

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

**SCOTTISH GOVERNMENT RESPONSE UNIT
1 SEPTEMBER 2017
(UPDATED 21 FEBRUARY 2020)**

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PREFACE

- i. 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 18 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. An updated and expanded version of this report was submitted by the Scottish Government to the Inquiry on 21 February 2020.
- ii. Briefly, this report is required to cover the following matters—
 - 1) 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;
 - 2) the reasons why the requests for a public inquiry made at various times between 2002 and 2014 were refused and why, on 15 April 2008, the Public Petitions Committee closed the petition submitted in August 2002;
 - 3) the reasons why the then First Minister offered a public apology on 1 December 2004 but did not also announce the establishment of a public inquiry;
 - 4) the reasons why the specific terms of the public apology were determined upon;
 - 5) 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; and

- 6) the reasons for announcing the establishment of this Inquiry 12 years after the petition submitted by Christopher Daly, including an 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 Lord McConnell.
- iii. Point 1 is addressed, in the first instance, by chapter 1 of this report (response of the Scottish Government to the Evidence of Helen Holland, David Whelan and Christopher Daly). That chapter offers a response to these survivors and to the Inquiry.
- iv. The remaining chapters of this report address points 2 to 6 of the section 21 notice and by doing so provide a more detailed response to particular issues that Helen Holland, David Whelan and Christopher Daly raised in their evidence regarding Scottish Government (including Scottish Executive) policy and how survivors were (or were not) involved in the development and implementation of that policy. These chapters rely on Scottish Government and public records to provide a factual explanation of the steps taken and the reasons why decisions were made.
- v. Points 2, 3 and 6 principally concern why a public inquiry was not established before 2014 and as well as relating to each other, also overlap to a lesser or greater extent with points 1, 4 and 5 which concern issues that provide the context to, or directly correlate with, why a public inquiry was not established sooner.
- vi. The following chapters of this report address points 2, 3 and 6:
- chapter 2 on the reasons for not establishing a public inquiry, 2004 to 2014 (addressing point 2 and in so far as First Ministers other than Lord McConnell were engaged, also point 6);
 - chapter 3 on why a public inquiry was established in 2014 (addressing point 6);

- chapter 4 on why Petition PE535 was closed in April 2008 (addressing point 2) (albeit a matter for the Scottish Parliament's Public Petitions Committee rather than the Scottish Executive/Government); and
 - chapter 5 on why a public apology was given on 1 December 2004 but a public inquiry was not announced (addressing point 3).
- vii. These chapters touch on, or to a degree repeat, some of the information contained in other chapters of this report, where that was considered helpful to provide context, or information directly pertinent, to addressing why a public inquiry was not established before 2014.
- viii. Point 4 is addressed by chapter 6 of this report which explains how the specific terms of the public apology given on 1 December 2004 were determined.
- ix. In relation to point 5, 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”.
- x. Given the potential breadth of point 5, 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*¹, being certain actions and interventions which followed on from the public apology given by the First Minister on 1 December 2004. Accordingly, to address point 5, this report contains a specific chapter on each of the steps mentioned in those paragraphs, which comprises—

¹Centre for Excellence for Looked After Children in Scotland. National Confidential Forum for Adult Survivors of Childhood Abuse in Care [Internet]. Glasgow; 2012 [cited 2020 February 18]. p. 98. Available from: <https://fbga.redquitar.co.uk/scopingReportJune2012.pdf>

- chapter 7 on the setting up of Tom Shaw’s Historical Abuse Systematic Review;
- chapter 8 on the commissioning of the Keeper of the Records to review public records legislation;
- chapter 9 on the national review of current residential child care, undertaken by the National Residential Child Care Initiative;
- chapter 10 on the launch of the National Strategy for Survivors of Childhood Abuse in 2005 and subsequent developments;
- chapter 11 on the establishment and funding of In Care Survivors Service Scotland; and
- chapter 13 on the consultation on the proposed Acknowledgement and Accountability Forum, and its evolution into the Time to be Heard Pilot Forum.

xi. In addition to those steps, the updated version of this report also includes three further specific chapters covering:

- chapter 12 on the Scottish Human Rights Commission’s Framework and InterAction Process;
- chapter 14 on the National Confidential Forum; and
- chapter 15 on prescription and limitation.

xii. These are important matters in their own right, but they also relate to other matters covered by this report, and it was considered helpful to include them.

xiii. It should be noted that various matters were worked on by different officials, across different teams within government, from 2002 to 2014. This reflected the fact that different Ministers had responsibility for different aspects of government’s response to survivors. Broadly speaking, in the early period of this report, officials from the Children and Young People Group of the Scottish Executive led the government’s response to survivors. The Minister for Education and Young People was, overall and notwithstanding the First

Minister, the lead Minister. There were some matters, related to the development of the National Strategy for Survivors of Childhood Abuse, which were undertaken by officials in health teams, but it was not until later, by 2007 and with the establishment of In Care Survivors Service Scotland, that officials working on health and social care matters assumed a leading responsibility. The Minister for Public Health primarily led on the health and social care aspects of government's response to survivors, including later, the establishment of the National Confidential Forum. The Minister for Children and Early Years (or Young People) and officials working on children and education continued to be involved over the whole period in the matters covered by this report, to a lesser or greater extent, depending on the matter in question. Those officials, and the Cabinet Secretary for Education and Lifelong Learning returned to a central role in 2013, during the period that led to a public inquiry being announced at the end of 2014. Throughout the period from 2002 to 2014 the Minister for Justice (later Cabinet Secretary for Justice) and the Deputy Minister for Justice (later Minister for Community Safety (and Legal Affairs)) led on justice matters and were supported by their officials, including on issues related to prescription and limitation.

- xiv. The Scottish Government has submitted to the Inquiry all of the documentation referred to in this report (including the updated version of this report). The Scottish Government has also transferred to the Inquiry a substantial volume of related material.
- xv. Other than chapter 1 of this report, which provides the Scottish Government's response to the evidence given at the Inquiry by Helen Holland, David Whelan and Christopher Daly in July 2017, this report relies entirely on records (the Scottish Government's records and public records) in order to address points 2 to 6 of the section 21 notice. The records-based explanations in this report detail steps and decisions in a chronological sequence within each chapter. Whilst records are narrated chronologically, it should be noted that Ministers and officials across government were frequently working in parallel on the issues concerned, as well as working on other government business.

- xvi. It has been a challenge to identify, gather, review, analyse and then narrate the information contained in the records. The search for relevant material since the section 21 was served has been extensive. Millions of government documents were filtered to more than ten thousand documents, which were then manually reviewed to identify documents for this report.
- xvii. There are, however, inherent limitations in this process. Not every detailed decision or step made by government was necessarily documented and documented matters may not have been recorded in the same way or to the same degree, or were retained. 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.
- xviii. The search for, and analysis of, records has been carried out by government officials who were not involved in events prior to 2014. They exercised their best, impartial, judgement in selecting material relevant to this report. Steps were taken to ensure consistency, in so far as possible. Nevertheless, different people (inside and outside of government) could potentially have made different judgements about which documents to cite and passages to quote, in this report. There is also a risk that during the analysis material could have been inadvertently misunderstood by officials who are less familiar with events than those who were involved at the time. In so far as possible, officials have refrained from attempting to characterise or summarise the evidence in their own way, to minimise the risk of such errors occurring.
- xix. The Scottish Government has not interviewed those who were involved in events at the time, including current and former Ministers and officials, as it was not considered appropriate to do so given that the Inquiry is investigating the matters covered by this report.
- xx. Should errors or omissions be identified, or more information be sought on particular aspects of the matters covered by this report, the Scottish Government would be happy to follow this up and assist the Inquiry further.

xxi. 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 others who may read it.

CHAPTER 1

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

- 1.1. In July 2017, Helen Holland, David Whelan and Christopher Daly gave oral evidence to the Scottish Child Abuse Inquiry. The Scottish Government takes this evidence very seriously. We have 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.
- 1.2. The Scottish Government acknowledged in its submissions to 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.
- 1.3. In their written and oral evidence to the Inquiry, they made a number of criticisms of the Scottish Government.
- 1.4. They were critical of the character, tone and manner of how Ministers and officials had at times treated them in the past and described a relationship that had lacked trust.
- 1.5. More specifically, they were critical of the outcome of certain measures introduced by the Scottish Government over time and the method by which those measures were promulgated, including how the Scottish Government consulted (or failed to consult) with them and other survivors.

