Scottish Child Abuse Inquiry

Witness Statement of

Duncan WILSON

Support person present: No

1. My name is Duncan Wilson. My date of birth is [redacted]1976. My contact details are known to the Inquiry. This witness statement is to give information to the Inquiry regarding some of my responsibilities as Head of Strategy and Legal Affairs at the Scottish Human Rights Commission (SHRC).

2. This statement is based on my recollection aided by documents. I have seen documents provided to me by the Inquiry.

Qualifications and employment history

3. I obtained a Bachelor of Laws degree at the University of Edinburgh and a Master of Laws degree at Lund University.

4. I have held a number of positions with a human rights dimension. I was employed by Amnesty International, where I held the position of Head of Economic, Social and Cultural Rights. Between 2001 and 2008, I lectured on a part-time basis in international human rights law. From 2000 until 2004, I also worked as a research co-ordinator for the UN special rapporteur on the right to education, Professor Katarina Tomasevski. I was an associate expert in human rights with UNESCO from 2003 to 2004 based in Geneva and was employed as a project manager by UNESCO in 2004.

5. Between December 2008 and October 2014, I was employed as Head of Strategy and Legal at the SHRC.

6. I am currently employed by Open Society Foundations as an acting Division Director. My permanent title is Project Director. I have worked there since October 2014. Part of my roles has involved strategy in the context of human rights.

Scottish Human Rights Commission

7. The SHRC was established by the Scottish Commission for Human Rights Act 2006, an Act of the Scottish Parliament. The SHRC operates as an independent body. My role was head of the team focussing on legal and policy advice, capacity building and research. I was also the most senior staff member, acting essentially as the secretariat to the SHRC members, of whom Alan Miller was Chair. There were also three part-time commissioners. Alan Miller was appointed as Chair in April 2008. I joined the SHRC on 1 December 2008 around the time that it became operational.

8. In December 2008 the SHRC was designing a consultation paper and planning a consultation tour of the country. That consultation led to the identification of dignity in care as a major issue of focus for the SHRC's first Strategic Plan. The bulk of the SHRC's attention was directed towards the rights of older people in care.

Discussions with, and commission from, the Scottish Government

9. The first Strategic Plan, amongst other things, covered work to ensure that human rights were respected in the area of remedies and responses to historical abuse. Before my involvement with the SHRC, Alan Miller had preliminary conversations with Scottish Government officials about that matter, in particular with Jean MacLellan who was the lead official in the Health Directorate at the time.

10. As I recall, in February 2008 the Scottish Government, in a statement by Adam Ingram to the Scottish Parliament, had announced its intention to look at establishing some form of acknowledgement and accountability forum. This public statement made it appear as if there would be a single forum responsible for acknowledgement and accountability.

11. In about March 2009 the SHRC was commissioned by the Scottish Government to assist in the development of the design and delivery of an acknowledgement and accountability forum which was human rights compliant.

12. At the time of this commission, a consultation exercise by the Scottish Government relating to a proposal for an acknowledgement and accountability forum as a response to historical abuse was concluding. We were encouraged by the combination of those two elements.

13. The SHRC was working to independently advise the development of a forum for acknowledgement and accountability that reflected best practice in terms of the human rights of everyone involved, both survivors of abuse and others, such as former workers or others who might be accused of abuse.

14. Although the consultation by, and our discussions with, the Scottish Government were framed as a proposal for an acknowledgement and accountability *forum*, we were really talking about a *process*. It need not be a single forum, but the two aspirations were to advance acknowledgement and accountability.

15. Before the Commission agreed to take on this work, I prepared an internal paper about this proposal and set out the pros and cons for various options as to how involved the SHRC could be. We undertook quite a significant risk assessment, as it was for us a high risk endeavour.

16. The SHRC determined that it should become involved. We negotiated terms of reference that secured our independence in this process and ensured that our

involvement was relatively contained. The terms of reference did not include a delivery date.

A human rights based approach

17. From the outset, the SHRC was clear that it saw its function as seeking to ensure that the human rights of everyone involved in the process were upheld, not only survivors but also others who may be named in such a process.

18. The SHRC's view was that a human rights based approach to responses to historical abuse required that the state ensure a range of remedies. The state cannot just focus narrowly on one aspect such as acknowledgement, whether private or public. It also has to focus on other aspects such as justice, accountability, redress and support. If the state does not do that, it would not be meeting its obligations from a human rights perspective.

19. Before the SHRC's initial involvement, the Scottish Government had taken a number of steps but these did not include either a public inquiry or a system of redress, such as the Irish redress scheme. Instead, it focused on improving services and appointed an independent expert, Tom Shaw, to conduct a review.

20. When commissioning the SHRC, the Scottish Government may not have predicted where the SHRC would land in terms of its recommendations. The terms of reference were very broad and our good faith interpretation of them was also very broad. Essentially, we asked "what would human rights require by way of a response from the state to the historical abuse of children in care?".

21. We did not narrow our focus down into the particular elements that the Scottish Government had determined that it was ready to pursue or those that might have been less politically or financially risky for them. We started with international human rights law and combined that with the experience of other countries as to what might work and what might not. Our approach was to look at the issue comprehensively.

22. The Scottish Government at no stage sought to limit the approach of our work.

Work of the SHRC on the legal paper and research paper

23. We submitted a draft legal paper and a research paper (the latter prepared by CELCIS) to the Scottish Government in July 2009. We published our Human Rights Framework report in February 2010, including several recommendations.

24. There was no written agreement on deadlines for production of the Human Rights Framework and legal paper. A working deadline of November 2009 was initially discussed, but it was not included in the terms of reference, which make no mention of a deadline. In retrospect, that working deadline seems extremely ambitious. It was a fairly ambitious body of work and included over one hundred pages of legal analysis, the research of the views of survivors and others, scoping of experience in other countries and a round table involving participants from other countries. We were of course undertaking this work alongside all the other work of a national human rights institution – promoting and protecting human rights across all sections of society and in all aspects of life – with a small staff team and a very modest budget.

The legal paper

25. The legal paper was prepared by SHRC, initially with the support of Susan Kemp, at the time a consultant, now a member of SHRC. Unfortunately during the preparation of the paper Ms Kemp became unwell and I finalised the paper, so much of the work in the end was mine. The paper summarised the evolution over decades in the understanding of what amounts to a violation of Article 3 of the European Convention on Human Rights (the Convention). Article 3 prohibits torture and inhuman or degrading treatment or punishment. The paper summarises evolving understandings or interpretations of common European standards from 1953, which is the time at which the UK became party to the Convention, until the present day. It further reviews contemporary understandings of the duty of response, and incorporates

other relevant standards, including the UN Convention on the Rights of the Child and the UN Convention Against Torture.

