

6th September 2011, Attention Scottish Petitions Committee, Re: PE 1351

Ref: INCAS submission to the Scottish Petitions Committee dated 21st June 2011

FBGA we would like to respond to a number of issues that INCAS have raised and addressed in this letter in particular concerning TTBH, Quarriers and the current Restorative Justice SACRO process.

Timebar

FBGA, in our submission in 2006 to the Scottish Law Commission we highlighted the inequalities and inequities of the current position regarding Timebar in particular the anomaly in law whereby previous convictions which were upheld in the Scottish Criminal Courts regarding a number of Quarriers ex-employees. These particular cases were then subsequently Timebarred in the Civil Courts.

This Timebar issue was also raised in court documents submitted to the Court of Sessions in the Quarriers civil cases by claimants to no avail.

Other countries have dealt with the Timebar issues by enacting legislation for this particular group of historical abuse victim-survivors in these countries. Such countries have done this without changes to their Timebar laws.

The Scottish Law Commission in its report 2007 made no recommendations or changes to the current Timebar law. Quarriers in submissions to the SLC opposed changes or amendments to Timebar in 2006.

The Irish Model

We have yet to see a broad range of components and remedies of the Irish model introduced in Scotland with the exception of (confidentiality) in the TTBH Pilot.

We do not necessarily agree that the Irish model in its entirety is in fact the best model for Scotland to resolving the issues in relation to the Scottish historical victim-survivors including the Quarriers victim-survivors. The Irish process and model was extremely adversarial, legalistic and unduly costly due to a number of factors.

We believe that there are other more cost effective models that could be developed to resolve these issues for all victim-survivors in Scotland.

Time to be Heard –TTBH

We agree fully with INCAS that there was no proper prior consultation regarding the setting-up of TTBH with a broad spectrum of former Quarriers residents for whom the TTBH pilot process was actually intended for in this instance Quarriers former residents.

The assertion by INCAS that it is very damaging from all in-care residences that only Quarriers survivors were included in the TTBH Pilot forum. This statement is very misleading and inaccurate.

Many Quarriers former residents who were actual victims of such abuse and had convictions of their abusers upheld in the Scottish Criminal courts including those survivors who had not been through a Court Judicial process previously, engaged and participated in TTBH including those within FBGA.

FBGA also supported the TTBH pilot, albeit with reservations when it was announced in Edinburgh. We feel this position today was totally vindicated, justified and borne out by the high number of former Quarriers residents who came forward to participate in TTBH.

At the time of the TTBH announcement in Edinburgh, FBGA also publically requested that TTBH be made available and opened up for all other former residents of other past care institutions.

It would have been inconceivable and wholly irresponsible of FBGA not to take part or encourage other Quarriers former residents to do likewise in TTBH as this process was for former Quarriers residents. We also welcomed Quarriers willingness to engage with TTBH.

Despite our experiences, its limitations, lack of remedies and positive outcomes the TTBH process was initially given a cautious welcome by the majority of those former Quarriers residents who the process was intended for. TTBH was in our view conducted under the appropriate safeguards.

The responsibility for which organisation was chosen rests entirely with the Scottish Government and the TTBH Advisory Group set-up under Tom Shaw.

FBGA fully understands the reasoning why Quarriers was chosen in the 1st instance.

Restorative Justice Process (RJ) SACRO

We agree with INCAS there was no prior proper consultation regarding such a process in particular with those it was intended for, in this instance former Quarriers residents.

We appreciate and recognise fully that many victim-survivors are frustrated and angry by the slow progress to date in resolving the issues in Scotland.

While FBGA could not recommend or support the current SACRO RJ process in its current format and the Sacro process has undoubtedly highlighted and thrown up a number of issues for participants.

We are disappointed to hear of the issues raised by INCAS and the language used at this time to describe Quarriers and RJ process as our experiences and perceptions are somewhat different.