The relationship between survivors and the Scottish Government

- 1.6. The evidence of these survivors included the following statements about their relationship with the Scottish Government:

Helen Holland

“Survivors are sick to the back teeth of the Government treating them as if they all got mental health problems” (transcript – p38)

“You will always get a lack of trust with survivors in relation to anything that is to do with the government...” (transcript – p41)

“There is a question if civil servants are providing all of the accurate information to Ministers. There is also a question why certain survivor groups meet independently and if this is strategic.” (transcript – p46)

“We get a phone call before an announcement is going to be made. I just find that really disrespectful to engage in that way...” (transcript – p46)

“If you are representing the government or the Scottish Executive, surely you are there to listen to the concerns of the people you are engaging with... it was almost as if the decision has been made and these meetings were taking place so that the government could stand up and say “we have engaged with survivors”. I think that has been used on more than one occasion.” (statement - TRN.001.001.5579)

“What I mean by that is the way that survivors have been dealt with over the years -- it hurts to say this -- but one of the meetings I was at -- and it was a government meeting -- at the time there were more service providers and stakeholders than there were survivors and I asked the question, “Why is it that there aren't so many survivors here?”. The response I got back was, “Well, we can't have the room full of nutters”. That to me spoke volumes because that said to me that we were always going to be seen by government as people with mental health issues, people who were aggressive, people who couldn't engage, when the reality is from any number of survivors I have spoken to, whether they can engage at a simple level or whether they can engage at a more professional level, every single one of them is able to engage because they are able to speak about their own experience and that is the most important thing.” (transcript – p126)

David Whelan

“We were the bad guys at one point. We were left out of the processes. We were not invited into the processes. We kept knocking at the door to be included in the processes... What I will say is I think some of the civil servants have been selective over the years and I actually think they haven't helped the processes move forward faster or in a more progressive way than they should have done” (transcript – p46)

“There has been a mistrust built up... when people go into processes and we are told certain things and we buy into those things... and something happens and there is an impact on trust, it just makes people untrusting of the process” (transcript – p86/87)

Christopher Daly

“Q. The comment that you have recorded in the statement is that: “There’s Chris Daly, what a waste of space.” A. Yes, that’s what was said. Q. That was the confusion. Did you respond to that at the time or did you just let it slide? A. I ignored that. Yes.” (transcript – p40)

1.7. The Scottish Government fully accepts that its engagement with these survivors and, through them, with the groups they represent:

- was not always as it should have been,
- on too many occasions fell far short of what they were entitled to expect, and
- led to hurt and mistrust.

1.8. That should not have happened and the Scottish Ministers are extremely sorry that it did.

Issues raised by survivors about Scottish Government policy and consultation

1.9. The written and oral evidence of these survivors also included criticism of measures that have been undertaken by the Scottish Government in response to survivors’ needs, which included concerns about how survivors were (or were not) involved in the development and implementation of those measures. Their evidence referenced a number of measures from the 2002 to 2014 period, many of which are discussed in some detail in later chapters of this report. The Scottish Government takes criticisms about those measures equally as seriously as those concerning the shortcomings in the way in which it has engaged with survivors. The Scottish Government understands that many, indeed likely most, survivors view the measures taken by the Scottish Government in the period in question as having failed to properly understand

survivors' needs or to genuinely involve survivors in the work to develop and implement those measures, and as a result failed to offer a suitable response. The Scottish Government regrets that it did not do more at the time to listen to survivors and respond more appropriately to their concerns.

- 1.10. Reflecting on this and the evidence in this report, it appears that throughout the period from 2002 to 2014 there had been a growing awareness in wider 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 and sexual abuse, and of the issues which matter to those who suffered abuse in care.
- 1.11. Important pieces of work, such as the Tom Shaw review, the development of the national strategy to support survivors and the SHRC led InterAction work (which involved and continues to involve close liaison with survivors and their representatives), have contributed to an increased understanding by Ministers and officials of the issues raised by survivors. Whilst there were in earlier years doubts by some, including in government, about whether a public inquiry was the most effective way to respond to survivors' concerns, the steps taken over the years to engage with, and respond to, survivors have helped many understand the issues better. The Scottish Government believes its decision in 2014 to announce an independent public Inquiry under the Inquiries Act 2005 was an important step in achieving acknowledgement and accountability, establishing the facts and identifying systemic failures, and to allow all concerned to learn from the mistakes of the past.
- 1.12. The remainder of this report explains, by reference to government records and public statements, many of the measures undertaken by the Scottish Government in response to survivors from 2002 to 2014, including how the Scottish Government consulted with survivors on the implementation and development of those measures. That includes addressing in more detail the criticisms raised by Helen Holland, David Whelan and Christopher Daly in their evidence to the Inquiry about those measures and consultation. This report is intended to provide them and the Inquiry with an open, evidence-based, response.

Recent progress and the steps ahead

- 1.13. The Scottish Government repeats here its acknowledgement of the crucial role played by victims and survivors of abuse in raising awareness and bringing about change over the years. Helen Holland, David Whelan and Christopher Daly have been, and continue to be, instrumental in bringing about change.
- 1.14. Since 2014 the Scottish Government has continued to work with survivors and others to take steps to address a number of issues, some of which began to be advanced before 2014 and are covered in part by this report. The steps that have been taken since 2014 have included:
- establishing the National Confidential Forum² and the independent Scottish Child Abuse Inquiry in 2015³;
 - SurvivorScotland's strategic outcomes and priorities were updated in 2015⁴;
 - launching the In Care Survivor Support Fund in 2015, which was replaced by Future Pathways⁵ in 2017, to better enable survivors of abuse in care to choose services tailored to their individual needs and offer access to a discretionary fund⁶;
 - supporting the passage of the Apologies (Scotland) Act 2016⁷;
 - introducing the Bill that became the Limitation (Childhood Abuse) (Scotland) Act 2017⁸, removing the three year limitation period;

² National Confidential Forum. 2017 [cited 2020 Feb 18]. Available from:

<https://www.nationalconfidentialforum.org.uk/>

³ Scottish Child Abuse Inquiry. No date [cited 2020 Feb 18]. Available from:

<https://www.childabuseinquiry.scot/>

⁴ Scottish Government. SurvivorScotland strategic outcomes and priorities 2015-2017. 2015 [cited 2020 Feb 18]. Available from: <https://www.gov.scot/publications/survivorscotland-strategic-outcomes-priorities-2015-2017/pages/1/>

⁵ Future Pathways. 2019 [cited 2020 Feb 18]. Available from: <https://future-pathways.co.uk/>; also relevant, but outside the time period of this report, is Petition PE01596 (lodged before the Scottish Parliament on 12 January 2016).

⁶ At the end of December 2019, 1,289 survivors were registered with Future Pathways.

⁷ *Apologies (Scotland) Act 2016*. Available from:

<http://www.legislation.gov.uk/asp/2016/5/contents/enacted>

⁸ *Limitation (Childhood Abuse) (Scotland)*. Available from:

<http://www.legislation.gov.uk/asp/2017/3/contents/enacted>

- launching a new Survivor Support Innovation and Development Fund for survivor services in 2017, which from April 2020, will be replaced by a new four year funded initiative, the Survivors of Childhood Abuse Support Fund⁹;
- announcing the National Trauma Training Programme in 2018¹⁰;
- giving an apology “on behalf of the Scottish Government” to survivors of abuse in care in Scotland, by the Deputy First Minister before Parliament in 2018¹¹; and
- launching an Advance Payment Scheme¹² in 2019 to enable certain survivors to begin receiving financial redress.

1.15. The Scottish Government continues to be a member of the InterAction Review Group and work is underway to develop a statutory redress scheme, with legislation to be introduced before the Scottish Parliament this year.

1.16. The Scottish Government will continue to listen to the views of Helen Holland, David Whelan and Christopher Daly, and to the views of all those who were abused as children in care, to do whatever more we can do to redress the wrongs of the past, as quickly as possible.

1.17. The Scottish Government will continue to participate fully in the Inquiry process. The Scottish Government is committed to addressing all the recommendations to be made by the Inquiry.

⁹ Inspiring Scotland. 2020 [cited 2020 Feb 18]. Available from:

<https://www.inspiringscotland.org.uk/news/survivors-childhood-abuse-support-fund-now-open/>

¹⁰ NHS Education for Scotland. National trauma training framework. Not dated [cited 2020 Feb 18].