Duty to investigate

26. We argued that Article 3, if engaged, raises an obligation for an investigation. In reaching this conclusion we were guided, among other sources, by the interpretation of the duty to investigate given in Manfred Nowak's commentary to the Convention Against Torture and by the judgment of the European Court of Human Rights (ECHR) on 26 November 2002 in *E and Others v United Kingdom* and other major ECHR case law. In his commentary, Nowak states that a "credible allegation" triggers the duty to investigate.

27. We also summarised the state's duty to investigate, to enquire and learn lessons and take steps to guarantee non-repetition.

Comparison with Ireland

28. There were understandable reasons why the Scottish Government might have looked primarily at the responses in Ireland, not least because the experience there was very visible. We however took the approach that in considering the best model for Scotland, we should look at a wider range of options and experience from other countries. There was a wealth of alternative models that could also help inform us in ways of getting to the truth, investigating failure and state responsibility and learning lessons for the future without some of the perceived drawbacks of the Irish experience that we heard of from those closely involved.

Violation of Article 3 of the Convention

29. Conduct that amounts to a violation of Article 3 or indeed other Articles of the Convention has changed over time. What is now considered to be a violation of Article 3 or Article 8, which relates to the right to private and family life, goes well beyond what would have been understood as a violation of those rights in 1953.

30. When judging whether historical conduct amounted to a violation of convention rights, the conduct in issue has to be judged by the standards that were applicable at the time. Expert evidence may show that certain conduct fell below expected standards of the time. For example, Anne Black gave expert evidence in *E and Others v United Kingdom* in relation to Dumfries and Galloway which was a case concerned with abuse during the 1970s. Such evidence is crucial when considering what the prevailing standards of good practice were or the minimum standards that would have been expected in the field of child care at that time in this country. Anne Black's evidence was very much to the effect that the social work standards at the time were not being complied with in that case.

31. When preparing the analysis of article 3 in the legal paper, we kept in mind two important considerations. The first was the evolving standards of common European practice in relation to matters such as corporal punishment. The second was the much more recent understanding that Article 3 requires action to prevent abuse, to protect those at risk of abuse and to ensure remedies where abuse takes place. There are ECHR cases involving not only child sexual abuse but also serious neglect which have been found to breach article 3 and are concerned with the failure of the state to intervene so as to actively protect children from a risk of abuse or serious neglect when it knew or ought to have known that children were at risk. Such cases concern the state's positive obligation under Article 3 to intervene so as to prevent harm occurring.

32. In considering the state's duty to respond, including to investigate credible allegations of inhuman or degrading treatment, where that duty has not been fulfilled to date it persists, and should be judged by today's standards. In effect the failure to effectively respond to alleged article 3 violations is a continuing violation, so the standard to assess state conduct is the duty to respond as it exists today. To summarise our position on these matters it would be that historic *conduct* should be assessed according to the standards of the time, however the duty to *respond* to historic conduct, where it remains unfulfilled, should be according to contemporary understanding of the obligation of response.

Acknowledgement and Accountability process from a human rights perspective

33. During the preparation of the Human Rights Framework, we sought to articulate the rights of individuals who may be named in processes of acknowledgement and accountability, in particular their right to protection of their reputation and to due process. From a human rights' perspective, there is another step above the level of individual responsibility. That is where the state has failed to establish appropriate regulations and standards of conduct against which the conduct of individuals could be assessed or measured. In the situation where there were no national standards of conduct, the state bears a responsibility for failing to regulate more closely or use the powers that were available to it.

Empowerment

34. One of the matters that we outlined in the Human Rights Framework was empowerment. By that I mean the creation of conditions in which people are able and supported to realise their rights, including to access remedies.

35. Examples of this would be patients' rights officers within mental health settings and the right to advocacy support. Such persons work on the patient's behalf. I am sure there are creative ways in which children in care can be better supported. First of all, they need to understand that they have a right to lodge complaints. They should be supported to claim that right through advocacy support or other accompaniment on that journey.

Corporal and other punishment from a human rights perspective

36. Some forms of corporal punishment were permitted by society and by law for much of the timeframe of the Inquiry. There are however clear-cut cases of manifestly excessive corporal punishment, that would not have been acceptable under any circumstances at the time of infliction. On the other hand there are other cases of

punishment that are, when judged by today's standards, clearly unacceptable but may have been viewed differently in the past.

37. When it comes to issues about discipline and punishment, one must look at how such conduct would have been viewed at the time. One has to consider the prevailing standards, in terms of professional standards of conduct and relevant regulations. One must ask "what could reasonably have been expected of an individual working in an environment like that?". Any investigation should consider whether some of the treatment which we were made aware of, such as leaving young children outside in the rain as punishment or in soiled bedsheets or in conditions of isolation, or shut in darkened rooms which they were told were morgues, could really have been considered acceptable forms of punishment at the time.

38. We hear today that in some institutions in the past a small number of people were responsible for large numbers of children. From a human rights perspective, it is important to think about systemic or institutional failures and then beyond that to thinking about state failures, rather than solely individualising responsibility. In other words, we need to consider the conduct of individuals or groups of individuals within the broader context before assessing which range of actors bear responsibility for a particular state of affairs.

39. However that does not, and should not, prevent us from saying that there should be the fullest apology for conduct which today would be considered unacceptable. What happened in the past may be unacceptable now, even if it is ambiguous whether or not it was accepted or common practice at the time. We can, and ought to, take responsibility today for saying that what happened yesterday is unacceptable.

Systemic failures from a human rights perspective

40. The emotional, physical and sexual abuse of children in a range of settings together with a lack of adequate systems for protecting those children can be seen as a

systemic failing on the part of the state. Failures to ensure proper staffing, regulation, training, supervision, leadership, monitoring and inspection – these are all systemic failures. The lack of adequate systems could amount to failures by the state to take effective preventative steps.

41. The duty on institutions should therefore not simply be to respond when an allegation is made. They should also have ensured that the hiring processes, the training of staff, the entire care environment and the culture within that environment were such that abusive conduct was utterly unacceptable. There should not only be a duty of response, but also a duty of prevention.

42. As an analogy, efforts to prevent mistreatment in interrogations would include effective regulation of police conduct, training of those who are conducting investigations, monitoring and inspection of places of detention. Similar duties to extend to prevent mistreatment in state mandated care.

Acknowledgement of systemic failings

43. I would hope that the general tone of response today of care providers would not be to defend unacceptable conduct or practices judged by today's standards, and to look for ways of getting around taking responsibility for such conduct and practices. Rather, I would hope the response would be forward-looking and constructive, taking responsibility for saying that things that happened in the past were unacceptable. The response should take responsibility and focus on ensuring that everything is done to remedy that failure and to ensure that it does not happen again.

