

Report To: Health and Social Care Committee **Date:** 20 October 2016

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Inverclyde Health and Social Care
Partnership (HSCP) **Report No:** SW/48/2016/SM

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Subject: HISTORIC CHILDHOOD ABUSE

1.0 PURPOSE

- 1.1 The purpose of this report is to advise the Health and Social Care Committee of key developments regarding Scottish action to address historic abuse.

2.0 SUMMARY

- 2.1 In 2014, the Scottish Human Rights Commission produced an InterAction Plan on historic abuse. The Scottish Government made a commitment to carry out the InterAction Plan. (An overview of the plan is attached as Appendix 1).
- 2.2 The InterAction Review Group was established in May 2012 to oversee the Scottish Human Rights Commission InterAction process and the subsequent progress of the Plan. The group is made up of key stakeholders, including Social Work Scotland.
- 2.3 The National Confidential Forum (NCF), set up in 2014 to enable survivors to share their care experiences, forms part of the Plan's acknowledgement measures. A revised engagement plan is being put in place to address the low uptake and awareness of the NCF.
- 2.4 A survivor support fund has been set up as part of the Plan's accountability measures. This has opened already for priority cases and is due to be launched for all other applications.
- 2.5 The Scottish Government intends to lift the three-year time bar on civil action in cases of historical childhood abuse (dating back from September 1964) in line with the Plan accountability actions. Public bodies may need to consider any financial/ insurance implications.
- 2.6 The Apologies (Scotland) Act 2016, has received Royal Assent but has not yet been brought into force. The Act will make an apology inadmissible as evidence of liability in most civil proceedings and may support public bodies in their initial approach to survivors where abuse is alleged to have taken place.
- 2.7 The Public Inquiry into Historical Child Abuse in Scotland forms part of the Plan's accountability measures. On 27th July 2016, Lady Smith, a senior judge and Head of Scottish Tribunals, was appointed as the new Inquiry Chair. This followed the resignation of Susan O'Brien QC and panel member Professor Michael Lamb.

- 2.8 The InterAction Action Plan Review Group is likely to propose to the Scottish Government that oversight of the whole InterAction Plan be placed with the Scottish Parliament and that Ministers be asked to report twice a year on progress.
- 2.9 The Inquiry commenced on 1 October 2015. The Inquiry will be asked to report to Ministers within 4 years of the date of commencement. The scope of the Inquiry is 'within living memory'.
- 2.10 In October 2015, the Inquiry Chair wrote to all organisations which are likely to be relevant to the Inquiry to request that immediate steps are taken to preserve records which may be sought by the Inquiry at a later date. This could include adult records as they may contain disclosures of childhood abuse.
- 2.11 A joint seminar is due to take place on 29th September 2016 hosted by Social Work Scotland in conjunction with SOLACE, ADES, SOLAR and COSLA. This is with a view to developing a joint approach to the planning and other activity generated by the Inquiry.
- 2.12 The Scottish Government has established a team to consider and plan for the impact of the Inquiry. They have recently written to public bodies, agencies etc to advise of this team and offer support to organisations with regards to planning and preparation.
- 2.13 Within Inverclyde, the Public Protection Chief Officer Group has agreed to establish a working group under the governance of the Child Protection Committee, chaired by Gerard Malone, Head of Legal and Property Services, to ensure Inverclyde is prepared to support the work of the inquiry and consider and plan for the potential local impact of the inquiry.

3.0 RECOMMENDATIONS

- 3.1 The Health & Social Care Committee is asked to
- note the contents of the report
 - note the establishment of an Inverclyde working group under the governance of the Child Protection Committee, chaired by Gerard Malone, Head of Legal and Property Services.

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Inverclyde HSCP

4.0 BACKGROUND

Historic Abuse

- 4.1 Scotland is one of only a few countries to develop and implement a dedicated support strategy for survivors of historic abuse in any setting. For 10 years Survivor Scotland has delivered services to many survivors.
- 4.2 In 2010, the Scottish Human Rights Commission was funded to develop a Human Rights framework as part of work to seek remedies for historical child abuse in Scotland. This is known as the InterAction Process. The InterAction process was completed in 2014 and an InterAction Plan was produced. The Scottish Government has made a commitment to carry out its 'InterAction' Plan (an overview of the plan is attached as Appendix 1).
- 4.3 The InterAction Review Group was established in May 2012 to oversee the Scottish Human Rights Commission InterAction on Historic Abuse of Children in Care. Its membership included survivors of abuse, representatives of provider organisations, Scottish Government, CELCIS, SW Scotland and the Scottish Human Rights Commission. The Review Group facilitated collaboration across stakeholders in order that the InterAction could take place in an atmosphere of respect, dignity and support. Following the final meeting of the InterAction in October 2014, a revised remit was produced. The group continues to facilitate engagement with stakeholders in relation to fulfilling the commitments of the InterAction Action Plan and providing progress information to the Scottish National Action Plan for Human Rights (SNAP) Action Group on Justice and Safety.
- 4.4 The National Confidential Forum (NCF) was set up in 2014 as part of the Victims and Witnesses (Scotland) Act 2014 and forms part of the Plan's acknowledgement measures.
- 4.5 The NCF has been holding hearings since January 2015. People who spent time in institutional care as children have been invited to come forward and share their experiences, both good and bad. What people say at the NCF hearings will form an important record about children in care in Scotland in the past and will also inform future learning.
- 4.6 A revised engagement plan is being produced to address concerns that there is a low awareness and has been a low uptake of the NCF. To date 83 hearings have taken place.
- 4.7 Other action taken by the Scottish Government in relation to the Plan includes:
 - The setting up of a dedicated support fund for survivors of abuse placed in care by the state to enable survivors to identify their own personal goals and access the right support to achieve them. £13.5 million is to be allocated over the next five years to develop a dedicated in care support service. The fund is now open for priority cases and due to formally launch for all other applications.
 - An intention to lift the three-year time bar on civil action in cases of historical childhood abuse (dating back from September 1964). A draft Limitation (Childhood Abuse) (Scotland) Bill to that effect was published by the Scottish Government on 14 March 2016. Further review of the terminology is underway to ensure that there are no unintended consequences from this action. Public bodies may need to consider any financial/ insurance implications.
 - The Apologies (Scotland) Act 2016, which has received Royal Assent but has not yet been brought into force. The Act will make an apology inadmissible as evidence of liability in most civil proceedings, with the aim of encouraging

