

**A REPORT ON
CERTAIN MATTERS BETWEEN 2002 AND 2014
AS REQUIRED BY THE SCOTTISH CHILD ABUSE INQUIRY**

**SCOTTISH GOVERNMENT RESPONSE UNIT
1ST SEPTEMBER 2017**

PREFACE

1. This report has been prepared by the Scottish Government in its capacity as a core participant to meet the requirements of a notice made under section 21 of the Inquiries Act 2005, which was served by the Scottish Child Abuse Inquiry on the Scottish Government on 18th July 2017. A copy of the relevant requirements for this report, as set out in that notice, are contained in the Annex to this report.

2. Briefly, this report is required to cover the following matters—
 - the response of the Scottish Government to the written and oral evidence of Helen Holland, David Whelan and Christopher Daly presented to the Inquiry during the first part of Phase 1 of the public hearings;

 - the reasons why the requests for a public inquiry made at various times between 2002 and 2014 were refused;

 - why, on 15th April 2008, the Public Petitions Committee closed the petition submitted in August 2002;

 - the reasons why the then First Minister offered a public apology in December 2004 but did not also announce the establishment of a public inquiry;

 - the reasons why the specific terms of the public apology were determined upon;

 - the reasons for the various decisions made and steps taken in respect of the abuse of children in care (including in respect of requests made on behalf of survivors of abuse) by the Scottish

Executive/Government between August 2002 and the announcement of the inquiry in December 2014;

- the reasons for announcing the establishment of this Inquiry 12 years after the petition submitted by Christopher Daly, including as explanation as to why the government (whether based in London or in Edinburgh) considered an inquiry appropriate in 2014 but not at any earlier stage, and whether the possibility of establishing an inquiry was discussed with any First Minister other than Jack McConnell.
3. In relation to the second last bullet point above, the notice further provides that there should be an explanation for the particular timing of each of the steps, and of the particular processes adopted when taking those steps (including the approach to engagement with survivor groups and campaigners in relation to such steps). It is also specified that: “the explanation should include, but not be limited to, the reasons for the decision to restrict access to “Time To Be Heard” to former Quarriers’ residents only, for the decision not to include any element of accountability, and for the decision to make the process wholly confidential”.
4. Given the potential breadth of this second last bullet point, the Scottish Government sought clarification from the Solicitors to the Inquiry as to what should be included in the report. The Solicitors to the Inquiry directed our consideration towards the steps set out at paragraphs 1.1.3 to 1.1.9 of the *Scoping Project on Children In Care in Scotland, 1930 – 2005*, being actions and interventions which followed on from the apology given by the First Minister on 1 December 2004. Accordingly, in addressing the second last bullet point, this report focuses on the following matters—
- the launching of the National Strategy for Survivors of Childhood Abuse in 2005;

- the setting up of Tom Shaw's review of regulatory requirements over the period 1950 to 1995;
 - the funding of In Care Survivors Service Scotland;
 - the commissioning of the Keeper of the Records to review public records legislation;
 - the national review of current residential child care, undertaken by the National Residential Child Care Initiative;
 - the consultation on the proposed Acknowledgement and Accountability Forum, and its evolution into the Time to be Heard Pilot Forum.
5. The Scottish Government has submitted to the Inquiry documentation which provides the basis of this report.
6. It has been a challenge to identify, gather, review, analyse and then narrate the information contained in the documents which explain the matters required to be covered by this report. The search for relevant material has been extensive and thousands of government documents have been reviewed. Not every decision or step made by government was or is documented in the same way or to the same degree. The challenges involved in searching government records were commented on in the Historical Abuse Systematic Review led by Tom Shaw (published 2007) at Chapter 5 of Appendix 3. Furthermore, the time which can be spent on searching for records to produce this particular report is constrained, naturally, by the importance of meeting the Inquiry's deadline for its submission; and there is accordingly, a balance to be struck in the level of detail which can be provided given the breadth of the matters covered by this report. Should omissions in this report be identified or more information be sought on particular aspects of the matters it covers, the Scottish

Government would be happy to supply additional information. The Scottish Government has endeavoured to provide a report which is as open, full and as helpful as possible to Helen Holland, David Whelan, Christopher Daly, the Inquiry and those who may read it.

**RESPONSE OF THE SCOTTISH GOVERNMENT TO THE EVIDENCE OF
HELEN HOLLAND, DAVID WHELAN AND CHRIS DALY**

7. The Scottish Government takes very seriously the evidence of Helen Holland, David Whelan and Christopher Daly. The Scottish Government has listened carefully to the evidence they have given to the Inquiry on their own behalf and on behalf of, and in relation to, survivor groups.
8. The Scottish Government acknowledged before the Inquiry, and continues to acknowledge, the eloquence and care with which those witnesses spoke to the Inquiry and described their own experiences and those of other survivors.
9. The Scottish Government is aware of the concerns raised by those witnesses about survivors' dealings with government where those dealings fell far short of what those survivors were entitled to expect. The Scottish Government will provide the Inquiry with information about the steps it has taken to investigate and apologise for failings by government in its dealings with survivors. That includes, most recently, an investigation into complaints made by survivors which reported in December 2016¹.
10. The Scottish Government understands that views vary among survivors about the usefulness and adequacy of steps that have been taken in the past to provide both acknowledgement and accountability to survivors.

¹<http://www.gov.scot/Topics/Health/Support-Social-Care/Support/Survivors-Sexual-Abuse/InvestigationfindingsDec2016>.

11. Reflecting on the evidence in this report, it appears that throughout the period from 2002 to 2014 there has been a growing awareness in society and by government of the prevalence of child abuse and the nature of that abuse, which includes neglect and emotional as well as physical abuse, and of the issues which matter to those who experienced abuse in care. Important pieces of work, such as the Shaw review, and measures such as the national strategy to support survivors (which involves close liaison with survivors and their representatives) have contributed to that increased understanding, and continue to do so. Whilst there were in earlier years doubts by some, including in government, about the efficacy of an inquiry, the measures introduced since 2004 have helped many understand the issues better. The establishment of an independent Inquiry is an important step in achieving acknowledgement and accountability, and learning from the mistakes of the past. The Scottish Government repeats here its acknowledgement of the crucial role played by those who have experienced abuse in raising awareness and bringing about change over the years. Whilst there has been progress since 2004, the Scottish Government is nevertheless committed to addressing the issues that remain.
12. This report, in accordance with the requirements of the Inquiry, sets out to explain by reference to government records and public statements what happened in the past in relation to the matters set out in the Preface above. These matters were raised by Helen Holland, David Whelan and Christopher Daly in their evidence, and this report is intended to provide them with an open, evidence-based, response. The Scottish Government will continue to listen to their views, and to the views of all those who have experienced abuse as children in care, on these and all other matters. The Scottish Government will also continue to participate fully in the Inquiry process, of which the submission of this report forms part, and which the independent Inquiry will consider along with the accompanying documentation. The Scottish Government is committed to addressing all the recommendations to be made by the Inquiry.

REASONS FOR NOT ESTABLISHING A PUBLIC INQUIRY, 2004 – 2014

13. On 8th October 2002 the Petitions Committee of the Scottish Parliament considered petition PE535 for the first time. It agreed to write to both the Scottish Executive and the Parliament's Cross-Party Working Group on Childhood Sexual Abuse, seeking their comments in relation to the issues raised in the petition. The clerk to the Committee wrote to the Executive the following day, seeking the Executive's comments generally but also in particular requesting details of its position on the petitioner's calls for both an apology to victims of child abuse in the circumstances described and for the initiation of a related inquiry².
14. On 13th November 2002 an official sent briefing³ to the then Minister for Education and Young People, Cathy Jamieson, seeking her agreement to a draft Memorandum to the Public Petitions Committee on petition PE535. That draft of the Memorandum states that "[t]he Executive has no plans to hold a public inquiry [which would then have taken place under the Tribunals of Inquiry (Evidence) Act 1921] into allegations of institutional child abuse at present". The briefing advises the Minister of the terms of the petition and of the letter from the Committee, and that the draft Memorandum is to be returned to the Committee by 15th November. It provides the Minister with background on a number of related issues, including the Commission to Inquire into Child Abuse in the Republic of Ireland, complaints of child abuse in residential institutions in Scotland (some of which had resulted in convictions), requests to the Executive to amend the law on prescription and limitation and to provide a compensation fund for victims, and the extent of the Scottish Ministers' current involvement in court actions.
15. Two main reasons are given in the briefing for not instituting a public inquiry at the time, namely that: (i) there was not currently evidence of systemic widespread abuse throughout residential establishments in Scotland such as

² Letter from Public Petitions Committee dated 8th October 2002.

³ Briefing for Minister for Education and Young People dated 13th November 2002.

appears to have existed elsewhere; and (ii) the need for improved child protection was already being addressed by the Executive.

16. The briefing concludes by stating that “[t]he number of cases of institutional abuse that are coming to light are obviously a matter of concern. At present the extent of abuse in the past is not clear but our impression is that widespread, systemic abuse of child [*sic*] in institutions was less prevalent in Scotland than appears to have been the case elsewhere. For that reason we think that there is insufficient evidence to warrant a full public inquiry”.
17. The Minister’s private secretary responded on 13th November 2002⁴ in the following terms: “Ms Jamieson has seen your minute of today on the above. She has commented that she is not happy with the tone of the response. Nor is she convinced that we can resist doing something on this. There are separate issues relating to the abuse and adult survivors and their need to have action taken, and ‘justice’ issues relating to legalities etc. It will be hard to justify that Scotland is/was somehow different – practice was not necessarily better here. The Minister would like to look in more detail at the action taken in Ireland and elsewhere”.
18. Further briefing was provided on 14th November 2002⁵. It advised that the Memorandum had been revised to keep open the possibility of an inquiry and to offer expressions of regret at past child abuse. It notes that the Minister was not content with the advice of 13th November, and that in particular she was “not convinced that we could resist doing something about this; did not support the argument that there is not, at this point, [*sic*] sufficient evidence to justify an inquiry; and indicated that we should make a very clear statement that abuse was and is wrong”. The briefing sets out a number of disadvantages to holding an inquiry, and offers two options, namely: (i) to turn down the request at this point in time as recommended in the original advice; or (ii) to indicate that the Executive will consider the

⁴ E-mail on behalf of Minister for Education and Young People sent in response.