Available from: [https://www.nes.scot.nhs.uk/education-and-training/by-](https://www.nes.scot.nhs.uk/education-and-training/by-discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx)

[discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx](https://www.nes.scot.nhs.uk/education-and-training/by-discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx)

¹¹ Scottish Government. Response to recommendations on financial redress for survivors of child

abuse in-care. 2018 [cited 2020 Feb 18]. Available from: [https://news.gov.scot/speeches-and-](https://news.gov.scot/speeches-and-briefings/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care)

[briefings/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care](https://news.gov.scot/speeches-and-briefings/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care)

¹² Scottish Government. Financial redress for survivors of child abuse in care: Advance Payment Scheme form and guidance. 2019 [cited 2020 Feb 18]. Available from:

<https://www.gov.scot/publications/financial-redress-for-survivors-of-child-abuse-in-care-advance-payment-scheme/>

CHAPTER 2

REASONS FOR NOT ESTABLISHING A PUBLIC INQUIRY, 2002 – 2014

- 2.1. This chapter responds to point 2 of the section 21 notice; and also responds to point 6 of the section 21 notice to the extent reference is made to engagement with First Ministers other than Lord McConnell on the issues covered by this chapter.
- 2.2. This chapter addresses the issues raised by Helen Holland, David Whelan and Christopher Daly in their evidence to the Inquiry which relate to the campaign to establish an inquiry from 2002.
- 2.3. The issue of whether to establish an inquiry touches on a number of other related matters covered by this report, such as the Scottish Executive opening up its records to survivors and the appointment of a “rapporteur” (as the position was initially known) which later became the Tom Shaw review. These related matters are expanded on in this chapter where it was judged helpful to do so.
- 2.4. This chapter begins with background from 2002, before Petition PE535 was lodged by Christopher Daly, calling for an inquiry. The records show that in the period from 2002 to 2005, the issue of whether to establish an inquiry was prominent – particularly during the events leading up to the First Minister’s apology on 1 December 2004. As explained later in this chapter, whilst calls for an inquiry continued throughout the period of this report, the issue returned to particular prominence within the Scottish Government in 2013 and 2014.

Events in 2002 preceding the lodging of Petition PE535

- 2.5. A number of events related to the historical abuse of children in care took place in 2002, prior to the lodging of the Petition PE535 by Christopher Daly in August 2002 that called for an apology and an inquiry. These events are noted in the following paragraphs for background.

- 2.6. On 30 January 2002 the report of an independent Inquiry into the abuse of children in Fife Council's care between 1959 to 1989 was published¹³. A briefing¹⁴ from an official to the Minister for Education and Young People on 28 January about the upcoming publication of this report noted that "While this was a matter for Fife Council...the findings of the report have wider implications". The official noted that the "report recommends that central government should provide funding throughout Scotland for services for survivors of sexual abuse".
- 2.7. A legal official emailed a policy official on 18 February 2002 regarding "List D Schools cases". The email stated "we do think it would be useful to ask Personnel for records of those working in SED [Scottish Education Department], SWSG [Social Work Services Group] and related Departments, with a view to contacting anyone involved with the List D schools between 1956 and 1981". Further, the legal official noted that she had asked Counsel for "his views on liability, and on the statutory controls which might have been available to Scottish Office departments in relation to disciplinary issues. Finally, I have highlighted the Department's concerns that Ministers are not to be drawn into defending an abusive regime"¹⁵.
- 2.8. On 18 June 2002 an official noted a statement in the media by a spokeswoman for the First Minister which read:

"Children are a priority for the Scottish Executive. In 21st century Scotland, no child should fall through the net of care services and it's vital these services are high quality and integrated. Cathy Jamieson, Minister for Education and Young People, is building on the work initiated by First Minister Jack McConnell, when he was education minister, to

¹³ A18234120 - KNX 1/56 Part 2. Briefing to Minister for Education and Young People, "Sexual Abuse: Publication of the Report of an independent Inquiry into the abuse of Children in Fife Council's Care Between 1959 -1989". p. 6 - 18. 28 January 2002.

¹⁴ A18234120 - KNX 1/56 Part 2. Briefing to Minister for Education and Young People, "Sexual Abuse: Publication of the Report of an independent Inquiry into the abuse of Children in Fife Council's Care Between 1959 -1989". p. 6 - 18. 28 January 2002.

¹⁵ A18234120 - KNX 1/56 Part 2. Email correspondence between officials. p. 5. 18 February 2002.

integrate children's services and ensure all youngsters get the best possible start in life.

Nothing can ever turn back the clock for adult survivors of sexual abuse - but Scottish Ministers are determined to protect future generations from such misery and support those who have suffered such traumas. The Executive is already taking action to try and address the psychological and other devastating long-term effects of childhood sexual abuse and prevent future abuse. These include setting up a victims strategy, improving access to criminal record checks and reviewing child protection procedures. The Executive has also provided funding to improve awareness of such abuse and evaluate the operation of a national telephone helpline.

We believe that the long-term effects of abuse need considered and sensitive handling. Health boards and NHS trusts must work with their partners to develop flexible and responsive services to treat and rehabilitate survivors of abuse.

The First Minister has asked officials to look at the work being done in Ireland and Health Minister Malcolm Chisholm is continuing to look at ways in which health and other services provide support for those suffering the multiple traumas of previous abuse¹⁶.

- 2.9. On 8 August 2002, the Secretary of State for Wales wrote to the First Minister of Scotland informing him that legal action was being taken against both the Welsh Assembly and the Secretary of State for Wales by victims of child abuse in North Wales, saying that "(t)he main plank of the complaint is that Her Majesty's Inspectors of Schools at the time breached their duty of care in investigating whether abuse was taking place"¹⁷.

¹⁶ A18234147 - KNX 1/56 Part 3. Email. FW: First Minister Response. p. 516. 18 June 2002.

¹⁷ A18234147 - KNX 1/56 Part 3. Letter from Secretary of State for Wales to First Minister of Scotland. CHILD ABUSE IN NORTH WALES: CLWYD HALL CASE. p. 424 - 426. 8 August 2002.

Petition PE535 and the Scottish Executive's response

- 2.10. On 19 August 2002 Petition PE535 was lodged at the Scottish Parliament by Christopher Daly, and was addressed to the Clerk of the Public Petitions Committee¹⁸. The petition stated:

"Inquiry and Apology for Adult Survivors of Institutional Abuse in Scotland

We the undersigned petitioners ask the Scottish Parliament to urge the Scottish Executive to commence an inquiry into past institutional child abuse. Survivors were subjected to systematic abuse including, sexual assaults, physical and emotional abuse, while they were as children resident in an institution in respect of which State bodies had regulatory or supervisory functions. In particular those in the care of the State under the supervision of religious orders.

We ask the Scottish Parliament to make an unreserved apology for said State bodies. And to urge the religious orders to apologize unconditionally.

Terms of Reference for the Scottish Parliament / Scottish Executive.

To afford victims of institutional child abuse in Scotland an opportunity to tell of the abuse they suffered to a sympathetic and experienced forum.

To establish a picture of causes, nature and extent of physical sexual and emotional abuse of children in institutions from around 1940 or before until the present, including the antecedents, circumstances, factors and context of such abuse, the perspectives of the victims and motives and perspectives of the persons responsible for committing the abuse.

To compile a report and make public, on the activities and findings of the inquiry, containing such recommendations as the inquiry considers

¹⁸Petition 535. 2005 [cited 2020 Feb 18]. Available from: <https://archive.parliament.scot/business/petitions/docs/PE535.htm>

appropriate including actions which should be taken to address the continuing efforts of the abuse examined by the inquiry.

To appoint specialist advisers supply information or elucidate areas of complexity, to conduct investigations, hold hearings, both private and public and conduct or commission research for the purpose of carrying out these terms of reference.

Principal Petitioners

Christopher G Daly¹⁹.

- 2.11. On 8 October 2002 the Petitions Committee (membership available from Committee minutes¹⁹) of the Scottish Parliament considered petition PE535²⁰ 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 an official in the Executive's Health Department the following day (9 October 2002), 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 inquiry²¹.
- 2.12. On 17 October 2002, an official from the Women and Children's Unit responded to an official in the Health Department highlighting child protection advances which should be included in the Scottish Executive's response to PE535. The official highlighted a review carried out by Roger Kent in 1998 and the recent child protection review²².

¹⁹ Public Petitions Committee. Minutes, 15th Meeting, 2002. 8 October 2002 [cited 2020 Feb 10]. Available at: <https://archive.parliament.scot/business/committees/historic/petitions/mop-02/pumop1008.htm>

²⁰ Petition 535. 2005 [cited 2020 Feb 18]. Available from: <https://archive.parliament.scot/business/petitions/docs/PE535.htm>

²¹ A18234147 – KNX 1/56 Part 3. Letter from Public Petitions Committee to official. p. 330. 8 October 2002.

²² A17927391 - 2WCV 002/001: Part 1. Correspondence between officials. RESPONSE TO PETITION PE535: CALL FOR INQUIRY INTO PAST INSTITUTIONAL ABUSE OF CHILDREN AND IN PARTICULAR THOSE UNDER THE SUPERVISION OF RELIGIOUS ORDERS. p. 419. 17 October 2002.

2.13. Between 18 October and 5 November 2002 officials corresponded regarding PE535²³. The email chain started with the letter from the Clerk of the Public Petitions Committee on 9 October 2002 writing to an official within the Scottish Executive's Health Department. Officials corresponded about which team was best placed to lead on responding to the petition. During the course of this correspondence an official noted: "I suspect the petition has been prompted by steps taken by the Irish Government in relation to widespread historical abuse in religious institutions... I am only aware of one ongoing police inquiry into historical abuse in a religious institution in Scotland... Consequently I would advise that we do not accede to the petition because:

- nature and scale of the problem appears to be different in Scotland
- other steps being taken in Scotland".