public bodies and others to issue such apologies where wrongdoing is alleged, without having to await the outcome of the court process.

The Scottish Child Abuse Inquiry

- 4.8 The Public Inquiry into Historical Child Abuse in Scotland forms part of the Plan's accountability measures.
- 4.9 On 17/12/14 Angela Constance, Cabinet Secretary for Education and Lifelong Learning, announced that a Public Inquiry would be undertaken into the historic abuse of children and that a consultation process would take place involving survivors and others in relation to the terms of reference and the appointment of a suitable Chair.
- 4.10 The Inquiry is to be held under the Inquiries Act 2005 ("the Act") and is a Scottish Inquiry in terms of section 1(2)(b) and section 28 of the Act. Panel members, along with the Chair, will form the Inquiry Panel in terms of the Act. The Inquiry can compel public bodies or private organisations to produce particular documents. It also has the power to summon people who were involved, such as a person providing care, to give evidence. People who make statements to a statutory inquiry are protected from some court actions, such as defamation. An inquiry is not designed to rule on anyone's civil or criminal liability and has no power to do this. It may be that liability can be inferred from facts that come out of the inquiry, or from recommendations it makes.
- 4.11 On 28/5/15 the draft terms of reference for the Inquiry were announced and Susan O'Brien QC was appointed as the Inquiry Chair.
- 4.12 The purpose of the Inquiry is to:
- To investigate the nature and extent of abuse of children whilst in care in Scotland, during the relevant time frame.
 - To consider the extent to which institutions and bodies with legal responsibility for the care of children failed in their duty to protect children in care in Scotland (or children whose care was arranged in Scotland) from abuse, and in particular to identify any systemic failures in fulfilling that duty.
 - To create a national public record and commentary on abuse of children in care in Scotland during the relevant time frame.
 - To examine how abuse affected and still affects these victims in the long term, and how in turn it affects their families.
 - The Inquiry is to cover that period which is within living memory of any person who suffered such abuse, up until such date as the Chair may determine, and in any event not beyond 17 December 2014.
 - To consider the extent to which failures by state or non-state institutions (including the courts) to protect children in care in Scotland from abuse have been addressed by changes to practice, policy or legislation, up until such date as the Chair may determine.
 - To consider whether further changes in practice, policy or legislation are necessary in order to protect children in care in Scotland from such abuse in future.
 - Within 4 years (or such other period as Ministers may provide) of the date of its establishment, to report to the Scottish Ministers on the above matters, and to make recommendations.
- 4.13 For the purpose of this Inquiry, "Children in Care" includes children under 18 years in institutional residential care such as children's homes (including residential care provided by faith based groups); secure care units including List D schools; Borstals; Young Offenders' Institutions; places provided for Boarded Out children in the Highlands and Islands; state, private and independent Boarding Schools, including state funded school hostels; healthcare establishments providing long term care; and any similar establishments intended to provide children with long term residential care. The term also includes children in foster care.