⁵ Briefing for Minister for Education and Young People dated 14th November 2002.

matter further. The briefing contains an Annex entitled "Situation in the Republic of Ireland".

19. The revised Memorandum is also included with the briefing of 14th November. The relevant wording regarding the possibility of an inquiry in the Memorandum now read: "The Scottish Executive will consider whether an inquiry of the sort requested is required in the light of recent and current criminal and civil cases. The Scottish Executive will also consider the experiences of institutional child abuse in other countries. [OR The Scottish Executive does not consider that an inquiry into these cases is needed at the moment but will be following progress in the civil cases currently being brought against a number of institutions]".
20. The Minister's private secretary confirmed on 18th November 2002⁶ that the Minister had indicated that she is "content with the revised response which indicates that the Executive will consider the matter further. The Minister commented that this will continue to be an issue and we should look at what is happening in Ireland and consider what action we need to take in Scotland".
21. A Memorandum in similar terms was sent to the Committee on 17th February 2003. The wording as regards an inquiry now read: "[t]he Executive is considering whether an inquiry, or some other forum, should be established to look into cases of abuse in institutions in Scotland, having regard to cases that have come to light in recent years, and what other role the Executive might take in addressing these cases. The Executive will also consider the experiences of institutional child abuse in other countries"⁷.
22. At its meeting on 25th March 2003, the Committee considered the responses received from both the Cross-Party Group and the Executive. It noted that the Executive was considering conducting some form of inquiry into this

⁶ E-mail on behalf of Minister for Education and Young People dated 18th November 2002.

⁷ Memorandum sent by letter dated 17 February 2003 to Public Petitions Committee.

matter and agreed to ask the Executive to provide firm details and a proposed timetable for such an inquiry early in the new session⁸.

23. On 20 May 2004 an official provided briefing⁹ to the Minister for Education and Young People entitled “Allegations of Abuse at Residential Schools”. This states that “[i]n autumn last year Ministers considered various options for dealing with allegations of historical abuse at List D schools. Ministers agreed that a full inquiry or truth and reconciliation commission was not justified”. The briefing also notes that in December the First Minister had asked whether another option – that of appointing an independent expert – be considered. Attached to the briefing are draft responses to letters which had been received from a number of MSPs (and a MP) in relation to allegations of abuse at children’s homes and List D schools, as well as a reply to the Committee. The draft responses are said to “reflect the latest position”. They provide that “[w]e have considered a range of options for looking into these cases, from a full public inquiry to an investigation by an independent expert. At this stage we have concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place”.
24. The drafts then state that, instead, the Executive will make public information held by it on List D schools and other establishments, and will look at the services available to adult survivors of child abuse.
25. The Committee considered petition PE535 again at its meeting on 29th June 2004. The Committee stated that it was yet to receive a response from either Peter Peacock or the First Minister. As a means of dealing with the Executive’s “tardiness”, the Committee considered involving the Presiding Officer. However, the Committee decided to hold that option in reserve and instead to invite the Minister for Education and Young People to give

⁸<http://archive.scottish.parliament.uk/business/committees/historic/petitions/or-03/pu03-0702.htm#Col3053>.

⁹Briefing for Minister for Education and Young People dated 20 May 2004.

evidence on the issues raised in the petition at the Committee's first meeting after summer recess.

26. A written response of the Executive was submitted to the Committee in June 2004; and it sets out the Executive's reasoning for not establishing an inquiry in response to petition PE535¹⁰. As this reasoning is reflected in the fuller statement given by Peter Peacock to the Committee on 29th September 2004, which is set out below, it is not repeated in this paragraph.
27. In the oral evidence given by Peter Peacock to the Petitions Committee on 29th September 2004, the Minister states that he "will address the substance of the petition and the Executive's response to it. The response that I sent to the committee in June sets out our reasoning, but I am keen to give the committee a better feel for what lay behind our decision". That evidence is quoted from in the following paragraphs¹¹.
28. In relation to the Executive's slow response, the Minister said: "I make very clear that I believe that the Committee was entirely justified in complaining about the tardiness that the Executive displayed in responding to its requests for information. There is no reasonable excuse or justification for the delays, and I do not seek to proffer any. The delays should simply not have occurred and I very much regret that they did. We have taken actions within the department to ensure that such delays never happen again"¹². When questioned further, the Minister said "I am not sure about the benefit of going into the fine detail of what went wrong in my department. All I will say is that there were breakdowns in communication and inappropriate allocations of time to task, given the circumstances"¹³.
29. The Minister acknowledged that: "there is a danger that to decline the request for an inquiry could be interpreted as the state trying to cover

¹⁰ Letter to Public Petitions Committee dated June 2004.

¹¹ The full statement is available here:

<http://archive.scottish.parliament.uk/business/committees/petitions/or-04/pu04-1402.htm#Col1045>.

¹² Public Petitions Committee Official Report, 29th September 2004, Cols 1045 and 1046.

¹³ As above, Col 1055.

something up or not acknowledge that things happened to some young people who were in residential care that should not have happened to them”.

30. He states that “[t]he Executive is very clear, not least from the evidence of recent criminal convictions, that some of the things that happened to young people in residential settings were gross and truly appalling. There can be few things worse for a vulnerable young person, I imagine, than to be taken from a family setting, to be placed in a new and unfamiliar setting and then to experience treatment that the courts have now found to be unacceptable and criminal”.
31. The Minister goes on to say that—

“[i]t falls to this generation of Ministers to acknowledge that, where wrongs occurred in the past, they were unacceptable. We share with others the profound sorrow for the damage that has been experienced by individuals ... However, it also falls to this generation of Ministers to decide what it is right to do today to address the outstanding concerns of many individuals. Against the background of Ministers' clear recognition that, for several young people, what happened to them was unacceptable, we considered whether to hold an inquiry. One of the purposes of seeking an inquiry might be to cause Ministers to recognise publicly that the regimes in some residential care homes in the past occasionally resulted in some young people being treated in an unacceptable way. It is unnecessary to have an inquiry, with all the time and expense to individuals and the complex legal and evidential intricacy we know about from the experience in Ireland, to get the acknowledgement we give today, that some young people were wronged.

We considered further reasons for holding an inquiry including whether an inquiry would lead to policy changes that would further reduce the risks to children who currently live in residential care, and lead to more and high-quality support to adult survivors of past abuse. We also

considered the impact of any inquiry on survivors' access to their legal rights and remedies. We identified several key questions, the answers to which would enable us to decide whether an inquiry was the best way forward. Would an inquiry prevent future abuse? Would it be in the public interest? Would it help to meet the needs of survivors today?

In order to come to a conclusion on those questions, officials were asked to undertake several pieces of work. They were to examine current child protection measures in residential establishments; to consider the experiences in other countries where, sadly, similar events had occurred and to consider whether their processes would be suitable and helpful in Scotland; and to consider the experience of other organisations that were dealing with the aftermath of abuse in their homes. We have subsequently studied the work of the short-life working group that was set up to examine services for adult survivors of childhood sex abuse.

In recent meetings with the petitioner, my officials have shared what happened by way of background investigations and I know from correspondence that he understands that those matters were looked into. We have given careful consideration to the outcome of the findings from those tasks and weighed the evidence from each. As the Committee will be aware, a great deal has changed recently and is still changing. That impacts on the consideration of the issues that I have identified”.

32. The Minister then sets out the general policy approaches and initiatives that had already been adopted in the area of child protection: following inquiries and reports into residential establishments, steps have been taken to improve the protection that is offered to vulnerable children; since 1995, HM Inspectorate of Education has carried out regular care and welfare inspections of boarding schools and hostels; the Scottish Commission for the Regulation of Care also regulates and inspects boarding provision in

independent special schools and will soon regulate all boarding provision and school hostels; from April 2002, the Commission has also regulated and inspected care homes for children; the Protection of Children (Scotland) Act 2003 is being implemented to provide a list of persons who are unsuitable to work with children; there are now enhanced disclosure checks on those who wish to work with children; an extensive child protection reform programme is being undertaken, following the publication of *It's Everyone's Job to Make Sure I'm Alright* in November 2002; in March 2004, *Protecting Children and Young People: the Charter* (together with an accompanying framework for standards) was published, setting out what can be expected from agencies that are tasked with the protection of children; Parliament created the position of Children's Commissioner; and the Executive funds Who Cares? Scotland (to provide independent advocacy services for children in care) and Childline.

33. The Minister notes that there were indications that Scotland was amongst the leaders of the world in carrying out such reforms. He said that “[a]gainst that background, and with my commitment to do whatever more is necessary and to follow international practice if it advances child protection, it is difficult to conclude that an inquiry would be the cause of policy advances that we are not already making or will not be prepared to make if we see that they would add to what we are doing. Therefore, we do not see an inquiry in itself advancing those matters”. He goes on to say that: “[w]e believe that the work that I have described will provide significant reassurances when it is taken together with the police’s work in investigating, and potentially bringing charges against, individuals when criminal acts are alleged”.
34. Various public interests in having an inquiry were then considered by the Minister. He explains that: “[w]e considered how an inquiry might help to meet the remaining points regarding the needs of survivors. Ministers are anxious to do the right thing by the survivors of past abuse”. He sets out a number of measures that are being taken or will be taken specifically for survivors: the short-life working group established by Malcolm Chisholm to consider the detail of what is needed for services for adult survivors of

childhood sexual abuse; in the context of the large number of civil claims then before the courts, the programme of making public the files held by the Executive on List D schools and other residential establishments; the request by the Executive for the Scottish Law Commission to review and report on the law of limitation relating to personal injury claims; and, adding that he “has an open mind on what more we can do”, he refers to recent discussions with In Care Abuse Survivors (“INCAS”) and his willingness to make resources available to support survivors who have a need to express their feelings and emotions.

35. The Minister’s conclusion was that “an inquiry would not add to our current actions and considerations for the reasons that I set out: because of our recognition that wrongs were committed in respect of some young people; because we are further reforming our child protection measures; because we believe that our actions meet the public interest considerations that we have examined; because we will do more for survivors and continue dialogue with them; and because an inquiry could have unintended consequences” (because it could be perceived as an admission that there are major issues still to be resolved, and it might lead to “an unfair and damaging loss of confidence in existing provision”).
36. In response to a question from John Scott to the effect that the public might be reassured by an independent inquiry, the Minister answered: “I completely understand that people would prefer a public inquiry for the reasons set out in the petition. I acknowledge where they are coming from. However, I have analysed the position that the government took and how we examined the issue. We took the matter seriously, considered the issues and concluded that an inquiry would not cause things to happen that are not already happening or that we can make happen now. I have tried to acknowledge today that we completely recognise that people have been wronged in the past and that we need to redouble our efforts, but we do not need an inquiry to do that. That is why we have chosen the route that we have chosen, which is a different route from the one the petitioner and others

would much rather chose”; and he states that “we want to move forward on a range of issues”.

