ Survivors' expectations not met
- ✓ Public expectations not met
- ✓ Potential human rights issues not addressed
- ✓ Adverse media publicity
- ✓ Pressure on legal avenues for punishing abusers and making institutions accountable

Option 2 Confidential Committee Model

6. The principal functions of a Confidential Committee model are:
 - To provide a forum for people who were abused in institutions during their childhood to recount their experiences and make submissions in confidence
 - To receive evidence of such abuse
 - To make proposals of a general nature that might form the basis of recommendations
 - To prepare reports
7. This approach is non-accusatorial and the institutions are not given the opportunity to give oral evidence or to challenge survivors' evidence although in Ireland institutions could submit documentary evidence if they wished. The proceedings are held in private and are designed to make it as easy as possible for survivors to recount in full the abuse they suffered in a sympathetic, understanding atmosphere which is as informal as possible.
8. One, or more usually two, Commissioners conduct the hearings. They do not require to be legally qualified and there is no legal assessor as the hearings do not consider blame-worthiness and make no findings of fault. No immunity from prosecution or civil suit is given to alleged abusers and institutions so that there is no bar to continuing or future legal action. All those involved in the proceedings enjoy 'absolute privilege' (immunity from civil action for defamation).
9. A Witness Support Officer makes the administrative arrangements and provides advice and assistance to survivors at the hearings. While survivors can be accompanied by a supporter and expenses for that person will be paid survivors are not legally represented at hearings. This reduces considerably the cost of any forum. **In Ireland nearly 60% of the Commission's costs were to cover legal fees for survivors, institutions, Government departments and the Commission**

¹ Most jurisdictions that established a specific scheme of financial compensation for survivors required them to sign a waiver that they would not institute civil proceedings.

itself but this expenditure was not incurred as part of the Confidential Committee's work.

10. The information obtained from the survivors cannot be transferred for use in any other forum. The proceedings are entirely confidential (with some very limited exceptions to safeguard children and prevent crime) and the identities of either witnesses or their alleged abusers cannot be disclosed in any reports or by any person. In Ireland the Commissioners used a pro forma to elicit information from survivors so that all the evidence could be incorporated into a database. The database then aggregated and anonymised the responses for inclusion in a report.

11. To ensure full confidentiality materials need to be kept in a secure area with limited access and the location for the hearings should be out of the public gaze.

Advantages

- ✓ Survivor focussed
- ✓ Therapeutic process
- ✓ Human rights issues met
- ✓ Legal proceedings still possible²
- ✓ Media handling straightforward
- ✓ Privacy of survivors preserved
- ✓ Costs kept down
- ✓ Unlikely to be subject to delays

Disadvantages

- ✓ Survivors' desire for full investigation not met
- ✓ Survivors' expectation of financial compensation not met
- ✓ Public expectation of 'naming and shaming' not met
- ✓ Pressure on legal avenues for punishing abusers and making institutions accountable

12. The confidential committee model therefore offers a relatively economic, swift, therapeutic forum for survivors to describe their experiences with full confidentiality assured. Preliminary consideration of human rights issues suggests that these can be secured in such a forum, for both the survivors, alleged abusers and institutions. It does not, however, afford the opportunity for an investigation of individual abuse allegations through the Forum.³ Neither does it give survivors the chance to confront the institutions in the Forum or for there to be any form of reconciliation between them within the process itself. Survivors, and even some institutions, may find this unsatisfactory and feel let down, particularly as the Forum was originally described as a 'truth and reconciliation' commission.

13. The Irish experience and preliminary work on human rights issues underline the difficulties that are likely to arise if institutions are involved in any forum process.

² Most jurisdictions that established a specific scheme of financial compensation for survivors required them to sign a waiver that they would not institute civil proceedings.

³ Where there is a material risk of harm to children or adults-for example, where an alleged abuser identified at the Forum continues to work with children or adults-the police will be informed.

A process that involves both the survivors and the institutions will be required to hear the institution's version of events and could be expected to take a view on the merits of both sets of evidence. Individual alleged abusers may also have to be given the opportunity to be heard otherwise their rights could be compromised. The Forum process could be subject to the same criticisms as those that confronted the Ryan Commission, resulting in an obligation on the State to meet the legal costs for all parties at the Forum and leading to long delays while legal issues were adjudicated upon. The process itself will then inevitably become a more formal one where survivors' accounts may be challenged and this could undermine the therapeutic value of a forum for some survivors. It is possible that future or pending criminal prosecutions could be adversely affected by Forum investigations, particularly if confidentiality is not applied to the proceedings. In addition, lawyers and insurers advising institutions may recommend against their involvement in any pilot Forum or in the full Forum itself.

Option 3 Investigation Committee Model

14. The principal functions of an Investigation Committee model are:
 - To provide a forum for people who suffered abuse in institutions during their childhood to recount their experiences
 - To inquire into the manner in which children were placed in institutions
 - To inquire into abuse of children
 - To determine the causes, nature and circumstances of such abuse
 - To determine the systems of management, administration, operation, supervision and regulation of such institutions and the manner in which these systems were implemented
 - To prepare reports

15. The approach is investigatory and in Ireland was triggered by receipt of at least 20 complaints about a particular institution. The Committee has the power to direct the attendance of witnesses and the production of documents, to require discovery of documents, to ask questions which must be replied to and to require parties to admit facts, statements and documents. All parties are legally represented with costs met as part of the Committee expenses. The Auditor General of Ireland has estimated that 78 million Euros have been spent on legal costs. At least one of the Commissioners presiding over the hearings of an Investigation Committee should be legally qualified and the Chair of the Investigation Committee in Ireland is a High Court judge. The proceedings are therefore likely to be much more formal than a Confidential Committee model and to be managed by the legal representatives. All those involved in the proceedings enjoy 'absolute privilege' (immunity from civil action for defamation).