44. There are many examples around the world where responsibility has been taken for human rights violations that may have been considered to be acceptable at the time. One example would be some of the steps that have been taken in Australia to take responsibility for abuses against Aboriginal people that would have been acceptable under former racist regimes but today are unacceptable.

Framework paper

45. The framework paper produced by the SHRC in February 2010, takes into account all of these aspects of the legal paper, as well as research undertaken by CELICIS on the views of survivors, and the experience of other countries which we gathered through our own research and through an international round table which we held. It outlines a number of recommendations for steps which should be taken to comply with human rights obligations. An easy-read version was eventually produced in response to survivors' articulation of the fact that it was not easy to read.

Time To Be Heard (TTBH)

46. In September 2009, there was a ministerial decision to pilot a confidential committee type forum. The pilot forum focused entirely on acknowledgement. The SHRC was still working on its advice for the development of a human rights compliant acknowledgement and accountability forum when that announcement was made.

47. The announcement in relation to the pilot forum was made in November 2009. There was a reference that officials met twice with the SHRC to discuss the arrangements for the pilot. This language suggests that we were somehow involved in the decision. We were not involved in making that decision or informing that decision.

48. Jean MacLellan was asked by the Public Petitions Committee (PPC) of the Scottish Parliament why the pilot forum was announced prior to the Scottish Government responding to the recommendations of the SHRC. She indicated that the timescale for the recommendations had been delayed.

49. That prompted me to write to the Scottish Parliament Petitions Committee on 18 November 2010 in relation to Helen Holland and Chris Daly's petition PE1351, "Time for all to be heard." The letter is still available on the PPC's website. It states:

> *"In undertaking this work the Commission entered into a grant agreement with the Scottish Government to deliver the framework. This agreement did not include a timetable for delivery, although a working deadline of November*

2009 was initially discussed. In August 2009 a delivery date of end of January 2010 was agreed. The grant agreement under which the framework was developed was for £28,050….Throughout the process the Commission updated the Government on its progress, sharing drafts of the legal analysis in July 2009, the draft research paper in December 2009 and the draft framework in January 2010. In refining the framework the Commission took into account the announcement by the Scottish Government in November 2009 of the current pilot, and comments of the Scottish Government on the draft framework provided in January 2010. The Government's decision to announce a pilot forum was made independently of and prior to the Commission presenting its recommendations."

50. While our initial vision for delivering the work of November 2009, which we discussed with the Scottish Government, was not achieved, a delivery date of the end of January 2010 was agreed in August 2009.

51. As far as any explanation for the timing of the announcement of TTBH is concerned, I do recall that there was mention of money which had been earmarked within the Scottish Government for next steps. There may have been a time-imperative to use this money. I recall mention of several hundred thousand pounds having been set aside at a certain point. That may have been a factor in the timing of the decision. To wait for the Human Rights Framework, which was more ambitious and may have been more costly to implement, would I imagine have required a different discussion on budget implications.

52. I did get the sense at the time that some Scottish Government officials and perhaps ministers were beginning to get nervous about potential redress along the lines of the Irish model and the cost involved. My understanding is that the Scottish Government officials went to Ireland and explored the process there, possibly before we became involved. They came back very influenced by what they had seen and heard. They considered the experience of the confidential committee in Ireland in a positive light. They were concerned about the cost escalation or the cost of the investigations committee in the Irish process.

53. It is unfortunate that the reference points for the Scottish Government seemed to be limited primarily to the Irish experience. We repeatedly mentioned the experiences of other countries which pointed not to adversarial investigations or an individual investigations approach but rather an inquisitorial approach.

SHRC's involvement in TTBH

54. The SHRC did not become significantly involved in TTBH. TTBH started in May 2010. Once the decision was made, we ended up including a number of recommendations directed towards the pilot forum. We recognised that it was a fact and that it would happen. We did not wish to undermine that process which might have some real value for those who were involved. The two recommendations which we made on Time to Be Heard that provoked most discussion were independence and connection with investigations.

55. The recommendation about independence was driven by a number of things. One was the overall benefit of such a forum being seen to be independent of the Scottish Government. Another was that if TTBH were considered a public body it would have to comply with state duties to investigate under the Human Rights Act. As a result of that recommendation, various steps were undone and TTBH was established as independently as possible from the Scottish Government. Implementing that recommendation proved to be fairly uncontroversial.

56. The more difficult area was around the connection with investigations. We had correspondence with one of the commissioners in TTBH, Kathleen Marshall, which was confidential at the time, around the issue of investigations and the duty to pass information to the police. In the end, a protocol was agreed between TTBH and the police. The SHRC did not have any involvement with the legal representatives for TTBH.

57. It is likely that Alan Miller spoke at events connected to TTBH, but I do not recall definitively. My recollection is that the SHRC's primary purpose was to help survivors

understand the place of TTBH within the broader scope of remedies. We reminded everyone that there were a broader set of recommendations to the Government in the SHRC framework. The SHRC pursued the implementation of the recommendations that we had made in our Human Rights Framework report that was published in February 2010. However at that time the Scottish Government only responded to our recommendations on the TTBH Forum, delaying its response on our other recommendations until TTBH concluded. We took a decision that, as the Scottish Government's response to our wider recommendations was crucial, we would allow TTBH to run and bring back our other recommendations when the TTBH report was issued, so that they may be considered alongside the outcomes of TTBH. The Scottish Government's decision to postpone its response to our other recommendations until TTBH had concluded did somewhat delay the action to implement the remainder of the Human Rights Framework.

Observations on TTBH

58. One of the recommendations that we had made was that, as well as recording the experiences of survivors, TTBH could ask survivors what forms of remedies they would seek. We were told that that was not appropriate for a confidential committee forum.

59. The SHRC felt it would have been useful for TTBH to listen to people as to what they wanted by way of redress, justice or anything else. Our key principles for defining the remedies that ought to be open to everyone were proportionality and participation in selection. The remedies available ought to be proportionate to the harm that was suffered and the people ought to have a real and effective choice as to the remedies available to them.

60. The SHRC was of the view that some form of reparation or redress should be explored with TTBH participants for two reasons. Firstly doing that would provide information to inform the design of remedies moving forward. There were around a hundred people appearing before this forum. It is not easy to gather the views of survivors so if you have the chance to speak with one hundred, you could take

advantage of that to inform decisions in the future. Secondly, some of the answers given could have resulted in people being signposted at that point, for example to support services or forms of rehabilitation. Generally speaking, as I came to understand from survivors, the onus at that point remained on them to find their own way in terms of support services or other remedies which they could access.

