

CONSULTATION ON THE CREATION OF A NATIONAL CONFIDENTIAL FORUM

RESPONSES TO QUESTIONS IN THE CONSULTATION DOCUMENT

INCAS

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

INCAS members agree with the purpose of the Forum but also agree that it might not be something in which all survivors would take part. It is viewed as part of a range of measures being considered by the Scottish Government and the SHRC InterAction to deal with historical in-care child abuse.

INCAS members agreed that the information gathered in survivor's testimonies in the Forum process should be collated against each of the named institutions and the named personnel allegedly involved. It was agreed that this information should be included in the record of a survivor's testimony, and in the Interim and Final Reports produced by the Forum.

INCAS believe that this would ensure that no allegations of institutional child abuse or malpractice were erroneously attributed to an organisation or person. It would also clearly indicate, for the named organisations, the prevalence of abuse, the scale of abuse, the categories of abuse and how representative had been the participation in the Forum by the range of survivors from the various in-care settings.

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

Members support the view that the Forum should be independent from Government so that the Forum is not unduly influenced by politicians. It is felt that this approach would enhance the credibility and powers of the Forum.

It was also strongly felt by all INCAS that the Forum, in an independent environment, ought to learn the truth and full extent of the damage that survivors have experienced and/or witnessed while in care and that participants in the Forum would have no fear of naming organisations and individual abusers.

Q3. Should the Forum

(a) be integrated into another public body?

(b) be a separate unit within another public body?

INCAS members expressed mixed feelings about this, with some being unable to favour either option in a) or b). This uncertainty arose due to the lack of knowledge of which public body would be considered.

However, there was a suggestion that the Forum should be set up in a way similar to the Scottish Human Rights Commission. INCAS members agreed that this would confer greater credibility and independence on the Forum.

There was agreement that survivors should be involved throughout the decision making and Forum set-up process. This would ensure that tangible outcomes for survivors were achieved in line with the advice of the Christie Commission and current developing policy within the Scottish Government on best practice.

INCAS would like to have advance notification of the body that will undertake the Forum and be actively involved throughout the whole process of selection and formation. This would allow time and an opportunity for any contentious issues to be resolved before the Forum begins.

Q4. Do you agree or disagree that all adults who were placed in residential care by the State should be eligible to take part in the National Confidential Forum?

INCAS members unanimously agreed that all adults placed in care should be eligible, no matter from which care setting and whether or not they had a good or bad experience.

Q5. Do you agree or disagree that the process should be the same for all participants, regardless of whether they regard themselves as survivors of abuse in residential childcare?

INCAS members agreed that no one should be excluded and all survivors who had been in residential care should be treated with the same sensitivity, fairness and respect, regardless of their experience. INCAS believe that every survivor's childhood experience is equally valid in the National Confidential Forum. It is felt that this approach would allow for a balanced view of the historical Scottish in-care experience. Also, INCAS survivors have publicly acknowledged that some children in care had a very happy, positive and nurturing experience and that this should be reflected in the NC Forum final report.

Q6. Do you agree or disagree that people who were in the following types of residential care should be included:

- residential schools and children's homes
- residential educational provision for children with special needs
- long-stay hospital provision for children with acute medical and/or mental health needs
- secure accommodation

There was unanimous agreement by INCAS members that those people mentioned above and that survivors of foster care and kinship care must also be considered eligible for inclusion in the Forum. This viewpoint is consistent with Tom Shaw's view as expressed in the TTBH Report. INCAS feel that no one's human rights should be infringed by any attempt to exclude them from the NC Forum process.

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

There was firm agreement by INCAS members that it would be helpful for a psychologist and an advocate to be in attendance at the Forum to support survivors, but that only professionals who are experienced in working with trauma and adult survivors ought to be considered for this support function.

This support should also be made available to the Forum panel members, family support members and other support attendees.

Statistics from the TTBH Pilot Forum Process Review indicated that the Information Pack could have been more effective in preparing participants. The Process Review also indicated that 28% of participants found it difficult to take part.

To alleviate some of this difficulty, INCAS believes that an open meeting on re-traumatisation for survivors run by ICSSS or a qualified psychologist team should be considered as part of the preparation process for the Forum and that such a meeting should include more explanation on the following points :-

- Clarity about the term 'abuse' in the Information Pack
- The context in which abuse is placed with regard to the historical period