16. The report of any such committee is not confidential but identifies institutions and, in certain circumstances, abusers. While evidence about individual allegations of child abuse is given in private and is confidential other evidence is generally to be given in public and to be published. No immunity from prosecution or civil suit is given to alleged abusers and institutions so that there is no bar to continuing or future legal action. Evidence obtained by the Investigation Committee cannot be used in any legal proceedings.

Advantages

- ✓ Full investigations into individual institutions conducted
- ✓ Opportunity for survivors to 'name and shame' the institutions
- ✓ Legal proceedings still possible
- ✓ Public have access to most hearings

Disadvantages

- ✓ Human rights issues about fairness to individuals accused and to institutions
- ✓ Survivor focus may be reduced
- ✓ Procedure formal and not designed to be therapeutic
- ✓ Survivors' expectation of financial compensation not met
- ✓ Considerable and possible adverse media interest
- ✓ Legal costs
- ✓ Length of time because of legal arguments and representation
- ✓ Some pressure on other legal avenues for punishing abusers and making institutions accountable

The Investigation Committee model does offer some opportunity for survivors to publicly name and shame alleged abusers but this is severely constrained by human rights concerns. There are also significant drawbacks in relation to the cost of legal representation and concomitant delays.

Option 4 Confidential and Investigation Committees

17. In Ireland survivors could opt to give evidence before either the Confidential or Investigation Committees provided (in the case of the Investigation Committee) that there had been more than 20 complainants raising concerns about a particular institution. They could not appear before both committees. The majority of survivors opted to appear before the Investigation Committee. Because of the large number of survivors wishing to give evidence a number of them were interviewed by Commission staff outwith the Investigation Committee formal proceedings. Survivors could also choose to move from the Investigation to the Confidential Committee.

Advantages

- ✓ Gives options to survivors
- ✓ Offers therapeutic process
- ✓ Full investigations into individual institutions conducted
- ✓ Opportunity for survivors to 'name and shame' the institutions
- ✓ Gives public access to some hearings
- ✓ Legal proceedings still possible
- ✓ Privacy of survivors preserved
- ✓ More likely to meet public and survivor expectations

Disadvantages

- ✓ Human rights issues about fairness to individual accused and to institutions
- ✓ Survivors' expectation of financial compensation not met
- ✓ Considerable media interest
- ✓ Legal costs
- ✓ Length of time because of legal arguments and representation
- ✓ Some pressure on legal avenues for punishing abusers and making institutions accountable
- ✓ Choice creating complexity and uncertainties

18. The combination of the Investigation and Confidential models appears to offer choice to survivors but shares the same drawbacks as option 3 above. The cost implications would be considerable and it is likely that the process would take years, resulting in frustration for survivors and adverse media coverage.

Conclusion

19. It is suggested that Option 2 is the preferred option for the pilot in Scotland. An Investigation Committee model on its own would not provide a therapeutic forum for survivors and would create considerable difficulties in terms of 'due process' rights for alleged abusers, with the potential for significant breaches of human rights. Institutions are likely to be hostile to such an approach and survivors might find it overformal and possibly even unsympathetic. It would take time to establish such a committee as legal challenges may well be made to its legitimacy. The cost of an Investigation Committee would undoubtedly be high and it is unlikely that there would be funds available to meet the heavy costs of legal representation.

20. A combination of the two models undoubtedly has some appeal but there would continue to be difficulties in relation to 'due process' and the costs are well beyond what is affordable, even for a pilot.

21. Any decision to opt for the Confidential Committee model would require to meet the human rights framework being designed by the Scottish Human Rights Commission. It appears from preliminary consideration of international human rights law that this model would fit within such a framework. It would also need to be presented as just one avenue for in care survivors to receive acknowledgment and be supported in making disclosures of abuse. The possibility of a criminal prosecution, a civil action and/or compensation from the Criminal Injuries Compensation Scheme should be explored with individual survivors. Consideration should also be given more generally as to how improvements can be made to make it easier for survivors to obtain redress through legal channels.

22. Efforts should also be made to explore with relevant experts (such as SACRO) ways in which institutions could offer survivors forms of apology and reconciliation that would be distinct from the forum process and would not constrain ongoing or possible future criminal investigations. It should be possible to provide guidance on such matters that would encourage the institutions to take part and be seen by survivors as providing them with another positive opportunity to deal with their experiences.

ANNEX B POLICY BACKGROUND

ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

Progress within the SurvivorScotland Strategy

1. All this work is underpinned by SurvivorScotland, the National Strategy for Adult Survivors of Childhood Sexual Abuse, www.survivorscotland.org.uk, which was launched in September 2005. A National Reference Group takes forward its implementation with survivor representatives (including those who have been abused whilst in care), those from a wide range of voluntary and statutory services and officials from Care and Justice as well as Health Directorates. The cross cutting nature of work under the National Strategy is significant and we seek to ensure that it is reflected in all our plans and awareness. Since its inception, work has progressed on a number of key areas which were identified in the strategy document:
 - **Better data collection** SurvivorScotland has worked in partnership with two health and local authorities in Scotland to develop pilot projects in order to collect previously unrecorded data on survivors who come into contact with gynaecological and mental health clinics. We are now at the stage of implementing best practice from these and rolling out the projects nationally.
 - **Public awareness raising**. Work has been carried out with marketing professionals, to prepare and create the beginnings of a campaign to reach the general public, health care professionals and others. Workshops have been taken on the road, to ensure that the widest input is gained from survivors, professionals and voluntary organisations, and in turn to ensure that the messages that need to be relayed have been captured. These measures are ready to be put into place in the form of a communications strategy.
 - **Training for professionals across all disciplines and at all levels** and creation of self-help tools. Funding has been made available for training for trainers. The training campaign is ready to be more widely disseminated and officials working on the strategy are ready to engage with NHS and wider to ensure that training already in existence is fully recognised, utilised and taken forward in the wider context. First steps will be through a training sub group.
 - **A network of survivors, practitioners and researchers** to collaborate on the systematic development of good practice across Scotland. The SurvivorScotland website was one of the initial priorities and it was always intended that it would underpin the strategy. The site is crucial in providing important information to a wide range of people who are affected by child abuse, as well as being a valuable resource for health and social care practitioners. The website will be used to reach survivors and the general public to inform them about the work for in care survivors and the Acknowledgement and Accountability Forum.