61. SHRC suggested different options for a sort of one-stop shop type solution. At that point, there was no "one-stop shop" for survivors to go where they could be directed to, and supported in accessing, the range of support options that they might wish to pursue. Ultimately, when the SHRC talked about a survivor support fund in the Human Rights Framework, we were not only talking about a compensation scheme. It was about supporting survivors to know, and to access, the forms of reparation that they might wish. That could be anything from mental health services, addiction support, parenting skills support, which were all things that people mentioned to us, or indeed compensation and more justice measures.

62. TTBH did not operate as an investigation. From an Article 3 perspective, that was not sufficient either to determine the truth or to satisfy the requirements of non-repetition. It had no powers of compulsion. It was one-sided in the sense that it listened to experiences. It did not in any way test or seek to assess people's recollections against a background of what other people were saying. It did not meet the requirement for some form of official investigation. The SHRC explicitly stated that in its submission to the Victims and Witnesses Bill, which was the bill that established the National Confidential Forum.

63. TTBH would also not have been sufficient as a means of establishing the truth. That is not to undermine the testimony that was given. However, one of the reasons for having an inquiry can be to test recollections, to reaffirm experiences, to further clarify exactly what happened. It can enable an individual to understand not just what happened, but why it happened and what failures need to be addressed to ensure it is less likely to happen in the future. The confidential committee model in itself clearly could not fulfil those roles.

Restorative Justice

64. I am aware that in the course of TTBH, Quarriers agreed to a restorative justice aspect which Sacro had developed. It was offered alongside the TTBH process. It was seen as form of reconciliation. The restorative justice component was an innovation of the Scottish Government that we had no part in. It was not part of the Human Rights Framework recommendations. It was not something that we called for or supported, nor did we take a clear position in opposition.

65. We did not look very closely at restorative justice in the InterAction process. We were very focused on implementing the recommendations in the Human Rights Framework. We saw restorative justice as something of an optional extra in the sense that the Scottish Government had chosen to take it forward. I did though hear anecdotal concerns about restorative justice, including individual cases where it seemed to have gone badly.

The SHRC's approach to an inquiry

66. In the period between 2008 to 2014, I do not recall the Scottish Ministers making reference to the position of the Scottish Executive in 2004, when a public inquiry was ruled out. Equally, I do not recall them actively supporting the idea of such an inquiry. The SHRC had discussions with the Scottish Government about investigation mechanisms. We pointed out the spectrum of possibilities that would comply with the requirement to investigate where Article 3 might be engaged.

67. In meetings with Scottish Government officials, one of the reasons put forward for not pursuing an additional inquiry was essentially that there had been a lot of inquiries in the past. SHRC countered that none of these inquiries had been national in scope.

68. SHRC started with the principle that the investigations component in Article 3 need not be adversarial. It could be inquisitorial in nature. It need not be the Irish model. It could be something closer to the Northern Ireland model. We went further and said

there could be non-traditional ways of running an inquiry. My understanding is that there were conversations between Alan Miller and the Cabinet Secretary for Education and Lifelong Learning, Mike Russell, along those lines.

69. An inquiry, such as the Inquiry, enables anyone to come forward and have their experience considered and reflected within the broader analysis of the failures, and lessons that Scotland has to learn. It enables in-depth case studies to look at all the different factors that have contributed to an environment in which abuse was possible. Individuals will not always get an answer about a specific instance of abuse, a specific perpetrator and a specific regulatory regime in a particular institution, but an inquiry established under the Inquiries Act 2005 has strong powers to compel the production of written evidence and of witnesses. It may be the way of gaining the greatest possible understanding of the facts of what happened and why, and crucially to ensure that we have learned lessons and taken all reasonable measures to seek to prevent repetition.

70. Prior to the decision to establish the National Confidential Forum, the Scottish Government was against an investigation mechanism because of the cost associated with the Irish model. In our conversations with ministers in 2011, the SHRC did raise the possibility of an inquisitorial approach. No position was stated in response to that.

Apology law

71. Throughout 2011 and 2012, the SHRC was putting on the table the idea of an apology law in meetings we held with Scottish Government officials and the Justice Directorate. At that time, there were consistent reports of concerns about potential legal liability flowing from making an apology. Some were from representatives of institutions and others were concerned about the potential action of their insurance companies.

72. The Apology (Scotland) Act 2016 was an initiative of Margaret Mitchell MSP. Her decision to take that on followed some conversations we had with her. The SHRC shared with her team the initial scoping that we had done ourselves on apology laws elsewhere, looking to British Columbia for example. My memory of the Apology Act from British Columbia is that it was three sections long. It stated in clear terms that a full and effective apology could not be the basis for civil litigation nor for voiding an insurance contract. Whatever the legal position had been before that in British Columbia, it is pretty clear what it was after that.

73. The SHRC also looked to the experience of New South Wales where they had evaluated the impact which apology laws had on reducing litigation. This led to an apparently satisfactory conclusion for claimants without the need to go to court, therefore saving everybody's time, anxiety and money.

74. While the Scottish Government was gradually minded to support the ultimate bill that Margaret Mitchell put forward, it was effectively a private member's bill in the initial stages. It was not a government bill with all the resources that the government would bring to be able to scope it out.

Scottish Government response to the Human Rights Framework

75. The Scottish Government made an interim response to the SHRC's recommendations in 2010. That interim response was focused entirely on the recommendations that related to the pilot forum. TTBH finished its work and issued a report in February 2011, about a year after the Human Rights Framework had been published. At that stage, the Scottish Government issued a fuller response to the Human Rights Framework report and its recommendations, although it did not at that stage commit to implementing the recommendations.

Redress/reparation

76. Providing forms of redress or reparation was built into the Human Rights Framework as a component of a human rights compliant response by the state to the historical abuse of children in care, particularly children who were in the care of the state.

77. One of the recommendations in the Human Rights Framework was that the Scottish Government should develop a redress or reparation programme, including different elements. Adequate compensation was one of those elements. Due to the operation of time bar and the limitations of the Criminal Injuries Compensation Scheme, there was no adequate compensation route for all survivors of historical child abuse when the SHRC published the Human Rights Framework in February 2010. Remedies have to be real and actually accessible. They cannot be theoretical.

78. The Scottish Government's position on this recommendation, as articulated in its letter of 22 February 2011 to the SHRC, referred to the Criminal Injuries Compensation Scheme and some ex-gratia payments made by Dumfries and Galloway Council. It indicated, *"We intend to conduct a scoping exercise to consider issues surrounding a possible reparation scheme."* That was indeed mentioned by officials and I think even by ministers at some point.

79. The Scottish Government contacted SIRCC to scope potential numbers of survivors who might come forward. I believe it was suggested that this work was a "scoping of reparations". My recollection is that the work focused on how many people might access a future reparation scheme. I believe Professor Andy Kendrick of CELCIS undertook some research. In my view that was not exactly scoping a potential reparation scheme, rather researching the numbers who might apply, which may help assess the likely cost of such a scheme but not how it should run or lessons from other such processes. If I recall correctly a commitment from Scottish Ministers to scope a potential reparation scheme was something that Jean MacLellan secured before retirement.