- Why the TTBH Pilot Forum Information Pack focussed on children
- The uncertainty of what was going to happen or be asked during the Forum.
- How intrusive the Forum process may or may not be
- How to deal with memory loss or incomplete recall in the case of the elderly
- Advice on how best to prepare for the Forum by participants having with them a broad list of topics they may like to mention (45% of participants at the Pilot Forum found it difficult to remember)
- A similar prompt list could also be prepared by the Forum
- Access to advisers
- Access to citizens' advocacy
- Self-directed support methodologies
- The availability of trained personnel from organisations with a track record in dealing with survivors of in-care abuse and trauma e.g. MAF, ICSSS, the advocacy project of the Care Commission and relevant others
- Assurances that all agency personnel considered for this role must be registered under the Protection of Vulnerable Groups
- The question of electronically recording a participant's testimony during the Forum
- What will happen to a participant's testimony, its confidentiality, how it will be securely stored, for how long, and whether a participant can get access to it in case of possible amendment
- An explanation that a participant's testimony would be given a random identification number known only to the participant and attached to excerpts of their testimony in reports so that only the participant will recognise those excerpts
- The payment of expenses, what claims are acceptable, the claim process and how they are paid

INCAS suggests that acceptable expense claims (on the production of valid receipts) should be paid out on the day of a participant's attendance. This will alleviate any possible financial hardship for those on benefits.

Q8. Do you think that the participants should be protected from legal action in connection with their work for the Forum?

INCAS agrees that all participants (panel members, survivors, family supporters and agency supporters) should have equal legal protection in connection with their work in the Forum

INCAS members agreed that testimonies should not be used in any legal action. But if a 'need-to-breach-confidentiality' report is given to the police, any investigation should start from that point. INCAS survivors agreed that an exception had to be made for alleged and prosecuted abusers who were adults/teachers/carers at the time of the alleged abuse.

INCAS members felt strongly that the record of a participant's testimony should not be protected within the Forum process because, as a statutory body, the Forum would have a duty to prosecute gratuitous use of the process meant to alleviate trauma for genuine survivors. Any personal testimony such as alleged and prosecuted abusers gave to the Forum should not receive the same legal protection as that provided to genuine survivors where criminal acts were described.

INCAS members agreed that the legal and/or Bill Team of the Scottish Government should provide, when necessary, advice on specific legal issues as they arise.

Q9. Do you think there are any barriers that would prevent people who are eligible to take part in the Forum from participating?

Drawing on the experiences of survivors who took part in the TTBH Pilot Forum, the following possible barriers to participation were raised

- Survivors being re-traumatised by recounting their abuse
- Survivors finding it difficult to deal with the aftermath of taking part in the Forum process
- Survivors finding it difficult to deal with unfamiliar language in the consultation document due to literacy issues
- Survivor testimonies being aggregated and their testimony not being reflected in the final report.
- The Forum being seen as another talking shop where survivors were still not given access to Justice and reparation as prescribed in the SHRC Framework

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

The ICSSS support telephone helpline was only available for two hours per day and did not suit survivor needs during the preparation phase and the aftermath of the NC Forum.

INCAS are concerned about the transparency of the recruitment process of the Forum Panel members. It is therefore, suggested, that survivors should have some input into recruitment decisions and be kept informed of the reasons why any particular decision on recruitment was taken.

INCAS strongly suggests that priority should be given to the aged in the Forum participation process. (Another three elderly INCAS members have passed away within the last two months and as a result have been denied access to any reparative process.)

INCAS suggests that participants, if required and within reason, should be allowed a break during the Forum process and that, in specific cases, they should be allowed to return at a later date to complete the participation process.

INCAS strongly advises against offering access to the Restorative Justice (RJ) process during the NC Forum. This advice is based on discussions with Quarriers survivor participants in the RJ process, supporters attending the RJ process, ICSSS supporters and the author of the RJ consultation document.

Survivor participants and supporters in the RJ process expressed real concerns over how the process was conducted and that this RJ process is not relevant or appropriate for in-care abuse survivors. The main areas of concern were:-

- SACRO facilitators lacked proper training
- SACRO did not adhere to the most important recommendations proposed in the Newcastle University Law School consultation document
- Some participants had a very traumatic experience in the RJ process, caused by the SACRO facilitators
- Participants and supporters were treated under a process normally used for criminals
- The RJ process did not allow for restoration of the abusers nor access to justice or reparation for the abused
- The apology given to individual participants was only partial, in some cases was felt not to be genuine, it was not authenticated and in some cases was attempted by telephone instead of face-to-face, or has not yet been given
- The RJ process was offered to survivors in the Forum when they were in a vulnerable or euphoric state and were not fully informed of the implications of the RJ process

- Vulnerable survivors were put in a position where they had to negotiate by themselves with the SACRO staff and the Quarriers CEO
 - The RJ process was conducted under a cloud of secrecy and participants were expected to sign confidentiality documents before the process started or before it was clearly explained to them
 - the RJ process left participants with a feeling of being let down and re-traumatised
- INCAS have already indicated that survivors/participants in the NC forum should be informed of the following:
- how many reports of crimes being given during testimony to the Forum were reported to the police
 - how many of these reported crimes were investigated by the police
 - how many of these reported crimes were prosecuted as a result of the police investigations
 - how many of these prosecutions were successful and what sentences were passed

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Chairman
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