- 4.14 The term does not include: children living with their natural families; children living with members of their natural families, children living with adoptive families, children using sports and leisure clubs or attending faith based organisations on a day to day basis; hospitals and similar treatment centres attended on a short term basis; nursery and day-care; short term respite care for vulnerable children; schools, whether public or private, which did not have boarding facilities; police cells and similar holding centres which were intended to provide care temporarily or for the short term; or 16 and 17 year old children in the armed forces and accommodated by the relevant service.
- 4.15 “Abuse” for the purpose of this Inquiry is to be taken to mean primarily physical abuse and sexual abuse, with associated psychological and emotional abuse. The Inquiry will be entitled to consider other forms of abuse at its discretion, including medical experimentation, spiritual abuse, unacceptable practices (such as deprivation of contact with siblings) and neglect, but these matters do not require to be examined individually or in isolation.
- 4.16 On 1/7/15, Susan O’Brien, QC commenced in her role as Inquiry Chair. She subsequently appointed as panel members Glen Houston, Northern Ireland Chief Executive of the Regulation and Quality Improvement Authority and Michael Lamb, Professor of Psychology at the University of Cambridge.
- 4.17 On 4/7/16, Ms O’Brien announced her resignation as the Inquiry Chair. Professor Michael Lamb had days earlier resigned on 27/6/26.
- 4.18 On 27/7/16, Lady Anne Smith, a senior judge and head of Scottish Tribunals was appointed as the new Chair of the Inquiry. Lady Smith was previously the Chair of the Scottish Partnership on Domestic Abuse and previously chaired the Advocates Family Law Group and the Advocates Professional Negligence Groups.
- 4.19 The rest of the senior Inquiry team remains unchanged at this time and the remaining panel member Glen Houston has indicated his intention to remain in the post. The Inquiry team have been continuing to meet with survivors to hear their evidence. Two survivor groups – INCAS (In Care Abuse Survivors) and FGBA (Former Boys and Girls Abused of Quarriers Homes) have applied and received core participant status in the Inquiry. Core participants are expected to have a significant role in the Inquiry and will obtain access to evidence and documents which may not be available to the public.
- 4.20 In response to the concerns regarding delays in progressing the InterAction Plan and changes to the Inquiry, a proposal is likely to be put forward to the Scottish Government by the InterAction Action Plan Review Group to propose that oversight of the InterAction Plan be placed with the Scottish Parliament and that Ministers be asked to report twice a year on progress.
- 4.21 The Inquiry is in the process of drafting Protocols for handling the documents it will recover and retain for its work. In 2015 the Inquiry Chair wrote to all organisations which she believed were likely to be relevant to the Inquiry to ask that they take immediate steps to preserve records which may be sought by the Inquiry at a later date. This letter has been received by the statutory organisations within Inverclyde. The Inquiry intends to begin issuing requests for documents in the coming months.
- 4.22 The Scottish Government has recently written to key public bodies, agencies etc to advise that a government team has been established to consider and plan for the impact of the Inquiry in a ‘core participant’ sense. The focus on the group will include:
- directing searches of records
 - liaising with agencies, public bodies, third sector organisations and others on the proposed approach of the Scottish Government
 - consideration of policy implications
- 4.23 In addition, as part of the work of this group, the Scottish Government is offering to

provide advice and/or assistance to organisations in relation to planning and preparation.

4.24 Police Scotland and the Crown Prosecution and Procurator Fiscal Service have put in place single points of co-ordination and contact for the purposes of the Inquiry. In preparing for the Inquiry, a co-ordinated approach may be useful with respect to:

- Identification of any issues with regards to records retention and storage
- Supporting resources
- Ensuring a single point of contact is in place to manage Inquiry requests
- Considering any potential financial risk/ insurance matters that might arise from the Inquiry

4.25 A joint seminar hosted by SW Scotland in conjunction with SOLACE, ADES, SOLAR and COSLA is scheduled to take place on Thursday 29 September at COSLA in Edinburgh, the focus will be on developing a joint approach and issues to be discussed will include:

- Supporting victims and survivors: counselling and support services
- Compensation: dealing with claims and budgeting
- Managing information: redaction, data protection, locating files and secure transfer
- Supporting staff who may have also been victims of child abuse
- Reputational Risk

4.26 Inverclyde requires to be in a position to prepare for and respond to the issues raised by the Inquiry. In order to do this, the Public Protection Chief Officers Group has requested that the Child Protection Committee provide a governance structure for this work.

4.27 Gerard Malone, Head of Legal and Property Services, has been tasked with chairing a working group to progress this. The group will be supported by the Head of Children's Services and Criminal Justice. It is likely that representation on the group will be drawn from service areas across the HSCP, and a range of council services including Human Resources, Legal Services, Finance etc.

4.28 It is intended that this group will produce at minimum an annual report to members and to the Public Protection Chief Officers Group to ensure full oversight.

5.0 IMPLICATIONS

Finance

5.1 Financial Implications:

There may be financial/ insurance implications in relation to civil action in cases of historical childhood abuse particularly given the Scottish Government intends to lift the three-year time bar on such actions.

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments

Legal

- 5.2 There are a range of legislative issues in respect of this report and these are contained in the background.

Human Resources

- 5.3 There are no human resources issues within this report.

Equalities

- 5.4 There are no equality issues within this report.

Has an Equality Impact Assessment been carried out?

	YES (see attached appendix)
X	NO – This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required.

Repopulation

- 5.5 There are no repopulation issues within this report.

6.0 CONSULTATION

- 6.1 This report has been prepared by the Chief Officer, Inverclyde Health and Social Care Partnership (HSCP) after due consultation with Head of Service Children's Services and Criminal Justice and Belinda McEwan, Child Protection Officer, Renfrewshire Children's Services.

7.0 LIST OF BACKGROUND PAPERS

- 7.1 Action Plan on Justice for Victims of Historic Child Abuse.

Action Plan on Justice for Victims of Historic Child Abuse