- **Sexual Abuse Service Development Fund** The strategy document originally indicated that it should look to local demonstration projects to develop and disseminate good practice nationally. In this respect development funding of £1.7m has been provided over a 2 year period to prime pump services already in existence and to create new innovative services. Evaluation has been carried out and further funding is planned for a number of key areas which were identified as those of most strategic importance. These include work with male survivors and for those supporting survivors in rural areas. Furthering development funding is likely to include support services in prisons, and discussions are taking place with SPS. Further financial support is likely to be available for work with potential perpetrators as detailed under Cosgrove below.
- Work has commenced to look at improved **commissioning and resourcing of services at local level**, and at providing more specialist and intensive support for those who require it, recognising the fluctuating and long-term needs of many survivors and the clear inclusion of adult survivor issues in mainstream policies. We have commenced work on care pathways to help mainstream services for survivors.
- **Identification of adult survivors in the prison population**. Work has commenced on this and funding has been provided to train relevant officials within SPS to help them work more confidently with survivors and handle disclosures sensitively.
- **Creation of change programmes** targeted at prevention of further sexual offending to take forward the Cosgrove recommendation. We have been funding Stop It Now! Scotland, a helpline for perpetrators or potential perpetrators under Section 10 funding and plan to continue to fund Barnardo's Feagarrach to work with young people who display sexually harmful behaviour as detailed above.
- **Research** - The original strategy document pointed out that there was a lack of research on a number of issues, including the long-term consequences of CSA for physical health. The Strategy document also stated that there was little knowledge about the needs of particular groups of survivors such as those in Scotland's prisons. Work has been done in particular to gain further knowledge of these areas by Sarah Nelson, one of the strategy's Lead Professionals. The SurvivorScotland website has a section on research.

In Care Survivors Service Scotland

2. In care and institutional abuse issues are represented by members of the National Reference Group. In recognising the very specific needs of those who were abused in care settings, the Reference Group decided that their interests could be better served by a group focussing on these areas of need. A sub group was therefore convened from a wide range of relevant agencies, to review the needs of in care survivors to evaluate what service provision is currently in place and identify any gaps. The sub group presented its findings

on the need for a National Service to the reference group for consideration and action and it was agreed that this should be taken forward.

3. Following a competitive process, Falkirk-based Open Secret was appointed as the lead agency to run the national service. Established in 1994, Open Secret is an independent organisation offering a wide range of services to survivors of childhood sexual abuse. KASP (Kingdom Abuse Survivors Project) is a main partner in the national service and has a remit to provide direct support in the Fife and Dundee areas. The In Care Survivors Service Scotland has set up partnership agreements with a number of other counselling organisations including The Moira Anderson Foundation in Lanarkshire, Penumbra in the Borders and Break the Silence in Ayrshire.
4. The Scottish Government has committed £750,000 to the In Care Survivors Service Scotland (ICSSS) over the next three years.

The remit of the service is:

- to provide a national confidential telephone support line (0800 121 6027) for in care survivors and their families;
- to provide support, advocacy and confidential counselling to in care survivors and their families;
- to facilitate contact with relevant health, voluntary, community and social care agencies;
- to provide an independent advocacy/signposting service to in care survivors on access to records;
- to provide an independent advocacy/signposting service to in care survivors on accessing the Criminal Injuries Compensation Scheme, and other relevant legal services; and
- to produce a website (www.incaresurvivors.org.uk) and series of leaflets on all aspects of in care and institutional abuse for survivors and their families.
- A monitoring group made up of representatives from Open Secret, the various counselling partners, the Scottish Government and survivors meets on a monthly basis to evaluate the effectiveness of the service and ensure it is meeting the needs of its client group.
- Care and Justice officials also meet with ICSSS every six weeks to provide advice and support, discuss issues and receive updates. As part of the terms and conditions of its grant, ICSSS must keep Scottish ministers fully informed of the progress of the project in the form of six monthly reports demonstrating satisfactory achievement of its objectives.

Investigations of Historic In Care Abuse

5. There have been allegations of abuse at residential institutions in Scotland over the last 40 years and a number of convictions of staff. Survivors from Quarriers have been campaigning for a public inquiry. In response:
 - The government has listened to survivors and their explanations of the importance of society acknowledging the suffering they have experienced.
 - Two major independent inquiries into abuse in care were commissioned by the Care and Justice Directorate. Tom Shaw's Systemic Review of Historical Abuse (published November 2007); and Eddie Frizzell's report into abuse at Kerelaw residential school in Ayrshire (published May 2009).
6. The Scottish Government is currently implementing the recommendations of Tom Shaw's systemic review. As part of this activity we have:
 - announced plans for a Scottish acknowledgement and accountability model to give survivors the chance to speak about their experiences and carried out a consultation on the approach;
 - asked the Keeper of the Records of Scotland to review the legislation on public records held on children in care in light of the shortcomings exposed in the Shaw report, and are bringing forward proposals for amendments to the law;
 - commissioned a review of residential childcare (the National Residential Child Care Initiative) to consider the many challenges facing residential child care in Scotland, including staff training and development;
 - jointly commissioned an independent inquiry into abuse at Kerelaw and accepted its recommendations.

Forum's Relationship to Current Policy

7. Current SurvivorScotland workstreams have many interconnections with the work to progress an Acknowledgment and Accountability Forum. For example, the development of in care abuse services is of course particularly relevant to meeting the needs of survivors who may take part in such a forum.

Media

8. Both the communications strategy and the website will be principal tools for explaining to and informing the public, politicians, professionals and survivors in all these groups about the background to any forum, what is happening at each stage, and by correcting any misinformation which may appear in the media.

Research

9. Research on physical health issues and male survivor needs is already providing “hard evidence” on how both the health and wellbeing of in care survivors could be improved and on the problems they faced at the result historic abuse. The Forum itself could provide additional information on such needs. This information will be used to directly inform the development of care pathways. Male survivors are likely to figure prominently in such a forum, since males have been in a majority in care settings.

