

**SCOTTISH GOVERNMENT CONSULTATION ON A PUBLIC INQUIRY INTO**

**HISTORICAL CHILD ABUSE IN SCOTLAND**

**SCOTTISH HUMAN RIGHTS COMMISSION[[1]](#footnote-1)**

**March 2015**

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| In 2006, the Scottish Human Rights Commission was established by an Act of the Scottish Parliament with a remit to promote and protect human rights for everyone in Scotland. Accredited within the UN system as an “A status” national human rights institution (NHRI), the Commission also chairs the European Network of over 40 NHRIs and is deputy chair of the International Coordinating Council of over 100 NHRIs, forming a bridge between Scotland and the international human rights community. |

**1. INTRODUCTION**

The Scottish Human Rights Commission welcomes the opportunity to comment on the Scottish Government consultation on a public inquiry into historical child abuse in Scotland.

One of the aims of Scotland’s National Action Plan for human rights (SNAP) is to improve understanding of the rights of victims, including the right to an effective remedy and ensuring justice for victims of historic abuse.

The Commission notes the Action Plan on Justice for Victims of Historic Abuse of Children in Care which was the result of a facilitated negotiation between the Scottish Government and survivors of abuse, and included a commitment to consider the added value of a national inquiry.[[2]](#footnote-2)

The Commission welcomes the Scottish Government’s commitment to hold a national inquiry into historical child abuse, and calls on the Scottish Government to take a Human Rights Based Approach to the inquiry. The inquiry should reflect the principles of Participation, Accountability, Non-discrimination and equality, Empowerment and Legality (the PANEL principles).

In establishing the inquiry the Scottish Government should make clear that the inquiry is only one component of providing an effective investigation and an effective remedy for survivors. Work on the other measures necessary to achieve acknowledgement and accountability for survivors should not be postponed until the conclusion of the Inquiry but rather should progress at the same time. The Action Plan on Justice for Victims of Historic Abuse of Children in Care identifies a number of such areas: acknowledgement and apology, reparation, and access to justice.

Survivors must be central to the design, constitution, and operation of the inquiry. While the Scottish Government must make clear to survivors that it cannot guarantee certain outcomes such as criminal convictions, the design of the process, constitution, timescales and operation of the inquiry must inspire confidence.

**2. LEGAL REQUIREMENTS FOR AN EFFECTIVE PUBLIC ENQUIRY**

An “effective” inquiry is one that can contribute to both an “effective remedy” and an “effective investigation” under international human rights law.

The Commission has reiterated various times that survivors of serious ill treatment such as physical or sexual abuse or serious neglect have a right to an effective remedy from the state, including access to justice and reparations, and that the state must also carry out an effective investigation to identify what happened and why.[[3]](#footnote-3)

The following requirements take into account the applicable human rights obligations, as identified by the Commission;[[4]](#footnote-4) UK legal obligations under EU law in Directive 2012/29/EU[[5]](#footnote-5); and recent report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Mr. Juan Méndez.[[6]](#footnote-6)

An effective public inquiry must be:

1. Independent
2. Impartial
3. Have fact-finding capabilities that enable it to
4. Identify and classify the mistreatment reported to it
5. Determine the identity of the individuals and institutions allegedly responsible, including the level of seniority at which responsibility is alleged, and
6. Determine whether the practice was systematic
7. Open to public scrutiny
8. Capable of involving victims in its procedure to the extent necessary to safeguard their legitimate interests; and
9. Able to make recommendations to ensure non-repetition

There are two fundamental issues that the Scottish Government must take into account in its efforts to fulfil these requirements:

*(i) The Inquiry must be considered as only one component of providing an effective investigation and an effective remedy*. A Scottish Inquiry into Historical Abuse of Children in Care can provide many of the basic elements but not all. It cannot determine individual civil or criminal responsibilities, impose punishment or make payments of compensation. Other state institutions must act alongside it, as the Commission has already stated.[[7]](#footnote-7)

*(ii) The inquiry body and any other institution involved in delivering an effective investigation and remedy must function with “due diligence.”* This is the legal standard applied in international law (including human rights law) where the obligation of the state is to take an action, say to prevent or investigate human rights abuses. Logically, no such standard applies when the state’s duty is *not* to take a particular action, for example not to discriminate.