37. Later in the session the Minister refers to the possible (negative) impact that holding an inquiry could have on those seeking a remedy through the courts: “a number of individuals might also be advised not to pursue individual claims because of the imminence of an inquiry. Given what we have seen in other areas, we could be talking about many years before a person could make a claim, so potential issues arise in relation to that. There are also issues about burden of proof and evidence in relation to inquiries. Given the nature of some of the concerns in this case, an inquiry would become a legalistic process”.
38. At the conclusion of the session, the Committee considered sending the petition to the First Minister with a recommendation that a public inquiry should be held, but ultimately decided that there should be a debate in Parliament instead: “We would have to get the form of the words right, but the purpose of the motion would be to get Parliament to discuss the petition”.
39. At the plenary session of the Scottish Parliament on 1st December 2004, following the statement given by the First Minister (see paragraph 74 below), there was a debate on the petition¹⁴. The Presiding Officer noted that a number of civil actions were underway in the courts, and that nothing that members said should refer to any particular case or individual circumstance that is, or might come, before the courts.
40. Michael McMahon moved that the Parliament should note petition PE535. He pointed out that the Committee had not taken a view on whether or not to recommend that Parliament support the petition’s aims.
41. During the debate Peter Peacock updated the Parliament on issues referred to in the evidence he gave on 29th September: “I made it clear to the

¹⁴ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&i=34110>.

committee that we were working to open all files that are relevant to people seeking insights into what has happened in residential establishments in which they lived. I confirm today that the detailed work that we have been doing is now well advanced”; “I confirm that I will establish another short life working group to examine the issues, which will involve individuals who have experienced abuse”; “I said to the Public Petitions Committee that Cathy Jamieson had written to the Scottish Law Commission to invite it to review the laws on limitation. I now inform Parliament that the Commission will prepare and publish in the second half of next year a paper for public consultation on limitation, and that it will report to Ministers in 2006”; “INCAS has submitted an application to the Executive to improve counselling services for survivors of in-care abuse ... I have told INCAS that I am prepared to provide the necessary financial support to help develop such services further”; “One issue that keeps arising in discussions with survivors is their need to understand more fully why the abuse that they experienced was – as they would put it – allowed to happen ... The issue is difficult, and I am conscious that a number of court actions are currently on-going ... I can say to Parliament that I intend to appoint someone with experience to analyse independently the regulatory requirements of the time, the systems that were in place to monitor operation of those requirements and, in general, to analyse how that monitoring was carried out in practice”. In response to a question from Dr Sylvia Jackson on a lack of training and checks for owners and staff in private residential establishments, the Minister responded that he “will happily look into the issues”.

42. The Minister went on to say: “[w]hat I have suggested is a positive way forward that will address all outstanding concerns”; “[i]n what I have said today, together with what the First Minister said on behalf of the people of Scotland, we offer for the first time comprehensive plans to address what survivors have asked of the Executive and Parliament. By following the proposals through, we will be able to shed more light on the national shame that in-care abuse represents. I believe that the plans will immeasurably improve the services that are available to survivors”.

43. During the debate, in the context of noting that there were various views on appropriate future action, Karen Gillon MSP stated that: “[t]here are strong views on all sides amongst the survivors. Some want a full public inquiry, others do not”.
44. Towards the end of the debate, Peter Peacock stated: “I stress that we are picking our way through a legal minefield ... However, I am determined to get to the other side of that minefield, to do so in such a way that I come through unscathed – I mean that in the best sense – and to address the problems without compromising the legal entitlements that people have in the system”.
45. By way of summary, the Minister stated: “Lord James raised the question of an independent inquiry. I respect the fact that the contributions from Rosie Kane, Campbell Martin, Linda Fabiani, Kenny MacAskill and others indicated that some people are certain that a public inquiry would be the right way forward”, but he “had to say that the debate demonstrated the degree of uncertainty about that. Nicola Sturgeon, Patrick Harvie, Fiona Hyslop, Robert Brown, Janis Hughes, Scott Barrie, Bill Aitken, Kenny MacAskill and Karen Gillon pointed to reservations about the outcome of an inquiry”.
46. The Minister continued his summing up: “I will run through the points that Lord James made about what an independent inquiry would do. He said that it might allow the proper recognition of what had happened; let lessons from the past be understood, to inform today's practice; ensure high-quality support for survivors; ensure access to rights and remedies; and address the question of a time bar. Others said that an inquiry might give rise to an apology, and Scott Barrie said that it would allow us to address why abuse was allowed to happen. However, I addressed each of those matters today in a way that genuinely takes them forward. If we can do that work without the complexity of a public inquiry, given the legalisation of the process that might arise and the long time that that would take, it seems to me that that is the right course of action. I welcome the Parliament's qualified support on

that. I fully expect members to continue to scrutinise the process, me and what I do, and I finish in that spirit”.

47. It should be noted that a question and answer sheet¹⁵ prepared for the statement given on 29th September 2004 contains the question, “did you consult with survivors in making this decision” (i.e. not to hold an inquiry)? The answer is as follows: “[o]fficials had contact with survivors, including meeting representatives of the In Care Abuse Survivors group (INCAS) and conversations with individuals. We also had letters from survivors. From these contacts it was clear that different survivors had different views. Some favoured an inquiry. Others had other priorities, and feared an inquiry would divert time and resources from [sic] developing services for survivors”.
48. In the period following the refusal of a public inquiry in 2004, calls for an inquiry came to particular prominence a number of times in response to certain events (detailed below). Furthermore, some survivors continued to advocate for an inquiry throughout the timeframe considered by this report; for example, a note of a meeting between Scottish Executive officials and certain survivors on 20th November 2006 states that: “[t]he group expressed their strong feelings of disappointment that the Scottish Executive was maintaining its position that there would not be an Inquiry”. The note goes on to record that whilst officials “respected these views, Ministers had decided against holding an Inquiry. One of the main problems in setting up an inquiry is that it would hold up existing court cases which have probably already taken years to come to court”¹⁶.
49. One event which brought calls for an inquiry to prominence was the publication of Tom Shaw’s *Historical Abuse Systemic Review: Residential Schools and Children’s Homes in Scotland 1950 to 1995*¹⁷. An official commented: “[i]t is inevitable that the strongest criticism of the Review will come from those survivors who want a public inquiry. Mr Shaw has engaged

¹⁵ This is briefing prepared for the Minister in advance of the committee appearance, setting out “lines to take” in relation to anticipated questions.

¹⁶ Note of meeting on 20th November 2006.

¹⁷ <http://www.gov.scot/Publications/2007/11/20104729/27>.

with survivors and a chapter in the review gives voice to their experiences. However, we have always known that this would not be sufficient for some. Some MSPs are likely to echo this view”¹⁸.

50. A speaking note prepared to accompany a SCANCE (“Scottish Cabinet Analysis of News and Current Events”) note in relation to the publication of the Shaw review includes the following lines: “[w]e can anticipate that some survivors will continue to call for an Inquiry and they will remind some of us of our earlier support. Given the major developments which have taken place since 2004, I would need considerable persuasion that a Public Inquiry would contribute helpfully to their and our understanding of the issues. I would prefer to focus on the improvements we want to achieve for survivors”¹⁹.
51. Further advice prepared by officials in relation to the publication of the Shaw review contains the following (under a heading “If Pressed on calls for a Public Inquiry”): “[w]e need to consider the Review carefully before making any decisions on the value of a Public Inquiry. I would also not want to put any brake on the development and improvement of services for adult survivors”²⁰.
52. The Scottish Law Commission’s *Report on Personal Injury Actions: Limitation and Prescribed Claims* was published in late 2007. Ministers agreed that the recommendations in both this and the Shaw review, together with wider developments on the SurvivorScotland strategy and developments planned by the National Archives of Scotland, required to be announced in Parliament²¹. The Minister for Children and Early Years, Adam Ingram, made a statement on 7 February 2008²²—

¹⁸ Submission entitled “Submission of Historic Abuse Systemic Review” dated 16 November 2007.

¹⁹ “Speaking Note to accompany SCANCE note of 16 November 2007”.

²⁰ Document entitled “Publication of Historic Abuse Systemic Review”.

²¹ “SCANCE” paper (not dated).

²² <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&i=39672>.

“My statement today sets out the progress that we are making to improve the support that is available for survivors of in-care and institutional abuse. I make it clear that this statement is made on behalf of the whole Scottish Government. My Ministerial colleagues and I cover the range of survivors' interests and, collectively, we are determined to work closely with our partners to achieve real change.

Survivors' commitment and action led, in 2004, to the then First Minister's apology for the abuse committed. He put in place a raft of work to get to the heart of how that abuse happened and to help us understand how we could prevent abuse on such a scale from recurring. One important area of work is the review that was led by independent expert Tom Shaw and which published, in November 2007, the document 'Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995'.

The Scottish Government is pleased to accept the recommendations of the Shaw review in full. There are a few differences in the detail of some of our proposals for taking forward the recommendations, but there is nothing that will affect their substance or intent.

In relation to Shaw's recommendation on the introduction of support services for in-care abuse survivors, I am pleased to inform Parliament of recent developments. Within the context of SurvivorScotland, the national strategy for adult survivors of childhood sexual abuse, which is being led by the Minister for Public Health, we intend to improve the well-being of, and services for, all survivors and to raise public awareness of the existence and impact of all forms of abuse.

The reference group that is taking forward SurvivorScotland has recognised the specific needs of in-care abuse survivors by establishing a sub-group, which is chaired by Gary Westwater and is made up of survivors and other stakeholders. That group concluded its work this week with proposals for a national service framework. It

wants a national hub that provides advice and information and is able to link up with the local services that in-care survivors need, which should include advocacy, mediation and counselling services.

I am persuaded in principle that that is the way forward. I have made available central funding for the next three years and, subject to the comments of the SurvivorScotland reference group, I expect to be able to move ahead quickly with the procurement of this national service.