Records

10. The National Archives of Scotland (NAS) has already been willing to engage, in that it has provided help in taking forward Tom Shaw's recommendations, by scoping the possibility of a central hub where personal records can be stored and accessed. It is hoped that a secondary outcome of this could be the gathering of testimonies of survivors which could become an archive that would produce a societal historical record of children in care.

Counselling

11. It is clear that a forum would need to be well supported by way of therapeutic and counselling services and we have already scoped the extent to which existing services would be able to meet this demand. In addition to the new service specifically designed for survivors of historical abuse (ICSSS), the 25 services funded by SurvivorScotland are able to be part of this wider picture and further work will be done to refocus what is currently available. Support will be needed for institution staff. Although they will not necessarily be involved in the face to face Forum, the outcomes from any forum may have repercussions for their ongoing work.

Educational Opportunities

12. In the consultation phase for the proposed Scottish Forum, setting up a scheme offering educational opportunities as a form of compensation was suggested. Discussion with colleagues in Lifelong Learning has shown that there are already a number of schemes in place (co-ordinated nationally or by individual colleges and universities) that could provide both personal and financial help to survivors and enable them to gain access to a wide range of educational opportunities.
13. We will provide details of these services (and guidance on how to access them) to survivors immediately through the SurvivorScotland website.
14. It was noted, however, that although comprehensive and appropriate, these services were not set up specifically for survivors and so additional training (possibly through Safe to Say) for staff at colleges and universities would be helpful. The provision of specialist support for survivors would also be helpful to support them in accessing the appropriate educational opportunities.

ANNEX C CONSULTATION PROCESS AND RESPONSES ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

1. The consultation process consisted of a range of elements, including conventional written submissions, stakeholder meetings and specific survivor events and interviews to ensure that their voices were heard. Some limited media coverage may also have raised awareness that consultation was taking place.
2. In addition, a major conference was held in November 2008 to debate the Shaw Report (one year on from its publication) and the progress on SurvivorScotland. Attendees gave their views on Acknowledgement and Accountability in sessions devoted to progressing this agenda.
3. Whilst resource-intensive and time-consuming, the result is a rounded analysis.

Summary of Responses

1) Should Scotland trial an acknowledgement and accountability forum?

- Unanimous agreement
- Need for clear framework, structure and remit
- Must not take resources away from existing supports

2) If so, do you think 'acknowledgement and accountability' is an appropriate title, or would you prefer other terms to be used?

- Acknowledgement and accountability rejected by vast majority as 'professional' rather than 'user-focused'
- No clear alternative title offered

3) If you think it should be adopted, which of the following elements would need to be included in such an approach:

Establishing a historical record as an act of remembrance.

- Agreed by the majority
- Clear guidelines necessary to ensure confidentiality

Identifying for current institutions additional ways of safeguarding children and young people in care.

- Unanimous agreement
- Learning from the past integral to informing current and future practice
- Ongoing training critical

Recognition of levels of accountability from the individual abuser through to Scottish society as a whole.

- Clear split in responses
- Those in favour- important for many parties to recognise they had failed in their duty of care to protect children

- Those against- recognition of accountability from such a wide range of parties would be unlikely
- Those against- problem with idea of society as a whole being accountable

Acknowledgement and apology.

- Vast majority agreed
- Being believed is critical

Acceptance of levels of accountability from the individual abuser through to Scottish society as a whole.

- Mixed response
- Competing elements recognised

Public recognition of the survivors' experience.

- Majority in favour
- Minority wary of what this might mean

Access for survivors to short, medium and long-term therapy and counselling as necessary.

- Agreed as vital by vast majority
- Needs to extend beyond financial redress

Access for survivors to education and training to compensate for lost opportunity and to increase the likelihood of gaining employment.

- Widespread agreement

Enhanced access to financial compensation for survivors

- Divided response
- Most supported need for financial compensation
- Many felt Forum should not take on this responsibility
- Need for independent assessment through different procedure (CICA suggested as appropriate body by one respondent)

4) Who would be eligible to apply and what criteria might be appropriate for determining which applications should succeed?

- Range of perspectives
- Some wanted tightly defined eligibility criteria
- Others supported a broad approach
- Some suggested only those harmed in care should be eligible
- Others advocated for all child abuse to be included – irrespective of setting
- Should be human rights based
- Should not encourage false claims

5) If you don't think that acknowledgement and accountability is the way forward, what would you like to see in place instead?

- Vast majority agreed the Forum was the way forward
- Not to be the only option
- Support services needed to be available

6) Available research emphasises the importance of having survivors shaping what a forum would look like and what it would do. Would you agree that this is the case and, if so, how best can this be achieved?

- General agreement

7) What additional involvement should there be to help shape the forum?

- General agreement it should be as broad as possible

8) The experience of other governments indicates that it is also important to involve family members. Do you agree and, if so, how can this be achieved, given that for some survivors, certain family members may be safe and supportive, others unsafe and unsupportive?

- Majority in favour – although case by case basis decision-making needed
- Minority felt it could be too risky and might adversely affect survivors

9) It is also essential to get accurate staff perspectives. How would we set about doing this?

- No clear ideas on how to achieve this
- Some concerns about potential barriers to staff involvement
- Those staff who participated would need appropriate support too

10) Focusing on the mechanisms and process of the approach, who should lead the work and how should these individuals be appointed?

- Needs to be independent
- Needs to be supported by Government

11) Testing out the approach in one geographical area may be an appropriate way to begin. What are your views on this?

- Vast majority in favour

12) Public awareness and understanding is critical. How do we go about achieving this?

- Unanimously agreed as necessary

ANNEX D HUMAN RIGHTS FRAMEWORK ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

1. The Scottish Human Rights Commission (SHRC) was commissioned by the Adult Care and Support Team to provide a human rights framework for the Acknowledgement and Accountability Forum (AAF). This includes a review of international, regional and national human rights law and standards. In addition SHRC will be scrutinising the consultation responses and their relevance to human rights concerns. A risk analysis will be undertaken and the SHRC team will be assisted by an advisory group. The framework will incorporate a set of suggested indicators to assess whether the pilot process is consistent with human rights best practice.