2.14. There was further correspondence between officials on 1 November 2002 regarding Petition PE535²⁴. An official provided an information note on child protection, and stated: "As you can see, there are a range of initiatives across the Executive which are aimed, either directly or indirectly, at strengthening child protection"²⁵. Further correspondence noted that the "draft memorandum and draft covering submission recommending that the Executive does not hold a public inquiry into past institutional child abuse" was to be sent to the Minister shortly, and requested any further comments from officials to be sent to an official by Tuesday, 12 November²⁶. Some further comments and changes were received.

2.15. On 13 November 2002 an official sent a briefing to the Minister for Education and Young People, Ms Jamieson, seeking her agreement to a draft Memorandum to the Public Petitions Committee on petition PE535²⁷. That

²³ A18234147 – KNX 1/56 Part 3. Email correspondence between officials. FW: PE535. p. 9. 18 October 2002.

²⁴ A18234147 – KNX 1/56 Part 3. Email correspondence between officials. FW: Petition PE535 contribution. p. 336 - 339. 1 November 2002.

²⁵ A type of document used by the Scottish Executive at this time for briefings

²⁶ A18234147 – KNX 1/56 Part 3. Email correspondence between officials. RE: PE535 – Call for Inquiry into Past Institutional Abuse of Children. p. 315. 8 November 2002.

²⁷ A18234147 – KNX 1/56 Part 3. Briefing for Minister for Education and Young People. p. 37 - 41. 13 November 2002.

draft of the Memorandum stated 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”.

- 2.16. The briefing advised the Minister of the terms of the petition and of the letter from the Committee, and that the draft Memorandum was to be returned to the Committee by 15th November. It provided 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.
- 2.17. Two main reasons were given in the briefing for not instituting an inquiry of the sort requested at the time, namely that: (i) there was not currently evidence of systemic widespread abuse throughout residential establishments in Scotland such as appears to have existed elsewhere; and (ii) the need for improved child protection was already being addressed by the Executive.
- 2.18. With regards to an apology, the briefing stated: “Regarding a potential apology, the briefing stated: “The clerk’s letter asks for the Executive’s view on an apology. The decision on whether the Parliament should apologise is obviously one for it to make itself. Nonetheless we do not think that it would be appropriate for the Parliament or the Executive to issue an apology at present when the extent of the State’s responsibility for institutional abuse is unclear”²⁸.
- 2.19. The briefing also stated: “The style of inquiry that Mr Daly is seeking would appear to some extent to be based on the example of the Commission to Inquire into Child Abuse in the Republic of Ireland”. It went on to note that:

²⁸ A17816112 - 2ADQ 004/001 Part 1. Briefing from an official to Ministers. PE535 – MR CHRISTOPHER DALY. p. 129. 8 November 2002.

“The Minister was copied a submission of 23 October²⁹ from [official] of Civil Justice and International Division to the Deputy First Minister, on the issues of compensation to victims of abuse and prescription and limitations issues”.

2.20. The briefing provided a recommendation in the following terms:

“Having consulted colleagues in Justice Department and Social Work Inspectorate our advice is that the Executive should not institute an inquiry into institutional child abuse at this time. We see two main reasons for this:

- The nature and scale of the problem appears to have been different in Scotland. There is not currently evidence of systematic widespread abuse throughout the residential establishments in Scotland such as appears to have existed elsewhere.
- The need for improved child protection is already being addressed by the Executive. Most of the cases that have been highlighted relate to events twenty or more years ago. There have been investigations and reports on child abuse and child protection in the intervening years. For example, as the Minister is aware, there was an inquiry into the abuse of children in residential care in Edinburgh, which was published in 1999³⁰, and the Scottish Office published the Children’s Safeguards Review³¹, along with guidance in 1998. The Executive is already taking forward a number of initiatives to strengthen child protection, such as inter-agency audit and review of child protection due to be published shortly, which are highlighted in the draft memorandum”.

²⁹ A17816112 - 2ADQ 004/001 Part 1. Briefing from an official to Ministers. PE535 – MR CHRISTOPHER DALY. p. 129. 8 November 2002.

³⁰ Marshall, K., Jamieson, C., Finlayson, A. Edinburgh’s Children Summary Report: The Edinburgh Inquiry into Abuse and Protection of Children in Care. 1999 [cited 2020 Jan 31]. Available at: <https://lx.iriss.org.uk/sites/default/files/resources/042A.%20Edinburgh%27s%20Children%20-%20Summary%20Report.pdf>

³¹ Kent, R. Children’s Safeguard Review ('the Kent report') Edinburgh; 1997. Physical copies searchable at <https://www.worldcat.org/title/childrens-safeguards-review/oclc/38086455>

- 2.21. The briefing concluded 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”³².
- 2.22. The Minister’s private secretary responded on 13 November 2002 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”^{33,34}.
- 2.23. On 14 November 2002 the same official asked colleagues for comments on a revised version of the draft Memorandum as the Minister “was not content” with the advice in his original briefing³⁵.
- 2.24. In further correspondence between the original official who authored the briefing and a legal official regarding an apology, the solicitor stated: “I consider that your wording could be construed as an acceptance of liability by those currently pursuing civil actions relating to abuse in List D schools and in which Scottish Ministers are already involved as defenders. It also appears to go beyond what the Minister requested. She simply states that we should make it very clear that abuse is wrong”³⁶.

³² A18234147 – KNX 1/56 Part 3. Briefing for Minister for Education and Young People. PE535 – MR CHRISTOPHER DALY. p. 37 - 41. 13 November 2002.

³³ A18234147 – KNX 1/56 Part 3. Email on behalf of Minister for Education and Young People. RE: PE535 – allegations of abuse at institutions. p. 239. 13 November 2002.

³⁴ Note, the Minister’s detailed comments were attached to a subsequent email, however this has not been found in available records.

³⁵ A17816112 – 2AQD 004-001 Part 1. Email between officials. RE: PE535 – allegations of abuse at institutions. p. 111. 14 November 2002.

³⁶ A18234147 – KNX 1/56 Part 3. Email between officials. RE: Petition on abuse. p. 247. 14 November 2002.

- 2.25. Further briefing was then provided to the Minister on 14 November 2002³⁷. 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 noted 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 set out a number of disadvantages to holding an inquiry, and offered two options, namely: (i) to turn down the request at that point in time as recommended in the original advice; or (ii) to indicate that the Executive would consider the matter further. The briefing contained an Annex entitled “Situation in the Republic of Ireland”.
- 2.26. The revised Memorandum was also included with the briefing of 14 November. The relevant wording regarding the possibility of an inquiry in the Memorandum now read: “The Scottish Executive has no plans to hold an inquiry into allegations of institutional abuse at present. The Scottish Executive is aware of recent court cases and of a number of representations from victims of child abuse which have been made to the Executive. The Scottish Executive has given careful consideration to the request but are not convinced that sufficient evidence of past widespread systematic child abuse in residential institutions exists at present to warrant an inquiry”.
- 2.27. The Minister’s private secretary confirmed on 18 November 2002 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”³⁸.

³⁷ A18234147 – KNX 1/56 Part 3. Briefing for Minister for Education and Young People. 14 November 2002. p. 252-258. 14 November 2002.

³⁸ A17816112 – 2AQD 004-001 Part 1. Email on behalf of Minister for Education and Young People. RE: PE535 – allegations of abuse at institutions. p. 111 - 112. 18 November 2002.

- 2.28. On 6 January 2003 the Minister for Education and Young People (Ms Jamieson) met officials to discuss institutional abuse. Notes from this meeting stated that Ministers are “concerned that allegations of institutional abuse in Scotland would continue to trickle out. The Executive should acknowledge the existence of the problem and explore whether we could take a positive role in bringing closure to those affected. The Executive would not want to affect any existing criminal or civil proceedings but allow the subject to be talked about publicly, and perhaps have a forum for victims to recount their experiences”. Possible models from other countries were discussed, including a truth and reconciliation commission and a confidential forum. Next steps were identified including identifying relevant organisations to engage further and getting more information on the Irish compensation arrangements³⁹.
- 2.29. On 31 January 2003, the Chief Executive of Quarriers wrote to the Minister for Education and Young People, and stated that: “As I am sure you appreciate, calls for a major enquiry are quite unrealistic, because our records do not include any information about what former boys and girls may, or may not have been told about their natural families”⁴⁰.
- 2.30. On 12 February 2003 an official wrote to his then Director regarding PE535, and attached an updated submission and memorandum. He stated:
- “I learnt today that the Committee has apparently set a deadline of Friday for this petition (you will recall it had sat with the FM’s office for a while).
- The Minister did ask for a redraft at the end of January and we had a note on 30 January that the FM had agreed to advice from Jeane Freeman and the Minister on how to proceed. I am trying to find out from Jeane and [Private Office] what that advice was,
- In the meantime I have prepared the attached submission and draft to reflect developments since our meeting at the start of January. I would

³⁹ A18234160 – KNX 1/56 Part 4. Minute. Meeting with Cathy Jamieson to Discussion Institutional Abuse. p. 252. 6 January 2003.