80. Probably the clearest articulation of the SHRC's position on redress was in its submission on 22 March 2013 to the consultation on "Civil Law of Damages: Issues in Personal Injury". That submission is still on the SHRC website. We articulated our

position in relation to the consultation on prescription and limitation, namely, that remedies had to be real and not theoretical. We cited ECHR jurisprudence on that. That would require not only a revision of the way in which the law on limitation was being applied, but also, in recognition of the likelihood that the 1964 long-stop (the law of prescription) would not be revisited, the need for an alternative for survivors of historical child abuse.

81. The SHRC suggested a support fund, to which a range of institutions could contribute, as an alternative. It would be a broad redress fund, established through the state, but with contributions from providers and organisations that had been involved directly in the care of children. It could satisfy the requirement for adequate compensation where there was no effective access to civil justice, particularly in the case of children who had been in care before 1964.

82. In relation to institutions' willingness to contribute towards a reparation fund, there were certainly some senior representatives of larger organisations who I recall being more open to doing so. Their openness was on the basis that there would be contributions from a range of parties. In the context of Ireland, the redress fund had very significant contributions from the Catholic Church, although that was still seen as insufficient by some.

InterAction process and participation of Scottish Government

83. We had follow-up meetings with the Scottish Government following its response to the Human Rights Framework. Meetings throughout 2011 were primarily to secure commitment from the Scottish Government to either (a) immediately implement the recommendations in the Human Rights Framework, or (b) failing which to engage in a process of interaction, intended to be a facilitated negotiation among all parties to agree steps to implement the recommendations in the Framework. For the SHRC, the important thing was that the recommendations were taken forward. If the Scottish Government had committed in February 2010 to implementing the SHRC's recommendations, there would have been no need for the InterAction process as it

was known. To be clear, we developed the InterAction negotiations to avoid an impasse, and to exercise some leadership to ensure we did all we could to ensure our recommendations were implemented. It was an option we took because sufficient action was not otherwise forthcoming to implement those recommendations. In the end, the Government's agreement to engage with the InterAction process followed the public hearings of the PPC on Chris Daly and Helen Holland's petition.

84. I gave evidence to the PPC in November 2011. It was the first time I had given evidence to a parliamentary committee. It was pouring with rain but there was nonetheless a march down the Royal Mile of survivors with placards and flags. The survivors were calling on the Scottish Government to take action and denouncing the lack of action. Frank Docherty was at the front of that march in a wheelchair in an image that was captured in *The Herald*, I think. A number of survivors were interviewed in front of the Scottish Parliament as well.

85. Some Scottish ministers gave evidence after me. Only days before, ministers had agreed to meet with us to discuss the possibility of engaging in an InterAction process. Michael Matheson's evidence seemed to suggest that an InterAction process was a prerequisite for implementing anything, including a confidential forum. I submitted a letter to the PPC around 5 December 2011 setting out the position that the SHRC had always taken. The SHRC's position was that what can be done today should be done today. There should be no delays in making remedies available. The continuing failure to deliver remedies was in itself an ongoing human rights violation.

86. There was a key meeting in December 2011 between ministers, Scottish Government officials, and SHRC representatives. There was a commitment by the Scottish Government to engage in an interaction process and consider in good faith the outcomes of the process.

The InterAction process

87. During 2012 there was then a degree of planning involved in setting up a programme of interaction. Without the participation of the Scottish Government, there would not be a proper InterAction process. The InterAction process that we were proposing was a reflection of the reality that some of the steps that we were recommending were so complex. In order to secure political commitment, our assessment was that we needed this broader process of discussion not only with the Scottish Government and survivors, but also with the broader range of institutions that had responsibilities.

General principles of the InterAction process

88. The vision for a human rights InterAction process was Alan Miller's. It was something that was included in the vision for how the SHRC might operate so as to resolve human rights challenges that were proving difficult to resolve. Alan Miller described the operation of the Human Rights InterAction using the acronym *FAIR*. It involved identifying the facts, analysing the rights involved, investigating responsibilities and recalling of parties to establish whether actions that were agreed had been taken.

89. My understanding is that this process was influenced by principles of mediation and negotiation. As part of our reflection as the SHRC team on to how to implement the InterAction process, we worked with John Sturrock of Core Solutions. He provided the SHRC with a condensed version of his training on mediation and negotiation. In putting into operation Alan Miller's vision, I was very influenced by the framework for negotiation that John Sturrock presented to us. It emphasises, amongst other things, the importance of preparation, including having a lot of bilateral meetings with the individuals before bringing them together in a room. That was the inspiration for the approach which we took to preparing the InterAction process, and I believe it was a large part of what helped gain the trust of the parties and led them to engage in good faith.

90. The SHRC's role was often as broker in ensuring that solutions to rights deficits were reached and that those solutions were compliant with human rights principles. It did so in recognition that in order to do that you needed broader participation of the rights holders and duty bearers. There is a lot of scope for ways in which human

rights can be realised. There are red lines that one cannot cross, but within that there is a lot of flexibility for policy options. The better way of resolving issues was to have those directly affected in discussion with those that have responsibilities to take action. Sadly, that is rarely how policy is made or disputes are resolved, but I think this example is a powerful one of the potential impact of carefully facilitated negotiation.

91. This approach involves broad participation of all interested parties and groups. It gives both greater respect and empowerment to people whose rights are directly affected. It does so by involving them in shaping the decisions, rather than simply asking them if the decision you wish to make is acceptable. The latter is essentially what a consultation exercise is about.

92. The approach supports participation and provides the necessary information and other forms of support that is needed by participants. It helps square the circle between the concerns of duty bearers in relation to legal risk or financial risk with the aspirations of rights holders for the fullest realisation of their rights and justice. It allows them to understand one another's perspectives and to negotiate within a facilitated environment which is a space that is bounded by the human rights framework. In that way, it advances rights, but it recognises that in doing so there is a flexibility for the mechanics of it and that one has to recognise pragmatic constraints.

93. The boundaries are the law, broadly understood. The outcome has to advance the legal rights that people have. In saying that, I am also conscious that in such a process we were, at times, drawing from rights that might not be directly enforceable in Scottish courts today. The rights might be internationally recognised standards of human rights rather than those which have been built into domestic law.

First InterAction group meeting

94. There was about a year between the Scottish Government committing to the InterAction process and the first InterAction group meeting in early 2013. That year

was spent planning and designing the process and negotiating with participants to come around the table. From the SHRC's perspective, I was safeguarding some of my own time to work on the InterAction process, alongside delivering on the other major elements of the Strategic Plan of the SHRC such as developing Scotland's first National Action Plan for Human Rights, another hugely ambitious project.