2. The SHRC team, headed up by Professor Alan Miller, Chair of the Commission, and Duncan Wilson, Head of Strategy at the Commission, began its work in May. The human rights law review is already completed and it is likely to be made imminently available. We understand that the advisory group has not yet been appointed. The final report containing the human rights framework will probably not be submitted to us until November. However, we have been liaising with them and sharing information about similar commissions elsewhere. We hope that our proposals for the pilot can be discussed with them over the next few months and that they can share with us the results of the human rights law review.

3. SHRC has indicated interest in monitoring the pilot in terms of its adherence to the human rights framework. The contractual arrangements do not currently include this work. Further discussions will need to take place with SHRC about this.

4. Preliminary results suggest that the Confidentiality Committee model for a pilot forum would meet human rights requirements but that the Investigation Committee model would present greater difficulties. In either case other avenues for legal and financial redress must be available to survivors. Scottish Government has a responsibility under Article 3 of the European Convention on Human Rights to investigate allegations of inhuman or degrading treatment or punishment and may also have an obligation to provide financial redress in some circumstances.

ANNEX E PILOT FORUM APPOINTMENTS AND ADVISORY GROUP ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

Chair of the Pilot Forum

1. The Chair needs to have suitable expertise, sufficient status to secure respect and the confidence of survivors and institutions. Informal approaches have been made to Tom Shaw who has indicated his willingness to assist.

Other Pilot Forum Members

2. Good practice and experience elsewhere suggest that the Chair should take evidence with another suitable qualified person. We are anticipating the appointment of two suitably qualified people with one of these people assisting the Chair at a hearing. These Pilot Forum members should not have had previous involvement in placing children in the care of the pilot institution. No approaches to possible candidates have been made so far but it is suggested that Professor Kathleen Marshall and Dr Anne Carpenter might be suitable.

Professor Marshall chaired *Edinburgh's Children*, the Inquiry into the abuse of children in care in Edinburgh (1999), and was the first Scottish Commissioner for Children and Young People from 2004 to 2009. Dr Carpenter is a forensic psychologist who works through the NHS with survivors and abusers and is based at the Douglas Inch Centre in Glasgow.

Remit of the Advisory Group

3. It is suggested that the remit of the Advisory Group should be:

- to provide expert advice on the pilot plans prepared by SurvivorScotland Team
- to identify gaps in proposals put to them by the Team
- to anticipate any challenges or unintended consequences of the proposals focussing particularly on risk assessments provided by the Team
- to act as an independent verifier of the plans
- to confirm that the human rights framework to be provided by SHRC is taken fully into account in plans for the pilot and in the pilot itself
- to assist with key issues arising during the pilot
- to consider any outstanding issues at the end of the pilot
- to comment on draft reports of the pilot's work, in particular anticipating the establishment of the full Forum

Membership of the Pilot Forum Advisory Group

4. This is a group which is not designed to be representative of all stakeholders or to deal with policy matters at large but rather to provide very practical advice. For this purpose it needs to be small and to focus on issues arising from the pilot. Useful expertise would include survivor work, work on other related inquiries, work with current 'looked after' children, and experience as a care leaver/survivor. A group of no more than 10 members is therefore suggested, with organisations nominating suitable people. Legal advice could be provided by SGLD but would not need to be extensive, given the SHRC Framework and the likelihood that the structure of the Forum would not be accusatorial.

A) Forum Chair and members

B) Representatives from Relevant Organisations

It is suggested that the following organisations be invited to nominate members:

Scottish Institute for Residential Childcare (Strathclyde University)

Who Cares Scotland

In Care Survivors Service Scotland

Association of Directors of Social Work

Secure Care Forum/Heads of Residential Schools

It is also suggested that Will McMahon, Chair of the Care Leavers' Association and Policy Director at the Centre for Crime and Justice Studies at King's College, be invited to join the group.

Scottish Government Representation

5. It is suggested that an experienced official from the SurvivorScotland team should be a member of the Advisory Group. The remit of that official would be limited to ensure that the Advisory Group was able to and was seen to operate independently. Their responsibilities would be:

- ✓ To provide advice to the Group about Scottish Government policy
- ✓ To feed into the Group any issues that come to officials' attention concerning the pilot where the Advisory Group's advice would be appropriate
- ✓ To take back to Scottish Government any issues raised by the Group which are not already covered by current policies and practices
- ✓ To act as the link between the Group and other Scottish Government Directorates
- ✓ To ensure that the SHRC human rights framework is embedded in the work of the Group
- ✓ To assist the Chair in dealing with relevant issues and meeting deadlines
- ✓ To work with the Chair and SG Communications on any media or publicity-related issues

Meetings

6. It is anticipated that the Advisory Group will meet about 6 times:
- *3 times before the pilot Forum begins its work
 - *twice while the pilot Forum is operating
 - *once after the pilot Forum completes its operations

Timing

7. Approaches need to be made soon to suitable individuals as it is anticipated that the Advisory Group should begin work in October after the formal appointment of the Pilot Forum Chair.

ANNEX F HEALTH AND WELLBEING ISSUES ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

Introduction

1. SurvivorScotland has placed considerable emphasis on issues of health and wellbeing. This reflects the overwhelming evidence produced by research and practice which shows that many survivors face particular difficulties in these areas. Addressing these issues appropriately is not only important for abuse survivors, but it could also lead to considerable resource savings for health services, and for the public purse.

2. We believe earlier recognition of abuse, additional specialist abuse services providing cost-effective therapeutic interventions, and more successful mainstreaming in general health settings will address and reduce mental and physical health problems for survivors.

SurvivorScotland Initiatives

3. Only a small percentage of CSA histories appear to be documented in health records, and there is no clear requirement on care providers to identify those affected. Obtaining better baseline data is essential to gain a better understanding of service needs. Two data collection pilot projects in Scotland are now complete, and planning is taking place on how to take this pioneering work forward into mainstream services.