More widely, the Scottish Government has listened to survivors and their explanations of the importance of society acknowledging the suffering that they have experienced. At the moment, the courts are the only avenue by which survivors can receive such public acknowledgement. Of course, it is essential that abusers are brought to justice, but often that route alone will not meet survivors' needs.

I am pleased to inform Parliament that we have been actively scoping the adaptation of the principles of a truth and reconciliation model. We are committed to that. We are considering good practice examples for establishing a forum to give survivors the chance to speak about their experiences and to help them come to terms with the past. That will provide an invaluable opportunity to establish the facts, learn from the suffering and use the experience to help us protect and provide for children in the future.

I assure Parliament that, as the process develops, there will be further consultation with survivors of abuse, organisations that provide them with support and information and other providers of care that share with Government responsibility for acknowledging and supporting survivors.

In that context, I turn now to the Scottish Law Commission report 'Personal Injury Actions: Limitation and Prescribed Claims', which was published on 5 December. The time bar is an issue in cases involving survivors of in-care and institutional abuse. That has recently been

brought directly to members' attention through a letter from a survivor. My Ministerial colleagues and I have every sympathy for survivors of abuse. However, the Scottish Government accepts the Law Commission's recommendations that prescribed claims should not be revived. The events in question took place before September 1964, and any attempt to legislate to revive those very old cases would run into very serious difficulties in relation to retrospection and European convention on human rights considerations.

The Law Commission's report does not make specific recommendations for survivors of abuse in relation to the limitation period for raising a claim, which is currently three years. It recommends the continuation of non-time-limited judicial discretion for cases outwith that period.

We genuinely do not believe that a change in the law to give abuse survivors a right to take any case to court would actually right the wrong in question and provide positive outcomes for survivors. Changing the law is not the way to tackle this issue. The Government's focus is the development of the forum that I have just described”.

53. A speaking note to accompany a SCANCE note on the statement provides: “[t]he key message of the statement is that we can no longer continue to say that we will learn the lessons of various inquiries. We must now demonstrate commitment to action ... Given the major developments which have taken place and are planned, this statement will confirm that our approach now is to move forward and focus on the improvements which need to be achieved”²³.
54. Following the decision of the House of Lords in *Bowden v. Poor Sisters of Nazareth and Others* in 2008, an article appeared in *The Sunday Times* in which the First Minister Alex Salmond was reported as having “pledged to

²³ Speaking note to accompany SCANCE note of 1st February 2008.

find a 'way forward' for abuse victims", and to have "told his officials to study Ireland's truth and reconciliation commission after the decision last week"²⁴.

55. The Scottish Government and Glasgow City Council commissioned an independent inquiry into the circumstances in which abuse occurred at the former Kerelaw residential school and secure unit in Ayrshire. The report of the inquiry, which was published in 2009, found that: "most of the factors which contributed to what went wrong in Kerelaw have been identified by inquiries into child abuse time and time again over the years, whether in residential establishments or elsewhere". The report did however make recommendations in relation to regulation, recruitment, management, training, supervision, scrutiny and resourcing. Two further inquiries into cases of child abuse, one relating to Edinburgh and the other to Fife, had already reported by this time²⁵.
56. In 2009 the Scottish Government commissioned the Scottish Human Rights Commission ("the SHRC") to produce a Human Rights Framework to inform the design and delivery of an acknowledgement and accountability forum. The framework was published in February 2010²⁶. The Scottish Government provided an interim response (in June 2010) on the specific recommendations for the Time to be Heard Pilot, and a further response (in February 2011) on all of the recommendations, following the completion of the Time to be Heard hearings and just before the launch of the Time to be Heard report. The confidential committee model adopted for Time to be Heard focussed on acknowledgement rather than accountability.
57. A letter from an official to Mr Stephen Findleton, an ex-resident of Quarriers Homes, dated August 2011 indicates that at that time, Ministers' preference was for the Time to be Heard forum over a public inquiry: "You mention your

²⁴ [2008] UKHL 32.

²⁵ Respectively, *Edinburgh's Children: The Edinburgh Inquiry into Abuse and Protection of Children in Care* (1999) and *The Fife Council Independent Inquiry Report* (2002). The former is available at <http://lx.iriss.org.uk/sites/default/files/resources/042A.%20Edinburgh's%20Children%20-%20Summary%20Report.pdf>, and the latter on request from Fife Council.

²⁶ http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedies.doc.

outstanding concern regarding the lack of a public inquiry. While such inquiries can serve a very important function in appropriate circumstances, there are significant potential disadvantages to them in a matter such as this, compared with the approach that has been adopted. Inquiries have the potential to be extremely demanding in emotional as well as financial terms and take a very long time, particularly when dealing with complex and contested historical evidence over many decades, involving many people at different locations. Moreover, they also cannot make any determination as to criminal or civil liability: that is explicitly prohibited by law. On balance, it was accepted by Ministers that establishing the Time to be Heard pilot forum was a more appropriate option for Scotland and offered a relatively straightforward, swift and therapeutic forum for survivors to describe their experience with full confidentiality assured²⁷.

58. In December 2011 the Scottish Government agreed to engage with an “InterAction” process (described as “a facilitated negotiation within a human rights framework”) to develop an Action Plan to implement the recommendations in the SHRC Framework. Participants in this process identified (through a series of “InterActions” planned in 2012 and held in 2013 and 2014) a number of areas in which commitments to action should be made. The Action Plan was published in draft in August 2013. A revised Plan was published in January 2014 and opened for consultation.
59. As regards the possibility of an inquiry, the Action Plan reads: “There was a very balanced view on the value of an inquiry. Discussions were well-grounded and articulated doubts regarding the value and possible benefits beyond what we have achieved as a result of previous processes. It was felt that we shouldn’t rule out the possible benefits of a national inquiry at this stage but that research was required to determine what we have learned from previous inquiries and what the deficits might be. Based upon the outcome of such research it can then be decided what form an inquiry might

²⁷ Letter dated August 2011.

take or whether other processes would be preferable. Care needs to be taken to ensure that any such process is well designed and contained”²⁸.

60. Under a section entitled “Commitments”, it is stated that: “[t]here should be a review of the lessons learned from previous inquiries and related processes such as the Historical Abuse Systemic Review. The review should consider what added value a National Inquiry on Historic Abuse would have, and should scope the potential costs”.

WHY PETITION PE535 WAS CLOSED IN APRIL 2008

61. On 15th April 2008 the Public Petitions Committee agreed to close consideration of both Petition PE535 and Petition PE888. The reasons why the petitions were closed is, of course, a matter for the Committee. The Convener noted that: “[w]e have considered the information that has been submitted, and there have been fairly extensive debates and discussions on the issues that have been raised – indeed, ministerial statements have been made”. The Convener then asked whether members had any views on how the committee should deal with the petitions.
62. Rhoda Grant MSP was of the view that the committee should close consideration of them: “The petitions have been successful in bringing a grave issue into the public arena and ensuring that things have happened. There has been great movement, and people have taken seriously the concerns that have been expressed, as they should have done. What has happened shows that submitting petitions to the committee works”.

WHY AN APOLOGY WAS GIVEN ON 1 DECEMBER 2004 BUT NO INQUIRY WAS ANNOUNCED

63. On 1st December 2004, regarding the apology, the then First Minister said: “I want to speak on one subject that should unite us, whatever opinions might

²⁸<http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>.

be expressed in the debate that follows”²⁹. However, for the reasons set out above, the Executive’s position at the time was that an inquiry was not necessary or the right course of action. As noted at paragraph 45 above, towards the end of the debate that day Peter Peacock noted that some MSPs were certain that a public inquiry was the right way forward, but he thought that the debate demonstrated “the degree of uncertainty about that”. He summarised the advantages of an inquiry as set out by Lord James Douglas-Hamilton and concluded by saying: “I addressed each of these matters today in a way that genuinely takes them forward. If we can do that without the complexity of a public inquiry, given the legalisation of the process and the long time that that would take, it seems to me that is the right course of action”.

AN EXPLANATION OF THE REASONS WHY THE SPECIFIC TERMS OF THE PUBLIC APOLOGY WERE DETERMINED UPON

64. At the Public Petitions Committee on 29th September 2004, Karen Gillon asked Peter Peacock: “acknowledging something is not apologising for it. Are you formally apologising for the actions of the state in respect of child abuse?”. Peter Peacock responded: “as I have tried to make clear, we are in the midst of legal proceedings and particular words have particular connotations in terms of those proceedings. I have tried to go as far as I can today in making it clear where the Executive stands, what we believe and how we empathise with people’s feelings and recognise the consequences of what happened, I have expressed our profound sorrow, in concert with others, about the things that happened. That is as far as I can go on the matter today”. Linda Fabiani also remarked “I understand that you may find it difficult to apologise at the moment because of legalities”.

²⁹ Official Report, 1 December 2004.

65. On 29th October 2004, in a submission³⁰ to Peter Peacock and his Deputy Minister regarding the Minister's appearance before the Petitions Committee on 29th September, an official noted—

“An apology from the state and from the institutions. Although a small number of people recognise how far your comments went at the committee, most did not hear it as an apology. It is perhaps more the local authorities than the Scottish Office that are seen as culpable but there is a strong sense that the First Minister should apologise for what happened to children while in the care of the state, in the way that Bertie Ahern did in Ireland”.

66. On 9th November 2004, Peter Peacock's Private Secretary asked an official to find out information requested by the Minister, in respect of the apology made in Ireland: “Was an apology issued by the state and what precisely was its form?”³¹. The official was also asked to find out what the position was on apologies for child abuse in Australia and America.
67. On 12th November, an e-mail between policy colleagues noted: “We discussed this morning the possibility of the FM making a statement on Child protection issues (including, potentially, an apology for historic abuse).”³². Then on 18th November, an e-mail³³ from an official was sent to Mr Peacock's Private Secretary which included a draft of the apology and stated that “consideration was being given to the First Minister making a statement of this nature in the Chamber, perhaps during FMQs, next week. I understand that the Minister has had a preliminary discussion with the First Minister around this issue earlier today”.
68. At a meeting with Helen Holland and Chris Daly on 23rd November 2004, Peter Peacock discussed with them what sort of apology they were looking

³⁰ Submission (by e-mail) dated 29th October 2004.

³¹ Document requesting information on inquiries being held in other countries dated 9th November 2004.

³² E-mail dated 12th November 2004.