95. The planning group for the InterAction process was called the Review Group, and was co-led by CELCIS (the Centre for Excellence for Children's Care and Protection) and the SHRC. Helen Holland, Chris Daly, David Whelan, and Harry Aitken, among other survivors, were around the table with representatives of the Scottish Government, social services, CrossReach and others. There was a core group of ten to twelve people.

InterAction Review Group

96. SHRC and CELCIS brought different skills and experiences to the process and I felt the partnership worked well.

97. The InterAction process had an independent chair, Doctor Monica McWilliams. Monica had been the chair of the Northern Ireland Human Rights Commission. She was an active participant in the negotiation of the Belfast/Good Friday Agreement, particularly on the human rights dimensions. She was a professor at Ulster University in the Transitional Justice Institute, focusing on gender and conflict resolution. She is a member of a group of international negotiators. For example, she has been working with a Syrian women's group to prepare them to be part of a potential peace negotiations. She is highly qualified in the area of conflict resolution and also creating human rights culture.

98. Dr McWilliams was considered to be ideal as chair, given she came from out with Scotland but had a close affinity with it. She understood the Scottish context, but she was somewhat removed from it. She had analogous experience, but brought a clean slate, as it were, into discussions. She was someone who came into this context without people having huge preconceptions about where she might land on certain

issues. She had no history of engaging in policy issues in Scotland, but her credentials obviously spoke for themselves. Her role was key, as a figurehead and as providing gravitas and a sense of importance to the main InterAction group meetings. Her commitment to the process was very real. At meetings and events she attended, she was very concerned to hear directly from survivors herself to inform her view and her approach to chairing the process.

99. Dr McWilliams could bring out the knowledge of the different people involved and ensure that knowledge was utilised in the process, bringing out their different views and perspectives and ensuring the key themes were identified.

InterAction group meetings

100. At InterAction group meetings, there were facilitators on each table. The meetings were always set up in what I think is called "cabaret style". There were a number of round tables to facilitate discussion in the small groups but also in plenary session. At each table, there was either one member of the SHRC or one member of staff from CELCIS who was very familiar with the process. That would be Alan Miller, Shelagh McCall or myself from the SHRC and Moyra Hawthorn, Andy Kendrick or Jennifer Davidson of CELCIS. We agreed in advance the questions for discussion. We wanted to facilitate involvement around the small group tables. We deliberately placed at each table a cross-section of participants. There would be survivors, institutions and government. In a sense, each small table was a like mini-interaction.

101. Rather than having a whole series of repetitive reports back, one of the facilitators played the role of a "rapporteur". At the first meeting, Shelagh McCall played that role. She ensured that the key elements of the various discussions were fed back. We wanted to make sure that there was a clear framework for something concrete to come out of each of the meetings. The outcome from the first InterAction group meeting was essentially heads of agreement. From the second full InterAction meeting, which followed so-called "mini-interactions" on the four areas that were identified for discussion, there was much more significant progress on flushing out the details under those heads of agreement.

102. The mini-interaction meetings on sub-topics were attended by a similar, but smaller cross-section of people – including survivors, local authorities, institutions etc. Because these events were more focused discussions, there was the opportunity to specifically target Scottish Government officials who had lead responsibility for particular issues. For example, on access to justice, a Scottish Government official who had responsibility for what became the prescription and limitation review consultation attended.

103. In my recollection Scottish Government officials attended all of the InterAction meetings, including the full meetings and the more in-depth mini-interactions. The agreement that we had with the Scottish Government was that ministers would attend at the beginning and the end of the process and Scottish Government officials would continue to be actively engaged throughout. Michael Matheson spoke at the beginning of the first meeting. I assumed that the ministers were getting briefed about the InterAction process throughout, and that was confirmed by periodic discussions we had during the process.

104. We persuaded parties to come into the room and around the table on the basis of established ground rules for participation, agreed in advance. They were circulated at the beginning of each meeting for reference. They included clarity as to what participation meant, not just in relation to treating others with respect, but a commitment to consider in good faith the outcome of the process.

105. Before the first InterAction group meeting, we had established enough trust that people came, but there was wariness. In the transcript of the evidence that Chris Daly gave to the Inquiry, he mentioned that this was the first time that he had sat down with a representative from the institution where he had been in care. I think that was a very important moment for him. The first event, if it achieved nothing else, achieved an element of trust in the process.

106. A number of care organisations were among participants in this process. I was only aware of the position of insurance companies through some conversations with

representatives of such institutions. For some institutions, I got the impression that the background influence of insurance companies was a practical impediment to progress. For others, it was not. There were clearly representatives of institutions who had taken a position of principle, whatever they were being told by their insurance companies.

107. During the InterAction process there was a recognition, from former residents as well as others, that some children in the past and currently in state care had good experiences. Even members of INCAS (In Care Abuse Survivors Scotland) themselves, at times spoke of some positive experiences in care.

Participation of the Catholic Church in Scotland in the InterAction process

108. Representatives of many of the various institutions of the Catholic Church were involved in the InterAction process. A member of staff in CELCIS, who has connections to the Conference of Religious, was particularly instrumental in guiding conversations, securing meetings and undertaking separate discussions with the Conference of Religious. Discussion with a safeguarding officer in the Catholic Church was arranged. That officer became one of the representatives in the InterAction process and was quite influential. Laterally, I believe that role was taken on by Tina Campbell.

109. It was very difficult to have a single conversation with the Catholic Church because of the complex governance. It was very hard – certainly from the outside - to find out who could speak to the position of the Catholic Church in Scotland on these matters. The safeguarding officer I mentioned and then Tina Campbell seemed to be a sort of conduit to the various strands, whether it was the Conference of Religious, the Bishops' Conference or the individual religious orders. As I understood it at the time, the individual orders often had a direct line of accountability to the Vatican.

110. The level of involvement of the Catholic Church gradually increased over that period. I understood there to be an increasing institutional engagement and commitment towards the outcome of the process.

Participation of local authorities in the InterAction process

111. Very few local authorities responded to the consultation on the Action Plan produced as a result of the InterAction process. I do not recall how many participated in InterAction group meetings, but it was nowhere near the full 32 local authorities. We did approach COSLA (the Council of Scottish Local Authorities) a number of times and Alan Miller spoke at a meeting of the heads of the local authorities. It was difficult to engage with the wide range of local authorities on a number of issues. That however was not something unique to this process.