Although there is no universal definition of “due diligence”, essentially it requires that the Scottish Government must take all possible measures to produce the result. The result in this case includes information, accountability for perpetrators, reparations and prevention of future harm. The state cannot, for example, guarantee that a perpetrator will be convicted as this is up to a jury, but its institutions must carry out a diligent investigation. Due diligence applies to processes, timescales and results. The only factor that can justify time delays is a lack of capacity, not a lack of policies or political will. Even with a realistic timeframe and sufficiently flexible mandate and resources, it is paramount that expectations of survivors are not unjustifiably raised such that they expect the Inquiry to fully resolve every individual case.

**2. RECOMMENDATIONS FOR THE SCOTTISH GOVERNMENT ON SETTING UP THE PUBLIC INQUIRY**

The Commission considers that taking into account (i) experiences of non-judicial commissions of inquiry globally, including “truth commissions”, and (ii) reviewing of information on inquiries into institutional child abuse in other countries, best practice would support the following elements in the setting up of a Public Inquiry in Scotland.[[8]](#footnote-8)

**A. Clear responsibility and adequate resourcing within Scottish Government**

The Scottish Government should act quickly to (i) complete a costing exercise to create a proposed budget for creating, running and closing the Inquiry over an appropriate period and (ii) design preliminary fundraising and outreach strategies.

In relation to (i), the due diligence standard also applies to funding. Financial and human resources must be able to cover at the minimum: travel for Inquiry purposes, witness protection infrastructure, commissioning of expert reports/advice, IT systems (particularly a database) and witness support including psychological screening[[9]](#footnote-9) of all survivors prior to giving information to the Inquiry.

The group should also be capable of on-going reviews to ensure that Scottish Government actions are compliant with the ECHR and the above EU Directive.

**B. Independence & impartiality: appointing the institution, the chair, members/assessors and staff**

The due diligence standard requires first that the Scottish Government ensures that this independence and impartiality is enshrined in the Inquiry’s Terms of Reference (ToR). Independence is both hierarchical and practical: no state body or representative can have the power to review any decision of the Inquiry regarding any aspect of its composition and work, any action it takes under its mandate, or any of its outputs (such as reports and statements). Impartiality includes the appearance of bias and not only actual bias. In practical terms this means:

* Those who lead and staff the Inquiry should be protected from reprisals including legal actions resulting from their work implementing the Inquiry mandate. As well as a clause in the ToR on this point, this may require action by the Scottish Government to ensure legislation or regulation is in place.
* The Scottish Government and relevant state bodies (such as Police Scotland and the intelligence services) must take all reasonable steps to carry out rigorous background checks on the persons to be appointed as Inquiry Chair, Members and staff. The selection process may (as is recommended below) involve a range of people and groups not connected with the state, however the state itself must ensure that those in charge of the Inquiry, and the staff who carry out its work, are independent from the institutions and persons implicated in the mistreatment, i.e. have no links with state bodies, private care institutions or any other group or individual alleged to be responsible.

New information may emerge during the inquiry investigation, for example about an institution not previously linked with abuse. It is advisable therefore that a mechanism is put in place by the Inquiry, Scottish Government and police allowing for periodic updates of these background checks, based on information received by the Inquiry, so that swift action can be taken in as necessary. This will require a specific Protocol to preserve witness/survivor anonymity as required (or the inclusion of this issue in the planned Protocol with Police Scotland). [[10]](#footnote-10)

**C. A realistic time frame for the work of the Inquiry.**

While this is a matter for discussion in framing the ToR, the Scottish Government could set a realistic example in its own preliminary communications. The initial time frame should be reasonable but also allow for extension. Promptness must be balanced with the need to carry out a sufficiently thorough inquiry. The Historical Institutional Abuse Inquiry in Northern Ireland, theHIAI, for example covers incidents from 1922-1995 but allows only 2 years 6 months for the Inquiry (with that time running from the date of the legislation rather than commencement of operations). It has apparently already had to ask for extensions that have been opposed by survivors. In contrast the “Ryan” commission in Ireland ran for 10 years. In a lengthy process, interim reports that contribute to a historical narrative and feed into policy reform are recommended.

It is important to take into account the next suggestion, D, when determining the time frame.

**D. Survivors must not have to wait until the Inquiry concludes in order to access other elements of their remedy including reparations, criminal investigation, apology or support mechanisms.**

This flows from the fact that the Inquiry is only one element of an effective investigation and an effective remedy. Experience thus far from the HIAI in Northern Ireland indicates that the reason survivors are opposed to the time extensions requested by the Inquiry is because they are being told that only once it is concluded can they access these other redress mechanisms. Being aware of the length of many other Inquiries in the UK survivors are concerned that they may have to wait many years.