³³ E-mail dated 18th November 2004.

for and who they felt should make this. The note of the meeting states, regarding the apology, that: "It was clear that INCAS felt it should come from the First Minister on behalf of the State and should be heartfelt. The Minister indicated that at this stage an apology has neither been ruled in or out of his thinking"³⁴.

69. The Minutes of the Scottish Cabinet meeting at 9:30am on 24th November³⁵ note that Peter Peacock provided an update on the upcoming Petitions Committee debate on 1st December. Regarding the apology, the Minutes note—

"(d) *The desire for an apology.* Mr Peacock said that the key issue for the petitioners and other victims was to receive an apology from the State. He said that he was taking legal advice on the form of words that it might be possible for the First Minister to use if this were judged appropriate."

The Minutes record that Cabinet agreed: "Advice should be provided to the First Minister and Deputy First Minister on the wording of any apology".

70. On 30th November, at 11:58am, in an e-mail from an official to Peter Peacock, it was noted: "On the issue of the proposed apology, the apology as currently drafted is addressed at survivors who attended residential care homes (whoever they were run by). It is an apology on behalf of the government of Scotland and the people of Scotland. I don't think that could be interpreted as being on behalf of local government, as they have a separate legal identity and FM cannot be seen as having any democratic or legal remit to speak on their behalf"³⁶.
71. On 30th November, at 4:01pm, a note records action points from a discussion between the First Minister and Peter Peacock. The note is

³⁴ E-mail dated 24th November 2004.

³⁵ Reference: SC(04)35th Conclusions.

³⁶ E-mail dated 30th November 2004 to Minister for Education and Young People from an official.

contained in an e-mail from the First Minister's private secretary to the Minister's private secretary³⁷. It states, regarding the statement to be made before Parliament by the First Minister the following day, that the First Minister "does not want to make a statement that does not include an apology and this needs to be reconciled with the need to avoid acceptance of liability for compensation payments"; that "soundings need to be taken from the churches concerned, to ascertain what their response would be. This need not involve briefing them on what Ministers are going to say"; and that "Mr Peacock needs to be in a position to explain clearly at Cabinet tomorrow how this issue will be handled, in Parliament, in the media and legally".

72. On 30th November, at 5:30pm, an e-mail between officials noted that: "Latest is that FM statement is going ahead and he will look at text later this evening. ... Word from FM's office is that FM statement is also likely to be trailed in papers tomorrow morning... We will forewarn INCAS of this in general terms. At FM's request we are also trying to sound out the churches. I have left 2 messages with CofS but no reply to those so far."³⁸.
73. The Minutes of the Scottish Cabinet meeting at 9:30am³⁹ on 1st December 2004 record that "the First Minister would make a statement on institutional child abuse immediately before the Petitions Committee debate on petition PE535" and that it "would include an apology to victims of institutional child abuse on behalf of the people of Scotland". It is noted that: "Mr Peacock said that during the Petitions Committee debate he would set out what the Executive had been doing to try to address the issues raised by petition PE535". The Minutes record that the Cabinet agreed that copies of the First Minister's statement and Mr Peacock's speech for the debate, along with supporting briefing, should be circulated to Ministers as soon as possible.

³⁷ E-mail dated 30th November 2004 on behalf of the First Minister to Minister for Education and Young People.

³⁸ E-mail dated 30th November 2004 between officials.

³⁹ Reference: SC(04)36th Conclusions.

74. The Scottish Executive was concerned that an apology on behalf of the government could be taken as an admission of neglect and failure by the predecessors of the Scottish Ministers and open the door to liability on the part of Ministers; and that institutions where abuse occurred would be pleased to see Ministers seemingly accepting liability in order to minimise their own exposure to damages. The Scottish Executive's consideration of the matter was informed by legal advice.
75. The First Minister gave an apology on behalf of the people of Scotland in his statement on 1st December 2004, which included the following paragraph—

“It would be a mistake for us to try to fit all that happened in the past into the framework of our own knowledge and experience, but some things are and always have been wrong. Now that we know what has happened, it falls to us, as representatives of the Scottish people, to acknowledge it. It is for this generation of the people of Scotland to say quite clearly that it was unacceptable that young people were abused and that it was appalling that they were abused by those entrusted with their welfare. That is why, today, I offer a sincere and full apology on behalf of the people of Scotland to those who were subject to such abuse and neglect and who did not receive the level of love, care and support that they deserved, and who have coped with that burden all their lives”.

76. During the debate which followed, the Deputy First Minister added: “On behalf of and before Scotland, we have come to the Parliament to apologise to and show our respect for survivors of abuse. None of the suffering should have occurred and words cannot remove their pain, expunge their memories or wipe clean the blemish”.

WHY AN INQUIRY WAS ESTABLISHED IN 2014 BUT NOT BEFORE

77. The conclusions of the SHRC InterAction Action Plan as regards the possibility of an inquiry are referred to at paragraph 59 above. The

possibility of a national inquiry was not to be ruled out, but there needed to be a review of the lessons learned from past inquiries, and the review should consider what added value a national inquiry would have.

78. On 27th August 2014 an InterAction Survivors' Event took place, with 28 survivors attending. According to the report of that event: "[p]rogress on the InterAction and views on different types of inquiry were discussed ... It was the view of all survivors at the event that an inquiry into historical abuse in care should be convened in Scotland". The report records: "[i]t was the survivors' view that little is known by the general public in Scotland about the historical abuse of children in public care ... In their view, an inquiry in Scotland would ensure that the public, government and civil society hear the facts, providing an opportunity to understand what happened and the implications for those affected. They also believe that this would establish a public record of the experiences of children in care over the years" .
79. The then Cabinet Secretary for Education and Lifelong Learning (Michael Russell) attended an InterAction Recall Day held on 27th October 2014. He told Cabinet that, at that meeting, he had announced that: "he was considering establishing an independent inquiry on the historic abuse of children in care. Such an inquiry must be designed to provide tangible outcomes for survivors, and it should also help society gain a better understanding of the issues, allow the various institutions concerned to give an account of their actions in public, and place the facts formally on the record (both for the benefit of survivors and in the wider public interest)"⁴⁰.
80. A draft response to a request under the Freedom of Information (Scotland) Act 2002 dated 31st October 2014 stated that, at the InterAction Recall Day Event, the Cabinet Secretary had "advised that the door remains open to such an inquiry taking place"⁴¹.

⁴⁰ Reference: (SC(14)31st Conclusions).

⁴¹ Draft response to Freedom of Information request Fol/14/01622, dated 31st October 2014.

81. Cabinet Paper SC(14)99 (considered by Cabinet on 4th November 2014)⁴² set out the Scottish Government's position on the issue of child protection and historic child abuse. Mr Russell stated that he would make a statement to Parliament the following week on the issues: "[a]s I reported to Cabinet last week, my experience of the InterAction process has convinced me of the need for a cathartic process of review to give survivors the opportunity to move on and thrive. It is essential that, given the very positive results of the InterAction process and our commitment to working with survivors in the development of a support fund and appropriate commemoration, any inquiry must build on the work which has already taken place. This will provide survivors with a public acknowledgement and validation of the abuse they have suffered and of its impact on them, and give them an opportunity to find reconciliation. I have set out in Annex D [of that Cabinet Paper] how a proposed inquiry forms part of a wider package of support aimed at mitigating the inequalities that many survivors have endured as a consequence of the impacts of abuse on their life chances".
82. The Minister continued: "I am also conscious that we are vulnerable to political criticism as the only part of the UK not currently undertaking an inquiry into historic abuse of children in care. Our focus until now, through the work of SurvivorScotland and its strategy for survivors of abuse, has been understanding the issues affecting survivors, working with them to develop and deliver services, and support that enables them to work through the effects of their abuse on their everyday lives. While we have made great progress (and the positive participation of the InterAction process is testament to that), I now believe that the time is right for us to undertake a positive, meaningful inquiry with significant engagement from survivors and relevant organisations which would be very different from that proposed in England and Wales, and which would go further than the 2007 Shaw review". The paper notes that that: "[t]he purpose of an inquiry would be to satisfy survivors' needs for a public acknowledgement and validation of their experience".

⁴² Reference: Cabinet Paper SC(14)99.

83. During the Ministerial statement on child protection made to the Scottish Parliament on 11th November 2014⁴³, the Minister said—

“[t]here has been much debate as to whether a further inquiry should take place into Historic Abuse in Scotland. The InterAction process produced a new paper on the matter in August after a special session to consider the issue. This took a clear and unequivocal stance in favour of an inquiry and I respect that view. However it suggested a very different type of inquiry from that which is usually established by statute and by Government.

I have spent considerable time in the last few weeks examining that suggestion. I have consulted colleagues and professionals from a variety of areas including social work, child care, health and the law.

I believe there are still issues that require to be resolved before a final decision can be made on whether a further inquiry is appropriate and if so, of what type. Some of these issues need continued input by the survivors. Of course, Presiding Officer, the Shaw Review, which reported in November 2007, and the Kerelaw Inquiry, which reported in May 2009, have already considered some aspects of these matters in Scotland. I have therefore asked the Scottish Human Rights Commission to reconvene an urgent meeting of the InterAction Group to focus on those matters, which still have to be resolved, with a view to allowing Government to reach a final decision. I have also heard from some survivors outside the InterAction process about this issue - strongly in support of an inquiry it has to be said - and I will continue to seek such views as well.

It is vital that this issue is resolved properly and positively. We can see only too clearly what has happened elsewhere when Governments

⁴³<https://news.gov.scot/speeches-and-briefings/michael-russell-ministerial-statement-on-child-protection>.

have taken an *ex cathedra* stance on an inquiry and how it should go forward without listening and exploring enough. There are good examples of much better processes elsewhere - for example in Northern Ireland and Australia - and we need to look at those too. I will therefore return to the chamber on this matter before Christmas”.

84. When Angela Constance was appointed Cabinet Secretary for Education and Lifelong Learning she undertook to fulfill the commitment to return to Parliament before Christmas with a decision. At the meeting of Cabinet on 2nd December 2014 she noted that she “was due to meet with survivor groups later that week, which would inform her consideration; it was clear that most survivors sought an inquiry which would adopt an inquisitorial format rather than a legalistic, adversarial approach. Most had spoken for the need for rigour and credibility, but set within an approach that would not be unnecessarily traumatising for victims”⁴⁴.
85. At Cabinet on 9th December 2014, Cabinet were invited to agree a need for an inquiry into historical child abuse in care, the proposed model, the outline terms of reference, and that further consultation with survivors should be carried out, with the intention that this would be announced in Parliament week commencing 15th December 2014⁴⁵. The model of inquiry proposed was a statutory inquiry under the Inquiries Act 2005. It was noted that it would be important to develop the remit for the inquiry fully through a process of consultation with survivor groups⁴⁶. Cabinet agreed to the holding of an inquiry that day.
86. On 17th December 2014, Angela Constance made a statement to the Parliament in the following terms—

“[a]s part of the Scottish Human Rights InterAction Response, I met with a number of survivors on Monday along with the Minister for

⁴⁴ Reference: SC(14)36th Conclusions.