112. We did have good representation from Dumfries and Galloway in more than one of the InterAction group meetings. Representatives shared their experiences of having taken voluntary steps. I cannot remember the reasons given for other local authorities failing to participate in the process. Glasgow and Edinburgh did not participate to my recollection. Perhaps we did not invest as much time in engaging individual local authorities as we might have done, but it is hard to imagine how we could have done so with all 32.

Participation of voluntary childcare organisations in the InterAction process

113. The voluntary childcare organisations were represented in the InterAction process, as were civil society organisations that had relevant areas of focus. There was a limitation on how big InterAction group meetings could be. I think there were around fifty people at each of the full InterAction meetings. Significantly more people and institutions engaged in the consultation on the draft Action Plan which was published in 2013.

Options for inquiry or investigation, the views of survivors, the SHRC's position, the position of Scottish Government

114. The options for running an inquiry or investigation were a feature of some of the discussions during the InterAction process.

115. It is very difficult to speak to the position of survivors at any particular point during the process. There were a number of different survivors' groups. There was not one representative body. Probably the vast majority of survivors were not, and are not, associated with any organisation or even known to one another. For that reason, CELCIS sought to reach out in different ways to involve the voices and perspectives of such survivors. In some of the InterAction group meetings and events, there were participants who were not aligned with particular survivors' group and who had not perhaps been engaged in all of the policy level discussions. There were a wide range of views on the question of an inquiry or investigations, with some, I believe cautious of mechanisms that they felt were dredging up the past or appeared to them to be potentially confrontational in nature.

116. The SHRC's position in 2010 was that there should be some kind of investigation by the state into the whole situation. That position did not change from 2010. The InterAction process was less a discussion as to whether people agreed with our recommendations, as the recommendations were based on international human rights obligations. It was more about how we implemented these recommendations as a nation. The entire ethos of the Human Rights Framework and then the InterAction process was to move away from the previous piecemeal approach. Instead, it laid out the comprehensive framework of what is required of the state in order to respond to serious, systemic human rights violations that we have yet to fully account for. The response to the inquiry and investigations requirement is one aspect of the Scottish Government being slow to come to the realisation that what was needed was an overall, comprehensive response.

117. There was, probably universally, a lot of confusion as to what an investigation or an inquiry could actually look like. There were a larger number of survivors that we spoke to who were in favour of a public inquiry. The InterAction reports, which talk about there being finely balanced views as far as a public inquiry was concerned, were primarily reflective of the fact that the participants in the InterAction process were not only survivors. Scottish Government officials were amongst those more

sceptical about the added value of an additional inquiry. It was, I think, a Scottish minister who eventually shifted their position.

118. As to why survivors wanted an inquiry, again, I am reluctant to try to speak for survivors, for all the reasons I have already given. However the message that comes back to me most strongly as one that was a repeated view of many survivors with whom we spoke, was the principle of accountability and the necessity for an independent body to conduct any inquiry. I think most had in mind a judge-led inquiry that would be capable of holding, and be trusted to hold, everyone to account for the failures, including state failures, that created led to an environment in which historical abuse of children in care was possible. Others talked about the notion of getting to the truth, but accountability was the word that many people kept coming back to. That may, of course, have been because accountability had been suggested at certain points and then taken away, as in the Scottish Government's consultation on an "Acknowledgement and Accountability Forum", which led only to a confidential forum and not directly to any real form of accountability.

119. When you talk about an inquiry, people have very different ideas or expectations in mind and sometimes misperceptions of what is possible from an inquiry. People's expectations may be beyond what can possibly be delivered. There were certainly conversations in which it became clear that some expectations were that a public inquiry could do things that it really could not be expected to achieve.

120. Throughout the InterAction process, we became more successful at securing the involvement of different parts of the Scottish Government. That ended up being absolutely crucial. At the end of the process, this issue was not much less controlled by one person or one part of the Scottish Government. That meant the options available were not limited to what was within one person or department's remit. Ultimately, during the InterAction process, we succeeded over time in getting on board decision makers and lead officials from the Justice Directorate and other departments. It can be a difficult process if things are being filtered back through one representative who may have a particular viewpoint. There is a need to recognise that an issue like this requires coordinating action across government. That was an

absolute lesson from this process. Some of the key breakthroughs were facilitated by either convincing or finding the right people within different parts of the Scottish Government.

121. Three ministers took the decision in September 2009 to hold the pilot forum known as TTBH. The tripartite ministerial representation was not always reflected in cross-departmental official involvement in the InterAction process. There were two key moments.

122. Firstly, there was more constructive engagement with the Justice Department officials, including the divisional director, Colin McKay, who is now the head of the Mental Welfare Commission. Cross-departmental participation was facilitated by constructive engagement with the senior Justice Department official. His involvement in the InterAction process really helped. The Justice Department was around the table and they thought that action in relation to time bar was worth exploring.

123. Secondly, Maureen Bruce took on the lead responsibility for the interaction process in the Health Directorate. It seemed to me that she took an approach which was quite holistic across the Scottish Government. She engaged particularly constructively with Alan Miller. She seemed to see her role as (a) seeing how she could be most effective in supporting the InterAction process, (b) understanding why the Scottish Government had concerns about implementing the recommendations that resulted from that process, (c) resolving such concerns, and (d) making commitments. I think her role was absolutely key in getting cross-government commitment. She seemed to foster much more engagement across departments and greater coordination with officials in those departments. That at least was my impression. Additionally, there were changes of ministers which also helped.

InterAction process Action Plan

124. The Action Plan which was the outcome of the InterAction process outlined agreed steps to take forward the recommendations from the Human Rights Framework report. The plan was a common agreement of the InterAction process. A draft of the

Action Plan was first published in August 2013. A revised plan was published in 2014 and put out for consultation. The Scottish Government agreed to commit to some, but not all, aspects of the Action Plan during that consultation. The final areas – principally commitment to hold a public inquiry - were not agreed until around the time of the last full InterAction meeting in October 2014.

125. Scottish Government officials were aware of our position on the need for an investigation. At the stage of issuing a draft Action Plan in 2013 our aim was at least to keep that option on the table. At that point the most we could secure from them, to avoid them saying 'no', was that they would prepare a paper. The paper would review what we had learned from past inquiries and what remained to be achieved by having a further inquiry.

Aftermath of the InterAction process and background to the announcement of the Inquiry

126. Just around the time of the final full InterAction meeting in October 2014, the Scottish Government's position on a public inquiry shifted. Both SHRC and others sought to build on that commitment through higher level engagement. Alan Miller and I think other Commissioners met with the Cabinet Secretary for Education and Lifelong Learning, and I recall there were also pivotal meetings between some survivors and Scottish Ministers. Had this engagement not been successful, we also considered the option of engaging the First Minister directly. My recollection is that the modest commitment to prepare a paper was then superseded by the political commitment made by Mike Russell and the action that followed that.