⁴⁰ A18234160 – KNX 1/56 Part 4. Letter from Chief Executive of Quarriers to Minister for Education and Young people. HISTORIC ABUSE AT QUARRIERS. p. 154 - 155. 31 January 2003.

be grateful for any comments asap. [Officials] might also want to give me any updates on the child protection bit at the end”⁴¹.

- 2.31. The Director replied later that day. The email stated that it was “tricky territory. If we can get the petition response right, then I think the submission should be relatively easy to amend”. The email also said: “I agree with the three strands of the response: 1. Unconditional statement about abuse; 2. Response to the specific request; 3. Indication of what else has been done”. The Director also provided various comments, including:

“I am concerned that we appear to offer an inquiry - when our conclusion might be that what will be best - on balance - for victims and future residents is some other set of mechanisms. Victims are all individuals - with very personal and different needs. What will help one resolve long standing issues might lead to negative consequences for another. It will be important to reflect - somewhere in the response - that we need to take advice (including from victims' representatives) about what will best meet their needs. That is a genuine problem, and we need to devote time and energy to it before we offer advice. I think we should make it clear in the response (without using the following phrase!) that we have not yet decided because this is difficult, sensitive and delicate - not because we are avoiding the issue”⁴².

- 2.32. On 13 February 2003, the official sent a submission and memorandum to PS/Minister for Education and Young People on PE535⁴³. The PS responded the same day, and stated “Ms Jamieson has seen your minute of today on the above. She is content with the memorandum (I have attached the revised version you sent up for copy recipients) which she feels reflects the discussion she had with Jeane [Freeman]. Grateful if Jeane could indicate whether she

⁴¹ A20728712 – Email between officials. PE535. 12 February 2002.

⁴² A20728816 – Email between officials. RE: PE535. 12 February 2003.

⁴³ A20728750 – Email from an official to PS/Minister for Education and Young People. PE535 – allegations of abuse at institutions. 13 February 2003.

is content and that the response covers the First Minister's views - to allow us to meet the Committee's deadline for a response by tomorrow"⁴⁴.

- 2.33. A Memorandum was sent to the Committee on 17 February 2003. The wording as regards an inquiry then 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"⁴⁵.
- 2.34. At its meeting on 25 March 2003, the Public Petitions 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 matter and agreed to ask the Executive to provide firm details and a proposed timetable for such an inquiry early in the new session⁴⁶.
- 2.35. A letter from the Committee was sent to the Scottish Executive Health Department on 28 March 2003 (the same official and same Department to which the Committee's previous letter of October 2002 was sent)⁴⁷. The letter indicated the Committee's concern regarding the lack of a timetable for the decision on whether to hold some form of inquiry: "The Committee would therefore urge the Executive to develop its thinking on this issue and to provide the Committee with an update on progress early in the new session, if possible by mid-June". This was followed by a reminder letter on 19 August 2003⁴⁸, providing a new deadline of 19 September 2003 for the Executive's response; and another reminder letter on 26 September 2003⁴⁹ with a further deadline of 24 October 2003. Email correspondence from April 2004⁵⁰ showed that the

⁴⁴ A18908034 – Email from PS/Minister for Education and Young People to official. RE: PE535 – allegations of abuse at institutions. 13 February 2003.

⁴⁵ A18924250 – Email from PS/Minister for Education and Young People to official, enclosing memorandum on PE535. FW: petition PE 535 – 17 February 2003. 17 February.

⁴⁶ The Scottish Parliament. Official report, Public Petitions Committee. 25 March 2003. 2003. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/historic/petitions/or-03/pu03-0702.htm#Col3053>

⁴⁷ A20723504 – Email from official. FW: petition PE 535. 4 August 2004.

⁴⁸ A20723504 – Email from official. FW: petition PE 535. 4 August 2004.

⁴⁹ A20723504 – Email from official. FW: petition PE 535. 4 August 2004.

⁵⁰ A20723504 – Email from official. FW: petition PE 535. 4 August 2004.

petition had been passed to the Education Department in February 2003, which had replied to the Committee at that time. The Clerk of the Committee replied to the Education Department, noting that the February response had already been considered at the meeting on 25 March 2003, and while the reminder letters had wrongly been addressed to the Health Department, the Committee would be grateful to know when the Executive would be in a position to respond⁵¹. It appears the issue was next returned to on 12 May 2004, when the Committee discussed the petition (see below).

- 2.36. On 24 July 2003 an official wrote to the Deputy Minister for Education and Young People, and referenced a Sunday Mail article which encouraged former residents at List D schools to write to the Scottish Executive demanding to see all documentation relating to them⁵². The official noted that: “discussion is still taking place on what response the Executive should make to calls for an inquiry into historic cases of institutional child abuse”. The official noted that there could be up to 300 civil cases from former List D pupils seeking to claim damages and a meeting between officials, lawyers and press office had been held, and a series of next steps identified. The Minister was invited to note the potential scale of the work involved in releasing information and the issues involved (on which further legal advice was to come).
- 2.37. On 8 August 2003, an official produced a paper for colleagues. It noted that the recipient officials had “asked for a scoping exercise to be done on the files relating to List D Schools and other establishments where there are allegations of historical institutional child abuse”. The paper provided the results of a preliminary exercise to find files and records related to this topic. The authoring official noted she had found files relating to “schools/homes which have been mentioned in relation to alleged abuse cases”. The author suggested a way forward for reviewing the relevant files⁵³.

⁵¹ A20723504 – Email from official. FW: petition PE 535. 4 August 2004.

⁵² A18234160 – KNX 1/56 Part 4. Submission from official to Minister for Education and Young People. SUNDAY MAIL STORY - ALLEGATIONS OF ABUSE IN FORMER LIST D SCHOOLS. p. 12 - 19. 24 July 2003

⁵³ A18234147 – KNX 1/56 Part 3. Briefing from official. List D Schools – Scoping Exercise. P. 43 - 45. 8 August 2003.

- 2.38. Officials met on 10 September 2003 on “how to deal with allegations of sexual abuse in children’s homes”, where it was decided that an official would prepare a draft paper for Ministers to consider on 25 September, and this would be cleared across Departments⁵⁴. A note of the meeting confirmed the “key issues” as:

“Whether or not to hold an inquiry

On balance we felt that the potential benefits (to meet the needs of victims, or to ensure that lessons are learned) were limited, and were outweighed by the disadvantages (to victims as well as the wider system).

Whether or not to establish a ‘truth and reconciliation commission’

We felt the arguments for this were weak.

Whether or not to take specific action to support victims.

We identified a wide range of work already underway to support present and previous victims. The question for Ministers will be whether this needs extended [*sic*], either for this group, or for a wider group of survivors.

Whether or not to introduce a compensation scheme.

This decision will be affected by the current test case to establish whether these cases are time barred, so we will advise this decision is delayed.

How to give access to relevant files.

This issue remains complex, but we did success [*sic*] in identifying a relatively small range of options and related legal and policy issues. Data Protection, Freedom of Information and Access to Justice issues were

⁵⁴ A26979960 – Email from official. Allegations of abuse. 10 September 2003.

relevant, as well as balancing the needs and rights of individuals who request access to information with those who have not.

Whether any of the above sets precedents.

We will work closely with relevant colleagues to identify any potential difficulties”.

- 2.39. On 12 September 2003 an official wrote to colleagues to find out if academic or other research work existed on child abuse in care (particularly in other countries) and whether they knew of someone who might be able to conduct a study⁵⁵. Officials then corresponded with Professor Andrew Kendrick at the University of Strathclyde, who informed them that: “there has been very little academic or research work done on this issue. However, it may interest you that SIRCC⁵⁶ has set up a short-life working group to look at the issue of historic abuse”. The resources Professor Kendrick provided included links to the Irish Residential Institutions Redress Board and the Law Commission of Canada. On 18 September 2003 one of the above officials replied to the original request for information, providing a number of relevant references and web-links regarding international perspectives on allegations of historical abuse, and mentioned that the Executive may want to get involved in the SIRCC working group on historical abuse in children’s homes⁵⁷.
- 2.40. On 23 September 2003, an official provided a briefing to the Minister for Education and Young People. This was the first in a series of submissions, the latter two being sent on 8 October and 20 October (see below). The purpose of the 23 September briefing was: “To advise that the Executive does not set up an inquiry into historic claims of abuse in residential institutions but that we look to improve service responses for adult survivors, and offer to help

⁵⁵ A18234147 – KNX 1/56 Part 3 . Emails between officials. RE: Historic Abuse in Residential Homes. p. 48. 17 September 2003.