4. Such baseline data, along with research on physical health problems and needs, is required to enable us to devise appropriate care pathways. We have engaged with QIS to explore devising a separate care pathway, or aligning to existing care pathways such as mental health. We also engaged very productively with the Chief Dental Officer and are currently negotiating on incorporating trauma issues into dentists' Continuing Professional Development.

5. National programmes of training for frontline staff can help ensure that survivors receive the services they actually require. 'Yes You Can', the training booklet for use by those working with survivors has been launched as an aid to training by Mental Health Division. The Strategy has clear linkages with the Mental Health Delivery Plan.

6. We are using evidence from 25 organisations supported by the Sexual Abuse Service Development Fund to develop improved and specialised services.

Why is this work important? Health issues for survivors

Mental health issues

7. While many survivors overcome their trauma successfully, research and practical experience shows that many others suffer long term mental health effects. Neurobiological research into the central nervous system describes changes in certain areas of the brain responsible for learning and memory in many adults who suffered severe childhood trauma, which can impact on their later educational and

employment opportunities. A forum could provide some help in this area by directing survivors to supported further educational opportunities.

Physical health issues

8. There is clear evidence of the links between CSA and a range of physical health problems in adult life. Unexplained illnesses or medical conditions that are difficult to diagnose are commonplace, and may have been dismissed previously as psychosomatic.

9. Chronic pain is an issue for some survivors and research has found this is particularly the case with those who suffered physical, as well as sexual abuse. In care survivors are recorded in Tom Shaw's *Historical Abuse Systemic Review* as having experienced repeated and at times extreme physical violence, often without subsequent medical care.

Addictions and other behaviours arising from early trauma

10. Efforts to self-medicate or ease the pain from early trauma have led to damaging, unhealthy addictions for many survivors. These include alcohol and substance misuse, repeated self-harm, high-risk sexual behaviour. Attempts to merely tackle symptoms do not address the origins of these addictions. A forum could assist some survivors to address longstanding, self defeating addictions should they take up the offer of the ongoing counselling provided.

Additional mental and physical health- related issues for survivors of in care abuse

11. In addition to reporting repeated physical injuries (see above), and the lifelong impact of a poor education to the Shaw Review, survivors of in care institutional abuse also related the particular mental and emotional distress and suffering which came from being institutionalised and which lasted into adult life.

Costs not just to individuals, but to services

12. Therapeutic initiatives, of which the Forum and related services for in care survivors would form a part, are also likely to reduce costly, wasteful and currently inappropriate use of health services; many survivors spend years in a “revolving door” of services which are not well geared to help them.

13. Survivors with medically unexplained conditions, in particular, can face years of costly tests, misdiagnoses and hospitalisations. Extensive demands are placed on primary and psychiatric care services, often with little effective or well-targeted result. For example, the Scottish Government recently commissioned a literature review which identified 96 studies involving survivors with medically unexplained conditions, yet these included only one study of a therapeutic intervention actually to assist this specific client group

14. Lengthy, sometimes inappropriate, psychiatric medication is costly and international studies show that abused women are heavier users of hospital services,

have lower perceptions of their overall health, make greater use of primary care and have more emergency admissions than non-abused women. A French study estimated that up to 80% of female survivors of CSA experience health problems in adulthood as a result of their abuse and a large scale study in the USA showed that, compared to women with no history of maltreatment, the abused women had median annual health costs (18%) higher than the non-abused women.

15. Using the estimate from this study for excess health care costs of \$245, and assuming that 10-20% of the general adult female population have health problems related to CSA, the increased cost to NHS hospital services in Scotland of managing the health consequences of CSA in adult women could be between £30-60 million each year. Since this study is at least four years old, the up-to-date costs may be significantly greater.

16. Another large study in 2008 found that both physically and sexually abused women had significantly higher healthcare use and costs than the non-abused. These higher costs ranged over mental health; A&E use; outpatient; pharmacy; primary care and specialty care. Costs were 36% higher for women who had suffered both physical and sexual abuse in childhood.

17. Research evidence by an eminent psychiatrist Dr Alistair Wilson, of Gartnavel Hospital, indicates that the development of self-care and preventative services for this under-diagnosed group of people would have considerable benefits, both for the individuals themselves and the public purse.

18. Finally, a 2008 British study on the long-term consequences of child abuse and neglect highlighted the need to remember other significant costs to health and welfare services, and the wellbeing of families. These were the “indirect” but substantial ones associated with substance misuse, domestic violence, and unemployment or under-employment of survivors due to the effects of their trauma.

What could a forum do to help?

19. Survivors can experience a sense of being completely devalued and disrespected, or in the words of survivors themselves “made to feel it was a crime we had been born”. Many survivors suffer from a lack of identity, may know little or nothing about their background and family and may not even know why they were placed in care. The opportunity to be able to speak about their experiences at a forum is in itself a statement that survivors have an individual identity, that their experiences matter, and that they are valued and important individuals. While a forum could not of course remove sufferings, it is likely to ameliorate them.

20. A forum could provide an ending, should survivors choose it, to what is so often a lifetime of silence and silencing about events, feelings and experiences which defined their childhoods, and were central to their lives. It is likely to be therapeutic for survivors to disclose their experiences of past abuse in a supportive environment. Signposting to other services, in addition to counselling before, during and after addressing such a forum will increase the therapeutic benefits. It would contribute to what has been called “the healing power of shared survivor narratives”.

ANNEX G SPECIFIC JUSTICE-RELATED ISSUES FOR SURVIVORS OF IN CARE ABUSE AS CHILDREN ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

General

1. Article 3 of the European Convention on Human Rights requires States to take active steps to prevent torture or inhuman or degrading treatment or punishment, such as the physical, sexual and emotional abuse and neglect of children in care. The Convention also places a procedural obligation on States to carry out an effective investigation and, if a violation is shown, to provide redress. The preferred option for the pilot Forum does not include an investigation or any form of financial redress. Therefore it is essential to consider the avenues for investigation and remedy that already exist for adult survivors of in care abuse as children, to consider any problems that survivors may have in accessing such avenues and to seek solutions for such problems.