127. Before the final InterAction meeting, which was planned to adopt the Action Plan, there was a survivors' event on 27 August 2014. The range of survivors that had been actively involved in the InterAction events was limited because of the nature of such events. There could only be so many people in the room. There was an element of controversy surrounding that and we always exercised some flexibility, to find ways to hear the views of a greater number of survivors. There remained a critical mass of survivors that wanted to express opinions about an inquiry. I recall

that this survivor event was at the initiative of some survivors calling up Moyra Hawthorn at CELCIS in particular. My recollection is that CELCIS facilitated that meeting and the views of participants were then integrated into the consultation findings on the draft Action Plan that were presented to and formed the basis of final discussions during the last full InterAction meeting.

128. New actors started to appear in the discourse at that time. In particular, there were survivors' representatives who had been active at Westminster in relation to the historical abuse of children. They were coming out of left-field in that we had not heard of them or interacted with them before. There also seemed to be new survivors' groups.

129. One survivor, who began engaging with the InterAction process at that time had been battling away to get agreements in Westminster. He brought the robust posture of an activist campaigner into the process in Scotland, which jarred slightly with the constructive engagement that had developed in the InterAction process. I had many conversations with him throughout 2014 to help channel his kind of impetus. There was a risk that this type of intervention might block the whole process when we were about to get agreement on a number of things. At the same time, there was an element of more visible, robust external pressure calling for political action and I would not discount the possibility that this additional pressure may have contributed to shaping decision makers' minds. This particular individual was suggesting that he might walk into the Mitchell Library event (the final full InterAction meeting in October 2014) with television cameras as an expose of the Scottish Government.

130. The InterAction Group met on 27 October 2014. The Action Plan had been developed. It had been drafted and there had been a consultation. The meeting was to ratify the Action Plan and secure commitments from the Scottish Government. The Cabinet Secretary for Education and Lifelong Learning, Mike Russell, had formally responded to the Action Plan by letter around that time. He was also in attendance at the event. He talked to some survivors, he listened, and in fact he stayed on longer than he planned to. He made it clear in his statement at the event

that he was considering establishing an independent inquiry. The written correspondence was more guarded.

131. Angela Constance was Mike Russell's successor. She announced the holding of an inquiry on 17 December 2014. I had left SHRC by that time, and was living and working overseas, but I watched the news reports with great interest.

Development of the Action Plan

132. My period of involvement with the development of the Action Plan did not extend far enough to cover follow-up and monitoring as to what actually happened. Whether commitments were followed through and whether they have made a difference was to be monitored by two bodies, the InterAction Action Plan Review Group (IAPRG) and the Justice and Safety Working Group (JSWG) which was a group established under Scotland's National Action Plan for Human Rights (SNAP), another major SHRC initiative which I played a part in developing. The IAPRG would be focused on regular reviews of progress with the implementation of the Action Plan's commitments. In addition, there would be periodic consideration by the JSWG involving more of a formal review of implementation of the Action Plan's commitments. That at least was the idea when we agreed the monitoring process in 2014.

Access to records

133. Tom Shaw raised human rights implications for former residents who were unable to access their records. Access to information that has an aspect of self-determination and understanding forms part of the right to family life guaranteed by Article 8 of the Convention. It is part of understanding who you are and where you come from. Some of these records were, and are, clearly in a bad state of maintenance and it would take institutions a lot of investment of time to uncover them and order them. That would be a contribution to one form of remedy. It could have a significant impact for individual survivors. My understanding is that there may be photographs or elements in the records which may help to reinforce memories and reconnect

survivors with that period of their lives or with siblings and other family. I recall that being mentioned by survivors in one of the participation events that Tom Shaw held in 2010.

134. Records were not an area which the SHRC looked into in any depth. The fact that survivors continually mentioned challenges around accessing records clearly suggested more action was needed. In the division of responsibilities between ourselves and CELSIS, the records management issue was much more one that CELSIS was reviewing.

Final thoughts

135. Throughout the InterAction process, it was key never to assume that people had the same vision in mind when they used the same language. It was important to be careful and consistent in managing expectations or encouraging the expectations that people might already have. The way in which different processes and potential benefits and outcomes are explained to people is important. Care must be taken not just to articulate, but to reiterate, what is actually likely to happen. For example, removal of the time bar is only, if anything, opening up the opportunity to have a hearing. Many had become fixated on the issue of time bar, understandly so, as a barrier to access to justice. Without reiterating clearly just what an amendment to the time bar could, and could not, achieve, such individuals would likely become disillusioned if they achieved the change they sought and did not ultimately achieve a sense of justice, for example if their case was heard but dismissed due to lack of evidence.

136. Similarly, we were advised early on – by those who had engaged with the process in Ireland – to avoid claiming that any aspect of rememdies, including the confidentially committee, could have a "therapeutic" effect. That was a term which kept recurring in the Scottish context, including I believe in Scottish ministers' evidence to the PPC in 2010. That was something which I have to say I felt uncomfortable with. We were advised that was not a healthy aspiration or expectation to place on a process which can actually be incredibly traumatic for people.

137. During the InterAction process I learned the importance of engaging everyone in good faith, of not making assumptions, but also of ensuring that the person you spoke with could really make commitments, and if not of finding that person.

138. The Human Rights Framework and the Action Plan were generally well received by survivors. We were conscious of the risk that there would be an expectation that the work would bear fruit. It was a real risk. In producing such an ambitious framework, we were not really clear what was a reasonable hope, even for ourselves, as to what we might achieve through it. I think we were as consistent as we could be in ensuring that the presentation of the framework was "This is what we should expect. These are the rights that we have at the moment that should be realised. We have made recommendations, particularly to Scottish Government, but there is no guarantee that they will follow through."

139. A surprising number of survivors said that reading the Human Rights Framework, and knowing of and seeing the involvement of the SHRC on this issue, was the first thing that had given them hope. Frankly, if that was all that was achieved, that already felt like something important. However, having created hope among those who have been failed in the past, and indeed in the present, we felt a huge responsibility to see the process through to the best possible conclusion and action. It would have been quite easy to draft a report with popular and aspirational recommendations and then denounce those with responsibility for failing to implement them. That is a standard approach in human rights work unfortunately, but that is not the approach the Commission took. In keeping with how the Commission viewed its role, we worked extensively with both rights holder and duty bearers to ensure that rights are realised in practice. It is true to say that getting to the point at which pretty much all of the SHRC's recommendations have resulted in some action took, and continues to take, a lot longer than we envisaged. However, I am certainly pleased that the SHRC stuck with the process.

140. I have no objection to my witness statement being published as part of the evidence to the Inquiry. I believe the facts stated in this witness statement are true.

Signed..... [redacted] Duncan Wilson

Dated…12 July 2020