⁵⁶ Scottish Institute for Residential Child Care. SIRCC was established in 2000 to improve outcomes for children/young people from residential care. SIRCC was a partnership made up of the University of Strathclyde, Robert Gordon University, Langside College, Who Cares? Scotland and Save the Children. In September 2011, SIRCC became CELCIS, the Centre for Excellence for Children’s Care and Protection. CELCIS eventually plays a role in hosting the InterAction process. More detail about SIRCC and CELCIS is available at the CELCIS website: <https://www.celcis.org/about-us/sircc/>

⁵⁷ A18924045 – Email between officials. FW: Allegations of historic abuse. 18 September 2003.

alleged victims with access to files held by the Executive. This advice has been agreed by colleagues across the Executive”.

- 2.41. The submission identified four options that the Executive could take in response to allegations of historical abuse at residential schools: (i) a full inquiry; (ii) a ‘truth and reconciliation’ commission; (iii) no inquiry, but a package of other measures including access to files for legal advisers, improved health and social care services for survivors of sexual abuse, and, in some cases, compensation; (iv) to do nothing – let existing criminal and civil cases run their course in the normal way, but retaining the health dimension.
- 2.42. It went on to state: “Our advice is that the Executive should not set up an inquiry or commission into these cases. Neither the weight of cases nor the nature of the allegations indicates a systemic failure or organised abuse that might justify a full inquiry. We are confident that work being done through the Child Protection Reform Programme will address any remaining institutional issues. A commission does not provide a satisfactory forum for these issues to aired [*sic*]. The issue of compensation should be looked at again in the light of the Courts’ decisions on the civil cases in the next few months”.
- 2.43. The submission noted that there were outstanding replies to GFs [Green Folders⁵⁸] from MSPs, and “we owe the Petitions Committee a further response”⁵⁹.
- 2.44. On 25 September 2003 Ministers met to discuss allegations of abuse at residential schools. Their decision and action points are more fully noted in a later briefing dated 20 October 2003⁶⁰. The action points from this meeting

⁵⁸ Green Folders (commonly referred to as ‘GFs’) were a formal method of communication between MSPs, typically requests for information. This comment indicates there were multiple requests for information from MSPs regarding this topic, and that responses still needed to be sent. More detail about these requests is in report content below.

⁵⁹ A26865453 – Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Institutions. 23 September 2003.

⁶⁰ A26865456 - Briefing from official to Minister for Education and Young People. Allegations of Abuse at Residential Schools – Next Steps. 20 October 2003.

were emailed to the Deputy Private Secretary to the First Minister on 8 October 2003 by an official⁶¹ (see below).

- 2.45. On 3 October 2003 Linda Fabiani MSP sent a letter to the First Minister regarding abuse at children's homes and List D schools⁶². She noted that the First Minister had been quoted as making statements of support to the victims who suffered abuse and "you had ordered a study to be carried out by officials into how the Irish government had dealt with similar circumstances". She asked to be informed of whether the study was carried out, what the findings were, and whether the First Minister had plans to set up a commission to investigate abuse in children's homes and List D schools. The Minister for Education and Young People replied to Ms Fabiani in June 2004 (in addition to replying to other MSPs with related queries – described below)⁶³.
- 2.46. On 8 October 2003 an official provided a briefing to the Minister for Education and Young People regarding "Allegations of Abuse at Residential Schools – Handling Issues"⁶⁴. It summarised the action points from the meeting of Ministers on 25 September 2003. In the email accompanying this briefing, the official stated that: "Overall, Ministers supported Option 3 in the submission, i.e. a package of other measures. There was a consensus that neither an inquiry nor a commission were justified. An inquiry was likely to tell us what we already knew, and it was not clear what a commission would achieve. There was also agreement that we should not consider the question of compensation further until the way ahead on current civil litigation was clearer, which would not be until next June at the earliest"⁶⁵.
- 2.47. The purpose of the briefing was also "to seek the Minister's agreement to a handling strategy for two [Green Folders (GFs)] and a parliamentary petition

⁶¹ A17759083 – FZJ 003-008: Part 1. Email from official to DPS/First Minister. RE: Submission on List D schools. p. 158 - 159. 8 October 2003.

⁶² A18234147 – KNX 1/56 Part 3. Letter from Linda Fabiani MSP to First Minister. Investigation into Abuse at Children's Homes and List D schools. p. 56. 3 October 2003.

⁶³ A18234147 - KNX 1/56 Part 3. Letter to Linda Fabiani MSP. Investigation into Abuse at Children's Homes and List D Schools, May 2004. p. 57 - 59. (indicating June reply) and p. 199 - 200. (indicating May reply).

⁶⁴ A26865455 – Briefing for Minister for Education and Young People, Allegations of Abuse at Residential Schools – handling Issues. 8 October 2003.

⁶⁵ A26865455 - Email from official to DPS/First Minister. RE: Submission on List D schools. 8 October 2003.

on allegations of abuse at List D schools”. The GFs were from Fiona Hyslop MSP and Jim Wallace MSP: “Both ask about access to files held by the Executive for those alleging abuse. The line taken in both replies, following our meeting with Ministers last week, is that the Executive is looking to be helpful in providing information to those alleging abuse but that there are a number of issues to be considered. The replies also refer to services for survivors and measures taken on child protection”.

- 2.48. With regards to responding to PE535, the same briefing noted that the Scottish Executive had said it would “consider whether a forum or inquiry should be established having regard to cases that have come to light in recent years”. It noted that: “The Committee has now written back... expressing concern that there was no indication as to the timetable for a decision and urged the Executive to develop its thinking on the issue”. It went on to state: “At our meeting with Ministers we agreed that the Executive should not plan to have an inquiry or a commission into this issue but should look instead at a package of other measures”⁶⁶.
- 2.49. On 9 October 2003 the Minister for Education and Young People emailed the First Minister and an official. The Minister had read the official’s email of 8 October and commented: “This seems fine. I presume it is implicit that a further paper will come back dealing with all the procedural points we covered, access to date, no compensation position etc.”⁶⁷.
- 2.50. In response, on 20 October 2003, the official provided a briefing to the Minister for Education and Young People entitled “Allegations of Abuse at Residential Schools – Next Steps”. It stated that “Ministers met on 25 September to discuss the way ahead on List D schools” and outlined the action points from the meeting, which included:

⁶⁶ A26865455 – Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools – Handling Issues. 8 October 2003.

⁶⁷ A17759083 – FZJ 003-008. Email on behalf of the Minister for Education and Young People to official and the First Minister. RE: Submission on List D schools. p. 188 - 190. 9 October 2003.

“Investigate the options on accessing files, associated costs and who will meet the cost

Look into the system Barnardo’s operate to deal with this issue

Look in to the Australian system as a good example

Find out if any data is available on foster carers and identify what the position would be if similar claims were made against foster carers

Find out from Press Desks what past statements have been made by Ministers on allegations of institutional abuse

We also need to consider how existing Health Department work on adult survivors of childhood sex abuse relates to these issues, and what services might be required for survivors of other forms of abuse”.

2.51. The briefing set out how officials proposed to take forward those actions and noted that officials expected to be able to return to Ministers with “the results of this work within six weeks”⁶⁸.

2.52. On 4 December 2003 emails between officials discussed INCAS and the Executive’s response to PE535. In the correspondence an official noted:

“I met [the] Chair of the In Care Abuse Survivors Group, in the margins of the STAAF conference yesterday for an informal chat...

He told me the organisation now had a constitution and was looking to build up a profile. For example he is writing to Barnardo’s and Quarriers looking to meet them. He is also starting to write to MSPs. He is particularly concerned about the Cross Party Group on survivors of childhood sex abuse, which seems to be inactive (you might recall we mentioned this in one of our submissions).

At the moment INCAS is a campaigning group but he sees this changing as they look at what service might be needed. They are currently

⁶⁸ A26865456 - Briefing from official to Minister for Education and Young People. Allegations of Abuse at Residential Schools – Next Steps. 20 October 2003.

surveying their members (about 250 at the moment, mostly around 50-60 years old, although one is 91) to see where the organisation should go and what they, the members, want.

We discussed a number of possibilities: they might want justice; or someone to listen to them (a lot feel they are being ignored by the State, which is a form of further abuse); they might need specific medical services; a very few are interested in compensation.

I explained that we were considering the response to the petition asking for an inquiry (which INCAS inspired). We are not attracted by a full public inquiry on the Irish model because of the cost and the lack of lessons to learn (he agreed that the money which could be spent on services would go to lawyers); we were also unsure of the truth and reconciliation commission, although we could see that some survivors might benefit from that; we were very unsure about ex gratia compensation as a matter of principle... although I acknowledged that the State had a general oversight of the system under which these people had suffered. We were most attracted by regarding this as primarily a health service provision issue, although we were also examining what help we might give in the civil legal cases.