Criminal Injuries Compensation Scheme

2. There is a need to clearly signpost possible avenues for financial compensation since the Forum is unlikely to offer financial redress. Survivors face difficulties making applications, in particular:

- No application can be accepted where injury was sustained before 1 August 1964.
- An award may be withheld/reduced where failure to take 'all reasonable steps' to inform police (or other appropriate body) has occurred.

This requirement seems to be interpreted fairly loosely. The Criminal Injuries Compensation Authority (CICA) will take into account the fact that the applicant was a child when the abuse took place.

- An award may be withheld/reduced where applicant failed to co-operate with police, with CICA or with others.

A refusal to cooperate with a police inquiry or to give evidence in a criminal case bars an applicant from compensation. CICA officials acknowledged that dissociation and 'flight' reactions by survivors are recognised reactions to stressful circumstances such as giving evidence and try to be understanding in their dealings with survivors.

- An award may be withheld/reduced where the applicant has unspent convictions unless a claims officer considers there are exceptional reasons not to do so.

Unspent convictions must always be taken into account regardless of the fact that they post-date the abuse. Where offending is linked to the abuse then that could constitute 'exceptional circumstances'.

- Application must be made within two years of the date of the incident, unless it is practicable for the application to be considered and it would not have been reasonable to expect the applicant to have made an application within the 2 year period.

The time period runs from the point that the child reaches 18 but otherwise is interpreted strictly. There is some room for discretion but a need for strong evidence to explain why the application was late. Lack of knowledge of the CICA or the fact that an applicant waited until the conclusion of the criminal case is not accepted as a reasonable excuse.

- No special arrangements exist for dealing with multiple claims from the same institution and no systems in place for linking applications.

CICA might be encouraged to adopt a more streamlined approach to any applications which may arise from the Forum. This approach was taken following the Bryn Alyn Inquiry in to Abuse in Children's Homes in North Wales.

There are proposals to consult on changes to the Criminal Injuries Compensation Scheme that are designed to reduce the cost of the Scheme. Some of the detailed changes could adversely affect victims of historical child abuse. Our concerns about the adverse impact of such changes have been flagged up in a submission to Scottish Ministers. A formal response to the proposed changes will issue from Scottish Government after the consultation responses on these proposals have been received early in 2010.

Limitation of Actions

3. Survivors may seek financial compensation and/or recognition of harm through a civil action, which may be against the alleged abuser, the responsible institution or both. To do so successfully, in addition to:

- identifying the relevant individual and/or institution;
- then having sufficient evidence to prove a case (on the balance of probabilities); and
- the relevant individual and/or institution then having funds to pay compensation;

survivors have at the outset to cope with rules which bar the bringing of proceedings, or extinguish obligations, after the elapse of a certain period of time. As the Scottish Law Commission noted in its discussion paper of 2006¹, "*such rules exist in most legal systems and have been known for a long time.... [They] are often seen simply as a protection for a defender against stale claims. However, they also serve a wider purpose. There is a general public interest in the efficient administration of justice and for a number of reasons it is important, in the interests of the efficient administration of justice, that claims should be brought and decided promptly.*"

4. Notwithstanding this rationale, the limitation period (the time bar) for bringing an action – which in Scotland is generally three years – has caused survivors particular frustration. This default three year period starts to run from which ever is the latest of the following:

- the date when the damage which is being sued for was sustained
- the date when the injuries causing the damage ceased
- the date when the person bringing the action (pursuer) became aware/should have become aware that the injuries were:
 - ❖ sufficiently serious to justify legal action
 - ❖ caused by a particular act or omission
 - ❖ caused in whole or in part by the conduct of a particular person (defender)

The time period cannot start until the pursuer reaches the age of 16² and does not include any periods when he/she was suffering from ‘unsound mind’

5. Case law to date has mainly offered a restrictive interpretation of these provisions. If the pursuer was aware of the three essential facts noted above then the time period will usually run from that date regardless of evidence showing that the pursuer was subject to ‘silencing’ and ‘suppressed memories’ or was reluctant to bring an action. (The exception to this is where the court takes the view that the pursuer ought to have known these facts earlier, applying a ‘reasonably practicable’ test). The pursuer’s knowledge that any act or omission was or was not, as a matter of law, actionable is irrelevant. The intelligence or personal characteristics of the pursuer that may have contributed to their failure to raise an action are generally not relevant unless they can show that they were suffering from ‘unsound mind’. Such characteristics may, however, be taken into account in deciding whether it was reasonably practicable for that particular pursuer to become aware of the essential facts. And if it can be shown that the abuse itself has had an impact on the pursuer which affected their ability to be aware of the relevant facts then that will be relevant- this may be most likely to occur where the abuse is sexual.

6 Although three years is the default position, judges have discretion – if they consider it equitable on the facts and circumstances of any case – to extend the time period. However, although it could theoretically allow any post-1964³ claim to proceed, in practice the scope of this discretion has also been interpreted strictly. A recent House of Lords case against Nazareth House nuns (*Bowden v. Poor Sisters of Nazareth* [2008] UKHL 32) confirmed that the discretion should only be applied in exceptional cases and only where there is no real possibility of significant prejudice to the defender. The gap of time in that case -21 years- had resulted in a major decline in the quality of justice and therefore no action could be allowed to proceed. Over 1,000 cases were affected by that judgment.

7. In 2007 the Scottish Law Commission in its Report *Personal Injury Actions: Limitation and Prescribed Claims* recommended that the limitation period be extended to five years and that judges should be given specific criteria to apply in exercising their discretion to extend the time period. The SLC paid careful attention

to the issue of childhood abuse, reflecting the fact that (although generic in its terms) the “second reference [from Ministers] arose from concerns for those who claimed to have suffered abuse while in institutional care as children”. However, the SLC report does not make any specific recommendations for survivors of abuse in relation to the limitation period. Nor does the report appear to envisage that any of the reforms which it does recommend should have retrospective effect.