**E. Fact-finding capabilities: A clear but relatively wide scope of inquiry**

An example would be *the context, causes, incidence and consequences of historical abuse of children in care in Scotland between the years X and Y.*This is closer to the “Ryan Commission” mandate in Rep. Ireland (“causes, nature, circumstances and extent”) and most international commissions of inquiry and truth commissions.

In its ToR the Inquiry should be given the power to vary its own mandate (Istanbul Protocol para 107). For example, it may wish to extend the period of time that it investigates if important new information points in that direction. The process of varying the mandate must however be transparent, and ideally include ratification by survivors and other stakeholders.

The reason to favour a wider mandate is that the remedy as a whole must be capable of fact-finding on individual cases , not only the systemic nature of abuse, and the inquiry therefore should be capable of preparing the ground for the work of other institutions such as reparations fund, or the police authorities.

**F. Assess the viability of including abuse of children in state-organised foster care**

Child abuse Inquiries in Iceland, Norway and thus far in the UK have been limited to children in institutional care and this has been seen by some as a drawback. In Sweden however the Inquiry did include foster care settings. Note that the NCF legislation would seem to exclude foster care at present.[[11]](#footnote-11) Children in institutional care might have been fostered and if the arrangement did not work out, they may have been returned to an institution. The category of survivors is referred to by some experts as “out-of-home care” to cover foster care too, and this approach would also be consistent with the spirit of the Commission recommendation that *“there should be no arbitrary limitation to specific types of institution in which people were placed”* (Submission to NCF consultation Question 6).

This issue should be included in discussions with stakeholders and the costing exercise mentioned above. It may be costly and time consuming to include additional survivors of foster care, but at the same time it may avoid the need to have to set up an expensive new Inquiry for children abused in foster care in future.

**G. Ensure non-discrimination**

The ToR of the Public Inquiry should allow for participation of under 18s (with sufficient protection/representation) and include a commitment to provide sufficient human and infrastructural resources, and communication strategies to ensure that under 18s, minorities, the elderly, people with disabilities, illness, literacy problems or who need language interpreters (eg Gaelic), and other groups requiring assistance can participate in the Inquiry and have access to its findings.

This will also require planning, budgeting and action by Scottish Government and public authorities to mobilise resources and expertise to support the Inquiry.

**H. Include private and public hearings in the modus operandi**

1. The Inquiries Act 2005 rules on public access (sections 18 and 19) appear sufficiently flexible to allow public hearings but also to restrict access to hearings to protect the rights of survivors and other witnesses.
2. International experience shows that while not all survivors of serious sexual, physical or mental abuse will wish to speak in public settings like truth commission hearings and trials in open court many will want to do so, and the choice should be available.
3. Avoid an “either or” approach to survivors and other vulnerable witnesses, they should be able to participate in both public and private settings: for example a survivor may wish to recount the details of their own abuse in confidential setting, but then to speak publicly about how it affected their lives, and about what steps they would like to see taken in future.
4. An overarching benefit of public hearings is to ensure that survivor narratives and the “meta narrative” are not completely controlled by, or filtered through, the Inquiry. The speech of survivors and others can be relayed without editing, summarising and being subject to prioritisation all of which inevitably form part of the preparation of interim and final reports of such inquiries. This is another reason for avoiding an adversarial dynamic, (see K).

**J. The inclusion of different forms of information gathering**

Hearings, whether public or private, should not be the only means by which the Inquiry collects information. The ToR should allow reception of signed statements, reports, academic, studies, other documents, and physical and audio/visual information. As with any truth and reconciliation commission , the staff will carry out a process of verification to determine the reliability of information and credibility of the source to a sufficient research standard.

Multi-location information gathering is also best practice. If the Inquiry sits only in one place (for example the capital city) survivors and others may be prohibited from attending due to work or family commitments, disability or cost. The Inquiry should organise visits to various regions of the country. Survivor Scotland also refers to survivors living outside Scotland, and so methods of taking their testimony should be put in place.

**K. The Inquiry should avoid a legalistic, adversarial approach**

The Inquiry is a fact-finding body. As such it must adopt an inquisitorial model and should not look or feel like a trial. For example, witnesses should not be examined or cross-examined by lawyers acting for the Inquiry or any other party. Previous experience of public inquiries and a generally legalistic culture might lead to an approach that is not only inappropriate but counterproductive. An adversarial model is likely to discourage survivors and others from participating. While the Inquiry must be impartial and safeguard the rights of individuals named as alleged perpetrators, it must likewise safeguard the rights of victims and witnesses and both of these aims can be achieved without replicating a trial-like modus operandi.