We agreed that he would come back to us in the New Year when he had had responses to his survey of members, and look to arrange a meeting in January, just with officials at this stage. We would also be interested in the response they had had from Barnardo's et al and the Catholic Church which [the Chair] has worked with on this subject in the past.

Overall, a very constructive chat. He recognises that there is little point in some huge and expensive inquiry, and that there was little to be gained from some sort of media driven campaign on this issue. He and John Fergusson (of Speak up) seem experienced in this sort of campaigning work and I think we should be able to work with them"⁶⁹.

⁶⁹ A18234147 – KNX 1/56 Part 3. Email between officials. List D – survivors group. P. 74. 4 December 2003.

- 2.53. On 18 December 2003, the Minister for Education and Young People sent a briefing to the First Minister regarding “Allegations of Historic Abuse at List D Schools” to “inform you of our handling of allegations”. In it, he stated that he met the Minister for Justice, Minister for Finance and Solicitor General on 25 September 2003 to discuss the issue: “We decided unanimously that there was no case for a full public inquiry, and that it was difficult to see the purpose of any other form of inquiry, such as a truth and reconciliation commission. Instead, we decided we should look at a package of support measures, notably the health services available to survivors of abuse... and how any relevant information on our files could be released”⁷⁰.
- 2.54. The First Minister replied on 22 December 2003 and asked whether “Are the 4 options in the minute of 23 September the only options? Have Ministers considered appointing an expert (without a working group or committee) to review the position, recent developments and recommend any procedural changes which might be advisable to reassure people now? Grateful for Mr Peacock’s views on this”⁷¹. On the same day, an official copied into the First Minister’s reply wrote to officials stating: “We’ll need to put supplementary advice to the Minister for his return in January. My initial reaction is that the appointment of an independent expert falls on the same basis as an enquiry [*sic*] or commission, i.e. that Ministers know what the problems were, there would be little, if anything, more to be learned, current procedures have changed so much since the alleged abuses that the circumstances could not be repeated now and all effort should therefore be focused on providing what help we can to the victims of historical abuse. This was pretty much the view of all the Ministers at the meeting they had in September”⁷².

⁷⁰ A26865458 – Briefing for First Minister from Peter Peacock. Allegations of Historic Abuse at List D Schools. 18 December 2003.

⁷¹ A26865459 – Email from APS/First Minister to PS/Minister for Education and Young People. RE: Allegations of Historical Abuse at List D Schools. 22 December 2003.

⁷² A18907663 – Email between officials. FW: ALLEGATIONS OF HISTORICAL ABUSE AT LIST D SCHOOLS. 22 December 2003 – 11 March 2004.

- 2.55. On 19 February 2004, an official emailed other officials with an information note⁷³ on the current child protection measures in residential settings following a meeting regarding this on 18 February 2004⁷⁴.
- 2.56. In June 2004, the Minister for Education and Young People wrote to Andy Kerr MSP regarding in care abuse, replying to Mr Kerr's letter of 12 January. He copied in the First Minister and Cathy Jamieson. The letter stated: "We have considered the individual requests and the Petition together, since they raise similar issues...In deciding how best to respond to allegations of historic abuse in residential children's homes, we first considered what we were already doing to: (1) Minimise the risks to children currently living in these homes; (2) Provide high quality support to adult survivors of past abuse; and (3) Ensure survivors have full access to their legal rights and remedies. We then considered whether an Inquiry would prevent future abuse, help meet the needs of survivors, or be in the wider public interest. On balance, after very careful consideration, we decided that it would not." The letter further outlined actions being taken by the Executive such as the publication of *It's everyone's job to make sure I'm alright* and the Protection of Children (Scotland) Act 2003⁷⁵.
- 2.57. On 7 May 2004, officials corresponded regarding PE535, following a request for comment by a journalist about what the Executive was doing in response. An official stated:

"Mr Daly and the Committee have indeed been waiting for an answer for a while. To be fair, the first six months (i.e. from March 2003 to October 2003) were lost because the Committees' request was sent to the Health Department, where it vanished. However, the delay of the last six months is all our own doing....]

Mr Daly's petition asked for an inquiry and we have been considering, with Ministers, how to respond to this request...we have been reluctant

⁷³ A type of document used by the Scottish Executive at this time for briefings.

⁷⁴ A17759083 – FZJ 003-008 Part 1. Internal communication within the Scottish Executive. Children abused in residential care. P. 69. 19 February 2004.

⁷⁵ A18917059 – Letter to Andy Kerr from the Minister for Education and Young People. June 2004.

to go down the path of a public inquiry, as there does not seem to be the evidence of widespread or systemic abuse – as there was in Ireland – or a ring of perpetrators in positions of influence – as there was in North Wales. At the moment, the picture is one of isolated cases by individuals, which horrific as they are, do not justify a public inquiry. Another consideration has been an inquiry is unlikely to learn any lessons of relevance to the modern system of residential care, which has changed considerably since the abuse took place.

We have also considered other forms of inquiry, such a [*sic*] truth and reconciliation commission or a private inquiry, but none of them seem to meet the needs of survivors.

For the moment, we have recommended that the Executive should seek to put into the public domain all the information it holds on residential establishments. We will also look at the services for survivors with the Health Department....

Ministers have not formally agreed to this approach and we have not put it in the public domain. Personally I think we might have to look at it again in the light of the very strong Ministerial reaction to the Borders case. We have a number of outstanding GFs and PQs on this subject as well as this petition. The latest submission on the subject is due to be Ministers [*sic*] next week”⁷⁶.

- 2.58. On 12 May 2004, the Public Petitions Committee met and discussed PE535. At that meeting, the Convenor (Michael McMahon) said: “[d]espite a number of reminders, no response has been received from the Scottish Executive [since March 2003], although Executive officials have told our clerks that we should receive a response soon. We have also received further

⁷⁶ A26978733 – Emails between officials. RE: petition re past institutional abuse. 7 May 2004.

correspondence from the petitioner in which he argues that Scottish victims and survivors should be given the same recognition as survivors in Ireland”⁷⁷.

- 2.59. At the same meeting the Public Petitions Committee agreed to write to the Minister for Education and Young People requesting an “urgent response” detailing any progress that had been made in considering conducting an inquiry and of the timetable for any such inquiry. The Committee also agreed to write to the First Minister to “express disappointment that the Executive had failed to respond to [the Committee], in spite of it having sent a number of reminders since its initial request”⁷⁸.
- 2.60. On 20 May 2004, an official provided a briefing to the Minister for Education and Young People entitled “Allegations of Abuse at Residential Schools”^{79,80}. This stated 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 noted that in December the First Minister had asked that another option – that of appointing an independent expert – be considered.
- 2.61. The same briefing attached letters dated from 24 July 2003 to 12 January 2004 from four MSPs who sought information from Ministers on the release of records related to historical child abuse and what steps the Executive had taken regarding further investigation (review or inquiry)⁸¹. Also attached were draft replies from the Minister for Education and Young People (dated May 2004) which followed a similar format and explained “the latest position”. The letters stated: “We have considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At

⁷⁷ The Scottish Parliament. Public Petitions Committee Official Report 12 May 2004. 2004. [cited 2020 Feb 20]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=3045&i=15220>

⁷⁸ The Scottish Parliament. Public Petitions Committee Official Report 12 May 2004. 2004. [cited 2020 Feb 20]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=3045&i=15220>

⁷⁹ A17759083 – FZJ 003-008 Part 1. Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools. p. 42 - 48. 20 May 2004.

⁸⁰ Within this briefing there is mention of *Protecting Children and Young People – the Charter and a Framework for Standards to help translate the charter into practice*.

⁸¹ A17759083 – FZJ 003-008 Part 1. Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools. p. 42 - 48. 20 May 2004.

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". The letters stated that an inquiry was unlikely to "produce recommendations relevant to the current system of child care" and that the "the number of allegations made did not indicate a failure of the system of residential care". The letters noted that an inquiry was unlikely to meet the needs of survivors and that Ministers had to be careful not to jeopardise civil claims before the courts. Instead, the letters provided details of the Executive's plan to release its records on List D schools and to look at services available to adult survivors of abuse.

- 2.62. The briefing also noted that the lead civil case of *McEwan vs. Hendron* was due to be heard in court in June 2004 and it would be considered by the court whether the claim in that case was barred by the passage of time from proceeding⁸². The briefing noted that many cases were on hold, pending the result⁸³.
- 2.63. The briefing also noted that "we also owe the Petitions Committee of the Parliament a reply on PE535"⁸⁴. Annex A of the briefing considered the advantages and disadvantages of appointing an independent expert to carry out a review.
- 2.64. The Committee considered petition PE535 again at its meeting on 29 June 2004⁸⁵. The Committee stated that it was yet to receive a response from either Mr Peacock or the First Minister⁸⁶. 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 evidence on the

⁸² A17759083 - FZJ 003/008 Part 1. Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools. p. 42 - 48. 20 May 2004.

