

# Historical Child Abuse Inquiry Scotland

PO Box 24085, Edinburgh, EH7 9EA

Email: [information@childabuseinquiry.scot](mailto:information@childabuseinquiry.scot)

22nd October 2015

to: Neil Hunter, Principal Reporter, and Scottish Children's Reporter Administration  
([neil.hunter@scra.gsi.gov.uk](mailto:neil.hunter@scra.gsi.gov.uk))

cc: Gillian Henderson, Scottish Children's Reporter Administration  
([Gillian.henderson@scra.gsi.gov.uk](mailto:Gillian.henderson@scra.gsi.gov.uk))

Dear Mr Hunter

## **PRESERVATION OF RECORDS RELEVANT TO THE INQUIRY**

The Scottish Historical Child Abuse Inquiry was formally established on 1<sup>st</sup> October 2015. The Inquiry is in the process of drafting Protocols for handling the documents it will recover and retain for its work. Data Protection issues will be outlined in detail in a forthcoming Protocol, but meantime it might be helpful to note that there are circumstances where organisations can and should retain personal data which might otherwise require to be destroyed. Please take advice on this if necessary.

At this early stage we are not in a position to identify precisely which records we will wish to evaluate. I have taken a careful decision not to ask for every possible document, as I am mindful of the expense involved. This letter is therefore **NOT** a formal request to produce documents under your control, in terms of s21 of the Inquiries Act 2005.

However, I am writing to all organisations which I believe are likely to be relevant to the Inquiry **to ask that you take immediate steps to preserve records which may be sought by this Inquiry at a later date.**

**I would also ask you to consider setting up your own process for identifying and organising the documents which you think the Inquiry may need.**

A copy of the Inquiry's Terms of Reference is attached to this letter.

As you will see, the Inquiry's remit covers a time period "within living memory", up until such date as I may determine, but no later than 17 December 2014. Provisionally, I ask you to treat the timescale as starting in 1945, although no formal decision has been taken about this.

You will note in the definition of "children in care" the many different types of residential care used for children, spanning the decades which we will consider. It may be that your organisation holds records about more than one type of residential care establishment.

Please also consider whether your organisation (or its predecessors) holds records relating to any legal responsibilities it had for children in care over the relevant decades, whether or not those records mention individual children by name.

You will note that the definition of “abuse” includes both physical and sexual abuse.

While it is up to each organisation to make its own preparations for assisting the Inquiry, I would suggest that you might wish to consider:

- the identification of any records which might be of interest to the Inquiry;
- the creation of an audit trail showing the steps taken to identify and protect relevant records (including the search terms used in any electronic archives or registers);
- the protection of potentially relevant records, to ensure they are not destroyed before the Inquiry has had the opportunity to consider them;
- the indexing and cataloguing of relevant records, to ensure greater accessibility in due course;
- the identification of any gaps in the relevant records held by your organisation.

If you wish to ask questions, or make suggestions, please contact the following members of the Inquiry team:

Felicity Cullen, Deputy Solicitor, [Felicity.cullen@childabuseinquiry.scot](mailto:Felicity.cullen@childabuseinquiry.scot)

Neil MacFarlane, Document Manager, [Neil.macfarlane@childabuseinquiry.scot](mailto:Neil.macfarlane@childabuseinquiry.scot)

The Inquiry will contact you later, formally, when it is ready to request the production of particular records from your organisation. I hope that all records will be provided voluntarily, but you should be aware that the Inquiry has the legal power to compel the production of documents in the custody or control of your organisation.

I hope that this letter will enable your organisation to respond promptly to a formal request for documents in due course.

I thank you and your staff in advance for your assistance with this difficult task.

Yours sincerely

Ms Susan O'Brien QC  
Chair of the Inquiry

## **Terms of Reference**

1. To investigate the nature and extent of abuse of children whilst in care in Scotland, during the relevant time frame.
2. 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.
3. To create a national public record and commentary on abuse of children in care in Scotland during the relevant time frame.
4. To examine how abuse affected and still affects these victims in the long term, and how in turn it affects their families.
5. 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.
6. 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.
7. 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.
8. 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.

### **Definitions:**

1. 'Child' means a person under the age of 18.
2. For the purpose of this Inquiry, "Children in Care" includes children 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. 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.

3. "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.