Survivors have reported negative experiences so far in the HIAI for example. The approach being taken by the Inquiry’s own lawyers is adversarial, with Inquiry barristers cross examining survivor witnesses and putting to them contradictory facts, challenging their accounts and even bringing up their previous criminal convictions. This has resulted in participation being a much more traumatic experience than it might have been. Recently a group of 16 survivors lodged a judicial review against the Inquiry, which the Inquiry is contesting. The survivors demand to have their own barristers present with them during all hearings.

Steps can be taken to promote an inquisitorial approach for example though choosing the location(s), the physical design of hearings and interview spaces, and in the methodology of the Inquiry in general. Examples of best practice would be allowing only the panel members or staff to ask witnesses to clarify their statements, not having lawyers who represent the panel, institutions or alleged perpetrators carry out this task; prohibiting questioning or release of information regarding survivors’ previous sexual history or criminal convictions; using subsequent communications and investigation to clarify facts and avoiding restrictive rules of evidence. A useful reference is the practice of Commissions of Inquiry conducted by the UN Human Rights Council.

The ToR can also make clear in the selection criteria for the Chair, and Members that it is not vital that these include judges and lawyers. An Assessor, or staff member, can provide legal advice to the Inquiry.

**L. A unified inquiry body with specialist teams is preferable to a complex structure of separate bodies.**

A “National Confidential Forum” has been set up as a separate body to run concurrently with the Public Inquiry, along the lines of the HIAI. Consideration should be given to integrating the NCF into the Inquiry structure. The Ryan Commission in Ireland offers an example: it contained two Committees, a Confidential Committee and an Investigation Committee within the one Inquiry body. (The Peruvian TRC also adopted a similar approach, including a unit to take forward key cases that were destined for criminal procedures and prepare information to hand over to prosecutors). There are various factors in favour of a unified structure.

* In order to ensure victims who do not want criminal investigations have a forum to recount their experiences, it is not practically necessary to create a separate ring-fenced body in this way. It can be achieved by proper information management based on survivor/witness consent.
* The fragmentation of forums and remedies is conceptually arguable (for example survivors may consider the report of a public inquiry as a form of acknowledgement). More importantly it risks being counterproductive due to overlapping objectives and duplication of efforts, fragmentation of information to inform policy reform and historical narratives, and creating a division between survivors.
* Survivors and any other users of the inquiry should be able easily to understand an Inquiry’s structure and functions, and have one access point. (For example, feedback so far in Northern Ireland is that, although victims groups wanted a two-pronged approach, it is proving problematic. Many confuse the two bodies.[[12]](#footnote-12))
* A unified body can limit delays and errors caused by communication and tensions between various inquiry bodies with similar or overlapping mandates. It also limits the need for multiple protocols of cooperation, for example with police and social services.
* Both the NCF and a Public Inquiry will generate information relevant to the wider aspect of effective investigations: whether the problem was systemic and how high up the level of responsibility was. Both bodies will produce information for a historical narrative and for framing policy recommendations. For example the NCF is tasked to “identify patterns and trends…make recommendations about policy and practice…prepare reports of testimony and recommendations”…[[13]](#footnote-13) Survivors may be seeking acknowledgement, apology, investigation but not wish to testify to the police for example. It is not clear whether they must use both forums, testifying twice, as is the case with the HIAI.

In its submissions to the Scottish Government on the NCF (20.10.2012, Question 3) the Commission advises, *“the aims of the NCF would be most effectively achieved by a body established solely for that purpose.”* This would not contradict a suggestion to now integrate the NCF into the Inquiry process. However, if the Scottish Government prefers two separate bodies, or if integrating the NCF into the Public Inquiry under the current statutory framework is not viable, the following is recommended:

* Scottish Government and NCF outreach should make clear to survivors the added value of the NCF and the differences between the NCF and the Inquiry in terms of concepts, goals and operations.
* The ToR should also clearly state the differences.
* Protocols must be put in place to allow survivors to lift the confidentiality of their NCF statement and authorise its transfer to the Public Inquiry if they decide later that they want to participate in the Inquiry. Survivors who have engaged with the NCF may be encouraged by seeing others participate in public hearings, or by accessing support or becoming involved with survivors groups. It is not necessary for an effective investigation that a survivor gives oral testimony and is questioned before the inquiry (see J). Likewise, a survivor must have the option to withdraw their statement from the Public Inquiry, if for example their mental or physical well-being is affected.