8. Ministers are considering the SLC report in parallel with the wider strategy for survivors of historic abuse and alongside preparation for a possible wide-ranging Damages Bill in the next Parliament, which would largely draw on three unimplemented SLC Reports on different aspects of the rules on damages more generally. It is unlikely that this will include provisions that would satisfy those focussed on historic child abuse, although the issue is likely to figure strongly during the passage of any such Bill. While a change in the law to exclude historic abuse cases from the limitation regime would enable survivors to take their cases to court it cannot be assumed that the court would be able to reach a conclusion. Witnesses may be missing or may have died. Documents may be unavailable. Judges may therefore continue to dismiss the case due to lack of evidence and survivors will be no nearer to feeling they have achieved some kind of redress.

9. Discussions are taking place with the Crown Office and Procurator Fiscal Service about possibilities for sharing evidence obtained in criminal investigations with survivors who wish to bring civil actions. If there had been a successful prosecution such evidence could be highly germane to a civil action; but even in cases where a prosecution had been unsuccessful there might be instances where such evidence could usefully and legitimately be shared.

10. It has been suggested that the time bar may have human rights implications in that it prevents survivors of historic abuse from obtaining a civil remedy. Pressure from survivors and others for change here is likely to increase if the Forum does not provide financial redress or include ‘naming and shaming’. Conversely, there could also be human rights implications in any radical relaxation of the limitation rules as the ECHR also requires that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...”

Criminal Prosecutions

11. In Ireland some survivors expressed dissatisfaction with the Irish Commission because there were few successful prosecutions of abusers. Preparation for the Forum needs to consider key issues surrounding criminal prosecutions, particularly if the process does not include any investigatory elements or ‘naming and shaming’.

12. The prosecution of historic abuse cases may be difficult because of evidential problems, in obtaining documentary evidence and securing witnesses. Accused may be dead or too frail to stand trial. Witnesses may have difficulties remembering incidents from long ago. The credibility of complainants is likely to be challenged by the defence, particularly where complainants have mental health problems, are drug or alcohol dependent or have a criminal record.

13. There have been successful prosecutions in relation to, for example, David Murphy who was convicted in 2001 of 14 counts of lewd and libidinous practices and 16 counts of sodomy against children in various children's homes in Fife, Brian MacLennan and Gordon Knott convicted in 1997 of various charges involving significant sexual abuse of children in various children's homes in Edinburgh, and Matthew George and John Muldoon convicted in 2006 of 18 and 4 serious sexual offences respectively against children in Kerelaw School.

14. June 2009 marked full implementation of the 50 recommendations contained in the Crown Office and Procurator Fiscal Service Review of Sexual Offences. These changes in the investigation and prosecution of serious sexual offences should have an impact on all such cases, including the sexual abuse of children in care.

15. Careful attention will need to be given to finding ways of encouraging survivors who come to the Forum to report abuse to the police. Where survivors give information at Forum proceedings which must be disclosed to prevent a serious offence or to protect a child/vulnerable adult, that possibility must be fully explained to them in advance of giving evidence and arrangements made which are suitably sensitive and survivor-aware.

16. Information about criminal prosecutions, including the high standard of proof and the necessity for corroboration, will be provided to survivors. Consideration is also being given to preparing specific guidance for support organisations which will assist them in helping survivors to consider the option of reporting and to prepare them for what will happen thereafter.

ANNEX H LOOKED AFTER CHILDREN ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

1. Care and Justice are involved in a whole range of activity to ensure that where children can no longer be cared for by their birth families, Scotland has the right type and quality of services to meet their needs and keep them safe. This includes delivery of our commitment to improve support for kinship carers; the introduction of a new regulatory framework to improve the effectiveness of decision making for looked after children; investment in the fabric of the residential care sector; and a major initiative to look at strengthening residential care across the board.

2. Hundreds of disadvantaged children and young people are cared for successfully in residential care and many studies over the years have shown that most young people admitted to residential care make improvements. However, we are well aware that the sector still faces a number of challenges. In summer 2008, we asked the Scottish Institute for Residential Childcare (SIRCC) to lead a multi-agency National Residential Child Care Initiative (NRCCI) aimed at addressing these challenges. Through three main working groups, the National Residential Child Care Initiative has been considering (i) how to ensure the supply of residential childcare services matches the needs of children and young people; (ii) what skills and qualities are required of our residential childcare workforce; and (iii) how to ensure more effective commissioning of residential childcare services. A fourth short life working group, Securing Our Future Initiative (SOFI) was set up under the auspices of the NRCCI to look at the more urgent challenges facing the secure estate. SOFI's report was published in February 2009 and the government and COSLA published a joint response accepting the recommendations in full in April 2009. The three remaining NRCCI groups will publish their reports towards the end of 2009.

3. In response to one of the recommendations of the independent inquiry into abuse at Kerelaw, a study has been commissioned into the availability of advocacy services for children and young people in Scotland. The report is due by the end of September 2009 and will help us understand where there are gaps in provision, what improvements are needed and what further advocacy arrangements would be helpful.

4. In collaboration with SIRCC, an expert working group has been set up to look at the use of restraint in residential and secure care. The main task of the group is to build on the guidance in Holding Safely and develop an appendix to the National Care Standards that will clarify procedures for staff, service users and regulators, and help staff to understand when it is safe and appropriate to restrain a child. The group is expected to report in spring 2010.

**ANNEX I
DRAFT AGENDA**

ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM

Ministerial Meeting 30 September 2009 at 4 pm

Scottish Parliament (Location to be confirmed)

- 1. Present**
- 2. Apologies**
- 3. Background to Pilot Forum Proposal** **Annexes B and C**
- 4. Model for Pilot Forum** **Annexes A and D**
- 5. Pilot Forum Chair, Members and Advisory Group** **Annex E**
- 6. Other Relevant Issues** **Annexes F, G and H**
- 7. Any Other Business**