⁴⁵ Reference: Cabinet Paper SC(14)116.

⁴⁶ Reference: (SC(14)37th Conclusions.

Community Safety and Legal Affairs and the Minister for Children and Young People and we discussed what an inquiry would mean to them.

I have deliberated carefully having listened to their personal experiences and concerns.

I have also reflected on the words of Archbishop Desmond Tutu who once said: 'If you are neutral in situations of injustice, you have chosen the side of the oppressor.'

Presiding Officer, this Parliament must always be on the side of victims of abuse. We must have the truth of what happened to them and how those organisations and individuals into whose care the children were entrusted, failed them so catastrophically. And to get to that truth we will be establishing a national public inquiry into historical abuse of children in institutional care.

And to ensure justice is done, I can tell this Chamber that where crimes are exposed, the full force of the law will be available to bring perpetrators to account. I can advise the Chamber that the Lord Advocate has been consulted on holding the Inquiry and measures will be put in place to ensure that the Inquiry does not compromise or interfere with on-going criminal investigations and prosecutions⁴⁷.

THE NATIONAL STRATEGY FOR SURVIVORS OF SEXUAL ABUSE

87. The National Strategy for Adult Survivors of Childhood Sexual Abuse ("SurvivorScotland") was the culmination of work by the Cross Party Group for Survivors of Childhood Sexual Abuse, survivors and several other parties: "The Scottish Government recognised over a decade ago the need to reconcile modern society with past abuses in care. This has focused on creating a framework to provide survivors with a climate of trust and support

⁴⁷<https://news.gov.scot/speeches-and-briefings/education-secretary-statement-on-historical-child-abuse>.

which will encourage and enable those with concerns to come forward and to be heard. This support is channelled through the Survivor Scotland strategy⁴⁸. It highlighted ways to improve services for survivors, using a more consolidated approach both locally and nationally, with a view to improving the lives of those who suffered childhood trauma.

88. The launch of the National Strategy was the subject of a debate in Parliament on 22nd September 2005. The briefing for that debate advises that: "Scottish Ministers have recognised for some time the need for better and more joined up services to improve support for survivors of childhood sexual abuse. This brings together the cross-cutting interests of health, education, criminal justice, communities, and the voluntary, statutory and private sectors. The work of the Cross Party Group and the subsequent report of the Short Life Working Group has led to the creation of a national strategy"⁴⁹.
89. The following is contained in the question and answer sheet which accompanies the briefing: "Did you consult with survivors on the strategy? Yes. The remit was to identify and recommend how best to improve care services for survivors of sexual abuse, requiring members of the Short Life Working Group (SLWG) to have knowledge and expertise from across the health and social care sector. The survivor perspective was very important however, that is why 5 voluntary sector care providers were invited to participate, together with the Scottish Parliament's Cross Party Group for Survivors. We need to listen and learn from survivors on what works best for them, and to better integrate services in partnership. Not all survivors need, or wish, medical intervention, many seek counselling and support services offered by voluntary sector operators which are better able to handle disclosure issues. We have invited a number of survivors to join our reference group; including a representative of the In Care Abuse Survivors Group and the petitioner of petition PE 535⁵⁰".

⁴⁸ Reference: Cabinet Paper SC(14)116.

⁴⁹ Briefing for Minister for Health and Community Care dated 15th September 2005.

⁵⁰ As above.

90. The *SurvivorScotland* document, which was published in 2005, “sets out a strategic way forward, agreed by Scottish Ministers, which will be led and coordinated by a national Survivors Reference Group”. It states that “[i]nput from survivors in identifying what works best will be critical”⁵¹.
91. According to briefing by officials provided in 2007, the National Reference Group (as it is commonly referred to) recognised that the needs of survivors of abuse in care required a more detailed approach than could be provided within the larger Reference Group. It therefore established a sub-group, which included four survivors, Who Cares? Scotland and SIRCC. This group’s remit was to produce proposals for a national framework for support services by February 2008 and tied in with Shaw’s recommendation for a centre for those abused in care⁵² (see paragraphs on In Care Survivors Service Scotland below).

THE TOM SHAW REVIEW

92. During the debate at the Petitions Committee on 1st December 2004, Peter Peacock said—

“[o]ne issue that keeps arising in discussions with survivors is their need to understand more fully why the abuse that they experienced was—as they would put it—allowed to happen. Why could no one stop what was happening to them? That is an entirely reasonable question. Understanding why is not reasonable only for survivors, but for wider society, and will help us to explore any lessons from the past for what we are currently doing. When I met INCAS last week, I offered to take that issue forward. The issue is difficult, and I am conscious that a number of court actions are currently on-going and that we cannot discount the possibility that there will be further criminal proceedings. It

⁵¹ *SurvivorScotland: a Survivor-centred Strategic Approach for Survivors of Childhood Sexual Abuse*, September 2005.

⁵² Minute to Cabinet Secretary for Justice and Minister for Children and Early Years to discuss government activity around historical abuse.

is vital that any other process that we undertake in looking into the matter should not interfere with such proceedings.

However, I can say to Parliament that I intend to appoint someone with experience to analyse independently the regulatory requirements of the time, the systems that were in place to monitor operation of those requirements and, in general, to analyse how that monitoring was carried out in practice. I wish to discuss that with other interested parties so that the process can start as soon as possible; I will keep members informed of progress. As I told INCAS, I will of course consider any conclusions that are reached and any policy questions that arise as a result of that further examination”.

93. Consideration was given by officials as to the precise period to be covered by the review, and in particular whether the end point should be 1985 or 1995: “[i]n the discussions with INCAS and with Mr Shaw, all have been content with the 1985 end date⁵³. None of INCAS's members appear to have experienced abuse in care before 1950 and asked whether the expert could look at the system in place before that date. We discussed this issue with Mr Shaw and he indicated that he would be happy to report on any information he came across that related to the period before 1950, but anticipated that such information would be very limited”⁵⁴.
94. On 2nd May 2006, Mr Shaw wrote to an official at the Scottish Executive in the following terms—

“[t]he most pressing matter for the Review is to get clarification of whether or not my remit permits me to request or receive information from individuals including those who were resident or who worked in residential schools and children’s homes during the period spanned by the Review. You told me that paragraph 5 of the remit was drafted with a view to sheltering the Review from the potentially large volume of

⁵³ The end date was extended to 1995.

⁵⁴ E-mail from an official to Minister for Education and Young People, 24th August 2005.

submissions and requests for meetings which might be made by individual survivors; and yet in conducting the review I have had to contact and request information from a range of individuals other than survivors and it could be seen as discriminatory were I to have contact with some individuals and exclude others...

... I raised the point about the interpretation of para 5 in the Progress Update for the Minister and I have also requested advice about the interpretation from the Review's solicitors. I hope to have the latter advice shortly and I would be very grateful for the Minister's view as soon as possible.

I believe that it is vital to the credibility of what I am doing and what I report, to have input from those who lived and worked in the residential schools and children's homes. I have some suggestions as to how this might be managed"⁵⁵.

95. In an e-mail dated 28th June 2006 to Peter Peacock, Minister for Education and Young People, an official wrote: "[t]he challenging issue is the one about contact with individuals. You will recall that the remit limits him to contact with organisations representing the interests of survivors. However, INCAS now seems to have imploded and the only other significant survivor organisation is one that only represents those who were cared for by Quarriers. We have explored whether other voluntary organisations might be able to fill the gap, but not been able to identify an organisation that could really fulfil this role. Following further discussions with Mr Shaw, he has developed a proposal (attached below) for how he might have contact that would assist his review without becoming overwhelmed with lengthy meetings with survivors. In essence, this involves a series of meetings with a mechanism for limiting the number if he is overwhelmed with requests. ... I believe this is a reasonable compromise that will help him to identify information that will not necessarily be available from written records and

⁵⁵ Letter from Tom Shaw dated 2nd May 2006.

allow him to check with survivors their experience of the systems while not creating an expectation that he will meet indefinitely with all survivors who wish to spend time with him. Although such meetings will inevitably be time-consuming, the proposal would allow him to focus discussions and the collection of information and identify those who are most likely to assist his work”⁵⁶.

96. The section entitled “Summary” in the published review led by Mr Shaw sets out what was done by way of engaging with survivors within the review process itself: “[t]he review received information from former residents, in interviews, telephone calls, emails, correspondence and from cuttings, video tapes and DVDs that former residents sent us”⁵⁷.

IN CARE SURVIVORS SERVICE SCOTLAND

97. In Care Survivors Service Scotland is “a trauma informed counselling and advocacy support service for adults who suffered childhood abuse in care and their families”, led by the organisation Open Secret (www.incaresurvivors.org.uk). The measures form part of the national strategy which aims to improve services supporting those who have suffered childhood sexual abuse. As noted above, a subgroup from the National Reference Group was set up in June 2007. Its purpose was to review the needs of in care survivors, identify what service provision was in place and highlight any gaps. This sub-group reported its findings to the National Reference Group on the 29th February 2008 with proposals for a national service to provide advice, information and support to in care survivors. The Shaw review had contained similar recommendations.
98. The statement made by Adam Ingram, then Minister for Children and Early Years, to the Scottish Parliament on 7th February 2008 included a commitment to fund a support service for survivors and their families for three years.

⁵⁶ E-mail dated 28th June 2006 from an official to Minister for Education and Young People.

⁵⁷ The Shaw review, page 4.