**M. Information handling: inputs and outputs**

In an inquiry body based on international models, the body would be able easily to “tag” information coming from survivors as “lead only” or “confidential” at the request of the survivor. Based on these instructions, written information (including transcribed oral statements) is then redacted to remove details that can identify the source. The remaining information can be used to analyse the existence of patterns and policies and so contribute to the wider aims of the Inquiry. Survivors should be allowed to give information to the inquiry panel members alone in private session. The requirement of “open to public scrutiny” is not an absolute requirement and, since it must be balanced with the protection of the rights of survivors and other witnesses, the Inquiry can be given the power to limit access to information. The 2005 Act appears flexible enough to allow this practice.

This is not incompatible with the kind of approach to crime prevention and human rights duties adopted in the Victims and Witnesses (Scotland) Bill as enacted Schedule 1A, part 6. The Commission noted that the discretion given to the NCF to report to the police was too wide and suggested a duty to report that was included in the Bill. The same approach can be adopted by an Inquiry. Firstly, provision can be made in the ToR that all those providing information to the Inquiry must be reminded of this duty before they give information and secondly, it is not in principle necessary for an Inquiry to disclose a witness’ identity to the police merely to alert them that credible allegations have surfaced about an alleged perpetrator or institution involved in on-going abuse.

In terms of the interim and final reports of the Inquiry, ordinarily the ToR of a truth commission or commission of inquiry will establish that these reports are not admissible in court as findings of civil or criminal responsibility.

**N. Empowerment and capacity building for survivors groups; a survivors and witnesses support office within the inquiry; and a Scottish Government / public authority survivor liaison office, each with sub offices regionally**

The Scottish Government or relevant public authority should also establish a survivor liaison office as a single contact point for survivors where they can be put in contact with support services, get links to survivor groups, and information on all available redress avenues. A corresponding unit within the inquiry should be able to provide information, orientation and psychological support throughout the process of engaging with the inquiry.

The state should consider helping survivor groups to access funding, to increase their capacity as part of “self help.” For example, many survivors in N. Ireland are reporting that they feel more comfortable getting support from such organisations than from an official victim support body. Experience from the now disbanded HET in Northern Ireland (now replaced by the Legacy Investigation Branch) and from many countries around the world is that victims have more chance of accessing information about remedies and progress of investigations if they are already activists or linked to a well organised NGOs. Some survivors may not want to become involved in survivor groups, and there are sometimes tensions between such groups. State and Public Inquiry support services and outreach should therefore be designed to reach out directly to survivors, rather than always be channelled through NGOs.

**O. Survivor rights to participation and actions to ensure legitimacy**

**a. Drafting the mandate, consultation and ratification**

The consultation exercise is welcome but is insufficient in itself to ensure legitimacy for the Inquiry. (This is the case even taken together with the 2008 consultation on Acknowledgment & Accountability, and on the NCF in 2012).

The model of cooperative mandate drafting and selection of inquiry staff used by the Greensboro TRC[[14]](#footnote-14) in the USA is a useful example, but would need modified for a national setting due to the numbers of survivors, families and NGOs in Scotland. A solution in Scotland for involving a wide enough participation without being completely unworkable would be for the Scottish Government to work with an advisory group of survivors to produce (with expert advice) draft ToRs then have them reviewed, amended and approved by a larger group representing all stakeholders.

Under this model Scottish Government representatives would make a call for establishment of an Independent Working Group (or similar) to discuss and approve the ToRs. Outreach to establish this group should harness all public & social media reaching out to any individual survivors & family members, civil society organisations, public authorities, public and private care home staff and institutional representatives, care / mental health / other relevant practitioners, SHRC, academic researchers and other parties to express interest in being or nominating a member of a working group. (The Group can also take on selection and monitoring later, if survivors are agreeable, but it is preferable to ensure that at least one monitoring group is composed entirely of survivor/families.)

**b. The selection process**

A similarly cooperative approach would involve outreach to the stakeholders (as above) to sit on an Independent Selection Committee (or the continuation of the Working Group that designed the ToR). Again the Greensboro approach is instructive. The Panel should be entirely independent, and be able to rely on expert advice.