It is our personal experience and given feedback by some of those individuals who have participated in the RJ process. That the RJ Sacro processes are fully explained prior to any Quarrier victim-survivors commencing participation, including in relation to agreeing to maintain confidentiality and the prior signing of a confidential agreement document.

Some participants appear to have failed to understand the significance of signing such agreements between the parties. Some are upset and disappointed now about the impact on losing any Rights to an equitable resolution. Anyone who sought our advice and who may now be bound by confidentially were advised to seek independent advice prior to participating in RJ process and the signing any agreements or documents by FBGA.

Given some of the issues, concerns and claims raised about the RJ process. FBGA feel it would be more appropriate to have a wide ranging review and consultation at the conclusion of the current Sacro Pilot process once SACRO has published its final report with the parties.

This will enable a wider proper discussion and consultation to take place whereby issues and concerns can be highlighted especially if this RJ process is to be considered as part of NCF and rolled out nationally at a future date. In our view, if the RJ process was perhaps enhanced in its capabilities, reviewed and had tools, remedies and outcomes beneficial to victim-survivors. It may in the future be an option worth exploring for Quarriers victim survivors to resolve their issues with the organisation.

Quarriers Organisation

As a group of former residents of Quarriers at the heart of the issues including having been through the Courts and who have publicly raised many issues over the years concerning the past organisations history.

We are somewhat surprised by the language used by INCAS to describe the Quarriers organisations current position as clearly from our view point the organisation has recently demonstrated its willingness to lend assistance to TTBH and also engage in the RJ Sacro process.

FBGA has engaged directly with Quarriers and met with senior Quarriers management.

We believe that it is not the current Quarriers organisation intention or perception to downgrade the serious crime of child abuse and in fact the opposite.

The Quarriers organisation and senior management are on record of fully accepting the verdict of the Courts in these matters and also have fully co-operated with the police throughout their enquiries.

We see no conflict of interest at this junction of Quarriers part funding the RJ Pilot process. Ultimately any resolution will be between the parties, Quarriers individual victim-survivors and Quarriers.

The current Quarriers organisation is in our view attempting to resolve the many difficult issues that former residents, victim-survivors may bring through SACRO.

Our perception at this time is that Quarriers are currently constrained by the limitations of the RJ-SACRO current process. Whereby barriers remain in finding equitable beneficial resolutions for the Quarriers victim-survivors.

We understand also that there are no barriers for victim-survivors to meet and engage with past Quarriers offenders in the RJ, provided all the parties agree and such offenders are still alive.

We also do not believe that the RJ process is an attempt by the current Quarriers organisation to engineer a diversion from prosecution. All those former residents of Quarriers alleging serious crimes are fully aware that they can report such issues to the police for investigation.

The perception that Quarriers has opted for the RJ process because it is relatively cheap and confidential and protects Quarriers from the full glare of the Scottish public this statement has to have minimal value at this stage.

Quarriers has as an organisation been in the media & public glare for many many years due to the high number of ex-employees convicted whereby the Scottish public is fully aware of what occurred in the past organisation.

It is abundantly clear that the Quarriers organisation still has to resolve the many outstanding issues that it has with its former residents abused in it past care and those alleging such abuse.

FBGA believe that it is only by enabling the implementation of a proper process and entering into genuine constructive, meaningful dialogue and engagement with Quarriers and other interested parties with a direct interest in the outcomes.

That only engaging in such processes, it should be possible to find common ground, equitable resolutions and solutions to these issues. If there is the political will and backing of the Scottish Government.

Likewise we would encourage all organisations with similar issues to engage directly with there victim-survivors and victim-survivors to do likewise.

We welcome the Scottish Governments commitment to provide additional funding to ICSSS to enable this service to continue to deliver a much needed valuable service for many victim-survivors in Scotland.

FBGA along with other victim-survivors, continue to call for the full implementation of the SHRC recommendations in relation to these historical abuse issues affecting Scotland.

Jennie Bristow, FBGA Secretary