99. In Care Survivors Service Scotland was launched later that year (November 2008) following an open, competitive process which involved survivors in the decision-making process. Falkirk-based Open Secret was appointed. KASP (Kingdom of Abuse Survivors Project) was to be a main partner with additional partners being the Moira Anderson Foundation and Break the Silence. All of the organisations involved have substantial experience of working with survivors. The new service was to be called “In Care Survivors Service Scotland: A partnership led by Open Secret”.⁵⁸
100. At the time of its launch, Helen Holland was reported to have said: “It was necessary to do something as a matter of urgency for in care and historical abuse survivors”; “Survivors the length and breadth of the country have had no central point to go for help until now and this new support and advocacy service will bring them some hope for the future.” Tom Shaw is also reported to have responded: “This is really good news. My report highlighted the necessity for advocacy, mediation and counselling services, easily accessible and related to appropriate information and advice”; “I am delighted that the Scottish Government has responded so wholeheartedly to my recommendation and I welcome the vision, structure, arrangements and funding which are manifest in the In Care Survivors Service Scotland⁵⁹”
101. The ICSSS service has helped over 900 hundred survivors across Scotland since its launch in 2009.

PUBLIC RECORDS REVIEW

102. The Shaw review recommended that the Scottish Government should commission a review of public records legislation which should lead to new legislation being drafted to meet records and information needs in Scotland. It also recommended that the government should invite the National

⁵⁸ Briefing for Minister for Children and Early Years – Support for Survivors of In-Care and Institutional Abuse.

⁵⁹ News Release – 25th November 2008 “Scotland leads the way in support for survivors of historic in care abuse”.

Archives of Scotland (“NAS”) to establish a national records working group to address issues specific to children’s historical residential services records⁶⁰.

103. In his statement to the Scottish Parliament on 7th February 2008, Adam Ingram announced a review of public records legislation in order to implement this recommendation: “[t]he Shaw report rightly makes important recommendations about records and record keeping. The first is the need for a review of public records legislation. There are clear advantages in such a review, as the existing law is more than 60 years old. We have therefore asked the keeper of the records of Scotland, in consultation, to review the legislation on public records in the light of the shortcomings that were exposed by Shaw”.
104. The Keeper reported to the Scottish Government in October 2009, concluding that the existing legislation was no longer fit for purpose.
105. As Fiona Hyslop, the then Minister for Culture and External Affairs, said at the beginning of the stage 1 debate on what by then was the Public Records (Scotland) Bill: “[Shaw’s] powerful and compelling evidence showed the human cost of record-keeping failures”⁶¹.
106. The policy memorandum to the Bill explained: “Ministers agreed that the review should extend beyond the immediate field of child care and it examined other legislation affecting record keeping. Evidence was gathered from the experiences of those involved in working with as well as those who sought access to information from them. The review examined current records management practice, existing Scottish legislation and legislation overseas. It sought a broad spectrum of opinion from individuals and representative groups working directly in the fields of social work and child care, central government policy, local authority and private residential care, the police, and the management of public inquiries. The review also covered those involved in freedom of information and data protection and

⁶⁰ The Shaw review, pages 156-157.

⁶¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=6102&mode=html>.

professional record keepers, together with survivors of abuse and former residents of care homes⁶².

107. The policy memorandum noted the public consultation on proposals for new public records legislation ran from 22 June until 4 August 2010. The consultation paper gave the background to the proposals and the proposed 6 main elements (the role and responsibilities of the Keeper, a definition of public records, record keeping requirements, the existing duty on local authorities to make “proper arrangements” for their records under the 1994 Act, enforcement, and records of the Scottish courts). 22 questions were asked in relation to these elements. A draft list of public authorities which would be covered by the consultation was also included.
108. The consultation paper was circulated to authorities to which the provisions were proposed to apply, as well as other stakeholder groups and interested organisations and individuals. An easy read version of the paper was also distributed and published.
109. Two discussion forums were held on the proposals, the first with survivors of abuse and representatives from support services, the second with archivists and records managers. Further details of these events can be found in the consultation report.
110. A total of 87 responses to the consultation were received from a mix of public and private bodies, organisations and individuals. More than half of respondents felt that lasting improvements to record keeping required new legislation.
111. The Public Records (Scotland) Bill was introduced before Parliament on 7th October 2010. Stage 1 commenced on 27th October 2010 with the Education, Lifelong Learning and Culture Committee as the lead committee.

⁶² [http://www.parliament.scot/S3_Bills/Public%20Records%20\(Scotland\)%20Bill/b56s3-introd-pm.pdf](http://www.parliament.scot/S3_Bills/Public%20Records%20(Scotland)%20Bill/b56s3-introd-pm.pdf).

The Stage 1 debate took place on 10th February 2011 and the Bill was passed following the Stage 3 parliamentary debate on 16th March 2011.

THE NATIONAL RESIDENTIAL CHILDCARE INITIATIVE

112. Following the publication of the Shaw Report, in 2008 the Scottish Government commissioned a strategic review of residential childcare, the National Residential Child Care Initiative (“NRCCI”). In his statement to Parliament on 7th February 2008, Adam Ingram said: “Shaw highlights the overriding concern of the survivors to whom he spoke that all those responsible for children in residential care now and in the future must learn the lessons of the past. He outlined the need to develop a culture in residential child care that is founded on children's rights and the need to raise respect for those children. I whole-heartedly agree with him. I want to work with partners to make residential care the first and best placement of choice for those children whose needs it serves....I will invite a range of partners to work with us to help achieve residential care of the best possible quality. I will look for recommendations on how we can achieve a supply of residential child care that matches the full range of needs of children and young people”⁶³.
113. The purpose of the NRCCI was to undertake a strategic review of residential child care services and develop a blueprint for their development which would shape the future direction of services and ensure the needs of children and young people are met⁶⁴.
114. Under the heading “Who was involved?” the *Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report* states: “[a] key feature of the NRCCI was the unprecedented number of stakeholders who contributed their wealth of expertise, experience and knowledge. Led by a Project Board made up of representatives from the wide range of agencies and organisations with an interest in residential care

⁶³ Official Report, 7 February 2008.

⁶⁴ <https://www.celcis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>.

in Scotland, including independent providers, social work, education, health, and government, the following engagement activities were undertaken: Working groups identified key themes and issues which were posted on the SIRCC website to elicit feedback, with the aim to make engagement with the Initiative as accessible as possible to a wide range of stakeholders. These themes and issues were explored and debated at four regional stakeholder engagement events held during February and March 2009. They were taken out to working group members' own organisations, association and/or network, and they were the basis for presentations and discussions at national conferences. In total over 100 agencies and organisations contributed to the work of the Initiative. In addition, over 100 children and young people were also involved in focus groups and interviews led by Who Cares? Scotland. They debated the themes and issues by reflecting on: what was good and not so good about residential child care; their understanding and experiences of care planning; their involvement in placement planning and placement moves; the skills, qualities and qualifications necessary to be a good residential worker”.

115. A list of contributors (which includes Who Cares? Scotland) is included at Appendix 2 to that report. Who Cares? Scotland is a national voluntary organisation, working with care experienced young people and care leavers across Scotland.
116. The report was published in 2009. The Scottish Government (together with COSLA) accepted the report and its key recommendations. The report made a number of recommendations; it concluded that residential care can be the right choice for some children and can provide flexible and responsive services to children and young people of all ages.

ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM / TIME TO BE HEARD

117. The possibility of a “truth and reconciliation” forum was discussed in December 2007. A scoping paper by officials on this topic states: “[t]his

paper describes the work in progress since the cross-Cabinet discussion held on 18 December. It was agreed then to scope the potential for the introduction of a truth and reconciliation model in Scotland as a means of responding constructively to the recommendations in Tom Shaw's report and to the implications of the recent Scottish Law Commission report on time bars which effectively debars alleged victims of abuse from claiming compensation for personal injury through the courts"⁶⁵.

118. As referred to in paragraph 51 above, in his statement to Parliament on 7th February 2008, Adam Ingram informed Parliament that the Scottish Government had been "actively scoping the adaptation of the principles of a truth and reconciliation model. We are committed to that. We are considering good practice examples for establishing a forum to give survivors the chance to speak about their experiences and to help them come to terms with the past. That will provide an invaluable opportunity to establish the facts, learn from the suffering and use the experience to help us protect and provide for children in the future".
119. Briefing provided by officials on 25th September 2008 provided that: "[t]he Scottish Government is committed to identifying appropriate approaches for assisting and supporting survivors of abuse. A minute and detailed advice, led by DG Health will be circulated to Ministers very soon. Depending on Ministers' approval, it is the intention to consult imminently on the possibility of developing a truth and reconciliation model, possibly to be renamed 'Acknowledgement and Accountability' following discussions with the National Reference Group set up to take forward SurvivorScotland, the National Strategy for Adult Survivors of childhood Sexual Abuse www.survivorscotland.org.uk. In progressing this work we will take due account of other countries' experience"⁶⁶.
120. A consultation paper entitled "*Proposal to Develop an Acknowledgement and Accountability Forum for Adult Survivors of Childhood Abuse*" was published

⁶⁵ Scoping paper entitled "Applying the Truth and Reconciliation and Redress Models to Scotland".

⁶⁶ Briefing referred to in footnote 58.

on 10th October 2008. It states that it has been developed with the National Reference Group, and takes account of their input, and that it provides summaries of the key elements of some similar approaches from across the globe. It goes on to provide that: “[i]t is not a conventional consultation, in that, rather than asking a series of questions, collating the responses and using them as a vehicle for making recommendations to Ministers about future policy, this part of the consultation will be followed with a series of meetings with individuals and groups to explore whether such an approach should be developed or not”; it continues: “[t]he paper does not go into detail because the Scottish Government is keen to know your views on whether such an approach should be adopted and if so, what the remit, processes and outcomes should be”⁶⁷. A section of the paper is entitled “Survivor involvement”.

121. On 16th January 2009 the main consultation on the “Acknowledgement and Accountability Forum” ended. Additional in-depth engagement with a number of survivors took place during February to April 2009. Short summaries of both were published⁶⁸. According to the former document: “[t]he term ‘Acknowledgement and Accountability’ was used in the consultation process but it is provisional and may be changed if another title is regarded as more appropriate”. The summary goes on to record that: “the vast majority of respondents felt that the title ‘Acknowledgement and Accountability’ was not appropriate. The title was viewed by many as being too professional a term. There was a clear desire for it to be more appealing and engaging to survivors. Having a briefer, simpler and clearer title would help achieve this. It was also suggested that survivors themselves should choose the name ... For many the word ‘accountability’ had connotations with the legal process/system and the allocating/assigning of blame and proof of guilt. This was viewed as conflicting with the primary aims of any proposed Forum which would be to provide the chance to be heard and believed, and the opportunity for healing. Many felt that an affirming

⁶⁷ <http://www.gov.scot/Resource/Doc/240981/0066913.pdf>.