The Independent Selection Panel would

1. Issue a call for applications for the posts of Inquiry Chair, Members / Assessors
2. Create its own guidelines for processing applications (including non- discrimination).
3. Select the Chair, Members[[15]](#footnote-15)
4. Optional: Frame criteria for hiring of a secretariat for the Inquiry (including, in addition to thematic expertise, criteria for experts in communications, operations, IT); participation on interview panels
5. Optional; With the Scottish Government, oversee background checks & provision for regular updated checks of Inquiry Chair, Members/Assessor and staff.

**c. Monitoring the operations of the Inquiry**

Clearly, many individuals and groups will be responsible for monitoring the work of the inquiry including the Justice and Safety Action Group established under Scotland’s National Action Plan for Human Rights, and the Commission itself. It is advisable that at least one body composed entirely of individual survivors and families also takes on a monitoring role. This can help mitigate the situation where the voice of activists or NGOs within the survivor community is heard disproportionately, and where inter-NGO tension can affect the input of survivors into policy and practice of redress mechanisms (these are already emerging as problems in the HIAI process and are common in many other contexts).

Reference can be made to lessons from the *Indian Residential School Survivor Committee (IRSSC) in Canada.* This type of mechanism can allow problems with the Inquiry to be identified and dealt with early, rather than risking disengagement and, in the longer term, loss of legitimacy of the body itself. It could also offer a place for staff working within the P.I. to raise any concerns they have confidentially.

One possible role of this body which is not ordinarily seen in larger commissions of inquiry (and therefore not among “best practices”) would be having input into the methodology to be used. This includes Protocols on public & private hearings; carrying out group / individual interviews; the reception, storage and analysis of documents; the safeguarding of confidentiality if requested; the authorisation by survivors of the transfer of their testimony from and to the NCF (to avoid those who wish to participate in both forums having to testify over again); the subsequent use of the Inquiry’s information archive; and information sharing rules with reparations bodies and criminal inquiries where victims authorise this. These are technical issues but of direct relevance to survivors.

SHRC, 2015.

1. Commission member Professor Kay Hampton has made a declaration of interest in relation to this consultation arising from her membership in a personal capacity on the National Confidential Forum. Accordingly, this submission should not necessarily be taken to reflect her views. [↑](#footnote-ref-1)
2. <http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf> [↑](#footnote-ref-2)
3. Most recently: SHRC submission to the Health and Sport Committee 9 April 2013 http://www.scottishhumanrights.com/resources/policysubmissions/nationalconfidentialforum [↑](#footnote-ref-3)
4. A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland February 2010; A review of international human rights law relevant to the proposed “Acknowledgement and Accountability Forum” for adult survivors of childhood abuse, February 2010 [↑](#footnote-ref-4)
5. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (consulted 13.3.2015) [↑](#footnote-ref-5)
6. Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, 18 January 2012, United Nations Human Rights Council A/HRC/19/61, See in particular paragraphs A-H pp. 15-21 Sections III/IV of this short document may be a useful reference for survivors groups and Scottish Government officials involved with the Inquiry. [↑](#footnote-ref-6)
7. SHRC submission to NCF consultation, 12 October 2012, Question 1. [↑](#footnote-ref-7)
8. Some of these elements are aimed at fulfilling mandatory legal standards and implementing non-binding guidelines. Others are included because they help create legitimacy for the institution thereby maximising its potential impact [↑](#footnote-ref-8)
9. A useful resource for guidance on Protocols for pre-testimony screening is the Investigation Division of the Office of the Prosecutor, at the ICC. (Note, not the Registry Victims and Witnesses Unit, which has a different function). [↑](#footnote-ref-9)
10. A protocol is being developed by Scottish Government and Police Scotland for cooperation between the police and NCF (see SHRC Action Plan outcome 2 p.8). [↑](#footnote-ref-10)
11. Victims and Witnesses (Scotland) Bill Schedule 1A Part 3 section 7(2)(b) and 7(3). The NCF excludes any care in a “private house” <http://www.nationalconfidentialforum.org.uk/who-is-it-for/> [↑](#footnote-ref-11)
12. It is also not clear whether some positive reactions to a separate confidential forum in Northern Ireland is due to its success in reaching its own goals, or is a just a knock on effect from the somewhat negative reaction to the conduct of the Public Inquiry. [↑](#footnote-ref-12)
13. Victims and Witnesses (Scotland) Bill Schedule 1A Part 4ZB (c), (d). [↑](#footnote-ref-13)
14. <http://www.greensborotrc.org/mandate.php> [↑](#footnote-ref-14)
15. A Scottish Minister would then be required to consult with and appoint the individual(s) selected by the Independent Selection Panel under s.4. [↑](#footnote-ref-15)