⁶⁸ <http://www.gov.scot/Resource/Doc/274239/0082015.pdf> <http://www.gov.scot/Publications/2009/09/22144103/0> at <http://www.gov.scot/Publications/2009/09/22144103/0> respectively.

environment was needed in which all participants felt safe and comfortable/empowered to share their experiences, with no fear of being silenced and no fear of any repercussions”.

122. However, the second document records that “[m]ost survivors were in favour of the title”, and that “[m]ost survivors agreed that abusers and organisations that looked after children should be held accountable”.
123. The idea for the Forum was also discussed at the *One Year On* seminar, at which attendees gave their views in sessions devoted to it⁶⁹.
124. In Spring 2009, the Scottish Human Rights Commission was commissioned to produce an independent human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability” forum.
125. A meeting between Chris Daly, Helen Holland and officials took place on 4th August 2009. The notes in respect of that meeting recorded that one of the officials in question “explained the progress made to date with scoping the forum, including the human rights’ framework, and the forthcoming Ministerial meeting at which decisions about any pilot would be made”. The notes also record that “Chris and Helen both expressed concern about confidentiality and access by third parties to their evidence in relation to civil proceedings and the CICA [Criminal Injuries Compensation Award]”. The officials “agreed that this was an important matter for the any [sic] pilot. Which would be fully explored”⁷⁰.
126. The minutes of a meeting of the SurvivorScotland National Reference Group held on 26th August 2009 record: “[c]onfidentiality/anonymity on alleged abusers was discussed, as was their human rights. There will be need for further discussion on this”; “[i]t was asked why the confidential model not the investigative model had been chosen as possibly the best route for the

⁶⁹ <http://www.gov.scot/Resource/Doc/264363/0079228.pdf>.

⁷⁰ Note of meeting of 4th August 2009.

Forum. It was explained that in Ireland both models were used. The investigative model was hugely expensive (the vast majority of this expenditure was on legal fees) and it was doubtful whether the process had been in the best interests of the survivors”⁷¹.

127. A document entitled “*SurvivorScotland National Reference Group: Update on Acknowledgement and Accountability Forum*”⁷² states that: “during the consultation process, we were approached by the Scottish Human Rights Commission (SHRC) who offered their expertise in considering how the rights of both survivors and those involved in institutions where abuse had happened could best be protected in any forum. SHRC has been commissioned to provide a framework for the Forum which will ensure that the rights of all parties are represented”; “[w]e are currently working towards establishing a Pilot Forum in 2010 which would provide the opportunity to test out whether the idea of a forum is helpful and feasible. We have looked at a variety of different models for a pilot, particularly the Confidential and Investigation Committees that were used by the Ryan Commission to collect evidence and give survivors the chance to describe their experiences. At present the Confidential Committee option seems to offer a way forward that fits with human rights requirements for survivors and alleged abusers but no decisions have been made about the pilot as yet.”. That document also records that pilot outcomes “will include a record of the proceedings (with confidentiality a key issue)”.
128. It is evident that a key meeting between the Minister for Public Health and Sport (the Lead Minister), the Minister for Community Safety, and the Minister for Children and Early Years took place on 30th September 2009. Decisions as to the format of the proposed pilot forum, its name and its restriction to Quarriers’ were made at that meeting.

⁷¹ Minutes dated 26th August 2009.

⁷² Document provided with minutes above.

129. Briefing for the meeting was provided a few days earlier. That briefing⁷³ sets out the background to the proposed acknowledgement and accountability forum, key steps taken in its evolution (for example, the input of the SCHR and the studying by officials of the Irish Commission to Inquire into Child Abuse), the options as regards the form of the pilot, and the reasons why Quarriers' were being proposed as the focus of the pilot.
130. The briefing sets out the advantages and disadvantages of the various options: "no action", "confidential committee model", "investigation committee model" and "confidential and investigation committees".
131. The section entitled "Conclusion" provides as follows: "[i]t is suggested that Option 2 [the confidential committee model] is the preferred option for the pilot in Scotland. An Investigation Committee on its own would not provide a therapeutic forum for survivors and would create considerable difficulties in terms of 'due process' rights for alleged abusers, with the potential for significant breaches of human rights. Institutions are likely to be hostile to such an approach and survivors might find it overformal and possibly even unsympathetic".
132. The note of the meeting on 30th September 2009 records what was agreed as follows—

"Agreement was reached at the meeting to conduct a pilot of a forum to give adult survivors of in-care abuse the opportunity to describe their experiences. The proposals contained in the submission to Ministers of 24 September were accepted. The following issues were raised and discussed:

⁷³ Briefing to Ministers entitled "Cross-Ministerial Meeting on the Proposal to Undertake an Acknowledgement and Accountability Forum (AAF)" dated September 2009.

Confidential Committee Model

There was discussion instigated by Mr Ingram about the strength of the model being proposed and whether a confidential committee would be ambitious enough, particularly since it was proposed that the institution from which survivors would be drawn should not be given any formal status at the Pilot Forum. Officials noted the difficulties (revealed in the work of the Irish Commission on the Investigation of Child Abuse) associated with institutions' direct involvement in the process, as the Pilot Forum would then have to consider evidence from both parties. All parties would have to be given legal representation. This could radically alter the nature of the process, making it more difficult to create a therapeutic environment, adding hugely to costs, creating possible delays and taking the focus away from survivors. Institutions might refuse to take part in such a 'fact-finding' process. Ms Robison stressed the therapeutic nature of the Pilot Forum. The extensive consultation that had taken place with survivors and the significant contribution made by of the National Reference Group taking forward the SurvivorScotland Strategy were noted.

ACTION

It was agreed that consideration should be given to finding ways of involving the pilot institution which would not adversely affect the process, through, for example, restorative justice approaches.

Pilot Forum Name

It was agreed that the current name 'Acknowledgement and Accountability' was not an accurate representation of what was proposed and was not favoured by those who responded to the Consultation Exercise.

ACTION

The Pilot Forum Advisory Group should be asked to consider a more appropriate title, drawing on the views of the consultees.

Quarriers

The choice of Quarriers as the site for a pilot was considered. Mr Ingram expressed the need to move on from the impact that institutional abuse has had on Quarriers' reputation. It was agreed that a forum could provide institutions with a chance to come to terms with what had happened and move on and Quarriers would be a prime example of this. The advantages of siting the pilot with Quarriers' survivors is that Quarriers is a national organisation that took placements from right across Scotland, there have already been successful prosecutions and therefore proof of harm exists, the organisation keeps good records so that it should be easier to contact survivors and the Chief Executive, Phil Robinson, has offered to work with us. He is approaching this with the best of motives and is very keen to assist.

Action:

Ways of giving Quarriers more active involvement in the forum will be discussed with the organisation, particularly the use of restorative justice approaches⁷⁴.

133. The title settled upon for the pilot forum was "Time to be Heard".
134. A letter sent by officials to care providers at the conclusion of the pilot forum's hearings summarises the thinking behind it—

⁷⁴ Note of meeting on 30th September 2014.

“I am writing to the major providers of residential child care in Scotland (past and present) to give you information about progress with the Time to be Heard Pilot Forum and to help you prepare for the publication of the report on Time to be Heard by the independent Chair, Tom Shaw.

The Pilot Forum was established in May 2010 (as part of the SurvivorScotland Strategy developed by Scottish Government) to hear from up to 100 survivors and other former residents of Quarriers Village. The primary aim of Time to be Heard was to test out a model designed to provide an opportunity for people to talk openly about their experiences and be listened to with respect and in good faith. Time to be Heard also provided access and signposts to other forms of support for former residents. We are grateful to Quarriers for assisting Time to be Heard to reach former residents and in supporting the Pilot Forum generally.

Applying the recommendations of the Scottish Human Rights Commission the Pilot Forum sought to safeguard the rights of survivors and also people against whom allegations were made. Details of this approach are contained in the Time to be Heard Confidentiality and Privacy Policy which can be found at the SurvivorScotland website alongside other information on Time to be Heard.

...We hope that the ‘historic record’ created from the information presented to Time to be Heard will give survivors and other former residents of Quarriers public acknowledgment of their experiences, both positive and negative. The record should also help us learn from any past failures and improve practice in the future”⁷⁵ .

⁷⁵ Letters sent to care providers at conclusion of Time to be Heard pilot.

ANNEX

The Inquiry's Requirements for this Report (Section 21 Notice)

The Inquiry requires evidence in the form of a report covering the period between the lodging with the Public Petitions Committee of the first petition by Chris Daly, in August 2002, and the announcement of this Inquiry in 2014 ("the 2002 – 2014 Report"). That report should be delivered to the Inquiry no later than Friday 1 September 2017.

The 2002 – 2014 Report

The report is to include:

1. The response of Scottish Government to the written and oral evidence of Helen Holland, David Whelan and Christopher Daly that was presented to the Inquiry during the first part of Phase 1 of the public hearings that commenced on 31 May 2017 and finished on 12th July, 2017;
2. An explanation of the reasons why the requests for a public inquiry made at various times between 2002 and 2014 were refused, and an explanation of why, on 15 April 2008, the Public Petitions Committee closed the petition submitted in August 2002;
3. An explanation of the reasons why the then First Minister offered a public apology ("the public apology") in December 2004 but did not also announce the establishment of a public inquiry;
4. An explanation of the reasons why the specific terms of the public apology were determined upon;
5. An explanation of the reasons for the various decisions made and steps taken in respect of the abuse of children in care (including in respect of the requests made on behalf of survivors of such abuse) by the Scottish Executive/Scottish Government between August 2002 and the announcement

of a public inquiry in December 2014, for the particular timing of each of those steps, and for the particular processes adopted when taking those steps, including the approach to engagement with survivor groups and campaigners in relation to such steps. This explanation should include, but not be limited to, the reasons for the decision to restrict access to “Time To Be Heard” to former Quarriers’ residents only, for the decision not to include any element of accountability, and for the decision to make the process wholly confidential;

6. An explanation of the reasons for announcing the establishment of this Inquiry 12 years after the first petition by Christopher Daly; this explanation should include (a) the reasons why government (whether based in London or in Edinburgh) considered that a public inquiry was appropriate in 2014 but not at any earlier stage and (b) whether the possibility of establishing a public inquiry in relation to child abuse was considered by or raised with any First Minister other than Jack McConnell and if so, when and why.