⁸³ A17759083 - FZJ 003/008 Part 1. Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools. p. 42 - 48. 20 May 2004.

⁸⁴ A17759083 – FZJ 003-008 Part 1. Briefing for Minister for Education and Young People. Allegations of Abuse at Residential Schools. p. 42 - 48. 20 May 2004.

⁸⁵ The Scottish Parliament. Public Petitions committee Official Report 29 June 2004. 2004. [cited 2020 Feb 20]. Available from: <https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1202.htm#Col958>

⁸⁶ The Scottish Parliament. Petition 535. 2002. [cited 2020 Feb 20]. Available from: <http://archive.scottish.parliament.uk/business/petitions/docs/PE535.htm>

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

- 2.65. A written response of the Executive was subsequently submitted to the Committee in June 2004; in it the Minister stated "that "[The First Minister] and I apologise for what has clearly been an unacceptable delay in providing a substantive response to your original request for information. I know you will appreciate this is a difficult and complex subject and we have been examining the way ahead very carefully"⁸⁷. The response set out the Executive's reasoning for not establishing an inquiry in response to petition PE535⁸⁸. As this reasoning is reflected in the fuller statement given by Mr Peacock to the Committee on 29 September 2004, which is set out below, it is not repeated in this paragraph. A copy of this letter was sent to the petitioner, Christopher Daly, on 14 July 2004⁸⁹.
- 2.66. On 16 July 2004, petitioner Christopher Daly wrote to the Minister for Education and Young People. In his email, he stated⁹⁰:

"Shame on your department and the Scottish Parliament who announced this week there would be no inquiry. I ask you and the First Minister, where is the comprehensive study that led you to conclude there should be no inquiry? For example did you look at the 'Ryan Report Towards Redress and Recovery'? Jack McConnell and your department have let down so many survivors of in care abuse in a swift u turn. May I remind you and the First Minister of the words of Edmund Burke, "all that is necessary for the triumph of evil is that good men do nothing"...

"PS I'm incensed at the insensitive way you have dealt with this matter. And equally shocked at the way you conducted matters with the petitions committee members. On the whole the members of that committee have

⁸⁷The Scottish Parliament. Official report, Public Petitions Committee, 1 December 2004. 2004. [cited 2020 Feb 20]. Available from:

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

⁸⁸ A27002317 - Letter to Public Petitions Committee from Minister for Education and Young People. Regarding PE535. June 2004.

⁸⁹ A18916868 – Email from official to Christopher Daly. Response to Petition PE535. 14 July 2004.

⁹⁰ A20752541 – Email from Christopher Daly to Minister for Education and Young People. RE: past institutional abuse petition PE535 Peter Peacock copy. 16 July 2004.

been supportive and sensitive in the way they dealt with an issue that is gravely important to In Care Abuse Survivors. Who were not consulted during your decision making process”⁹¹.

- 2.67. On 27 July 2004, the Minister for Education and Young People received a letter from Christopher Daly⁹². In the letter he said he “was taken off guard recently when a journalist told me there would be no inquiry into past institutional abuse of children in Scotland. Apparently I was the last person to know as no letter was sent to me, although I was not the only [one] treated with contempt by you and your department”. The letter referenced petition PE535, and posed a number of related questions. It also reiterated that an inquiry was “imperative”. The letter was acknowledged by an email from an official, who informed Christopher Daly that he would receive an official reply in the near future⁹³.
- 2.68. An official from the Scottish Executive Education Department replied to Christopher Daly on behalf of the Minister for Education and Young People on 6 August 2004. The letter apologised for the “unacceptable oversight” which led to Christopher Daly not receiving a reply to his earlier correspondence. The official said she was sorry that he was “unhappy with Ministers’ decision not to hold an inquiry”. She further stated: “You mention the Irish situation in your letter and the fact that the First Minister undertook to ask officials from the Executive to look at the work being done in Ireland. I can confirm that this has been done and it did inform the decision making process”. The letter concluded:

“I can only re-iterate that Ministers made their decision after careful consideration and do not consider that an Inquiry would prevent further abuse, help meet the needs of survivors, or be in the public interest.

⁹¹ Available correspondence suggested Mr Daly would receive an official reply in the near future, however this has not been found in records.

⁹² A18234147. KNX 1/56 Part 3. Letter to the Minister for Education and Young People. REF: PETITION PE535. P.103. 27 July 2004.

⁹³ A20728757 – Email from official to Christopher Daly. Petition PE535. 4 August 2004.

I realise that this is not the answer you are looking for and I am sorry that I cannot be of more assistance on this occasion”⁹⁴.

- 2.69. On 11 September 2004 an official received a letter from Christopher Daly, thanking her for her fast response to his request for a copy of documentation that informed the decision-making process regarding a public inquiry⁹⁵. It stated:

“It is very clear that your department did look into the matter thoroughly. I do appreciate the documents you enclosed. Some of the Irish documents I’m familiar with...You mention additional documents written by officials giving advice to Ministers. At this stage I don’t think it is necessary to ask for your department to review the decision not to supply this information.

Regarding discussions with INCAS and individual survivors in the decision making process. In my view these discussions were not to any great length or depth.

I would like to take the opportunity to attend a presentation about development in child protection and if you could make arrangements for... myself to attend this and look at the redacted files I would be very grateful”⁹⁶.

- 2.70. On 23 September 2004 an official sent a briefing to the Minister for Education and Young People prior to his appearance before the Petitions Committee⁹⁷. This included opening remarks and details of Petition PE535. It included an update on information Christopher Daly had been provided with following his Freedom of Information request on 10 August 2004. A ‘Q & A lines to take’

⁹⁴ A18234147 - KNX 1/56 Part 3 . Letter from Scottish Executive Education Department. Regarding letter REF: PE535. p.100 - 101. 6 August 2004.

⁹⁵ A copy of Mr Daly’s original request or the official’s response have not been found.

⁹⁶ Christopher Daly and Helen Holland (INCAS) do attend a presentation and have the opportunity to look at redacted files on 18 October 2004, discussed below.

⁹⁷ A18922406 – Email from an official to Minister for Education and Young People. Briefing for Minister’s Appearance at PCC. 23 September 2004.

document was also attached, which was subsequently revised^{98,99}. In the version marked as ‘final’¹⁰⁰, the document provided answers to questions including (but not limited to): why the delay in responding to the Committee; why aren’t you holding an inquiry (the answer for which highlighted the ‘major factors’ in the decision); did you consult with survivors in making this decision; and are you going to apologise to those who suffered abuse.

- 2.71. On 29 September 2004 the Minister for Education and Young People attended the Public Petitions Committee. In the oral evidence given by Mr Peacock to the Committee, the Minister stated 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 paragraphs¹⁰¹.
- 2.72. 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”¹⁰². 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

⁹⁸ A18922419 – Email between officials. Immediate – Revised Q & A Briefing for Minister’s appearance before PPC 29/09/04. 28 September 2004.

⁹⁹ A18922560 – Email between officials FW: Immediate – Revised Q & A Briefing for Minister’s appearance before PPC 29/09/04. 28 September 2004.

¹⁰⁰ A18922327 – Email between officials. FINALQ&ADOC. 28 September 2004.

¹⁰¹ The Scottish Parliament. Public Petitions Committee Official Report 29 September 2004. 2004. [cited 2020 Feb 20]. Available from:

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

¹⁰²The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Cols 1045 and 1046. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm> (Draft of the Minister’s statement can also be found at A17759083 – FZJ 003-008).

there were breakdowns in communication and inappropriate allocations of time to task, given the circumstances”¹⁰³.

- 2.73. 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 something up or not acknowledge that things happened to some young people who were in residential care that should not have happened to them”¹⁰⁴.
- 2.74. He stated 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”¹⁰⁵.
- 2.75. The Minister went 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

¹⁰³The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1055. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

¹⁰⁴The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1055. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

¹⁰⁵The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1055. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

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”¹⁰⁶.

- 2.76. The Minister then set 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 had been taken to improve the protection that was offered to vulnerable children; since 1995, HM Inspectorate of Education had carried out regular care and welfare inspections of boarding schools and hostels; the Scottish Commission for the Regulation of Care also regulated and inspected boarding provision in independent special schools and would soon regulate all boarding provision and school hostels; from April 2002, the Commission had also regulated and inspected care homes for children; the Protection of Children (Scotland) Act 2003 was being implemented to provide a list of persons who were unsuitable to work with children; there were enhanced disclosure checks on those who wished to work with children; an extensive child protection reform programme was 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 could be expected from agencies that were tasked with the protection of children; the Scottish Parliament had created the position of Children's Commissioner¹⁰⁷; and the Scottish Executive was funding Who Cares? Scotland (to provide independent advocacy services for children in care) and Childline.
- 2.77. The Minister noted 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

¹⁰⁶The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1055. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

¹⁰⁷ <https://www.cypcs.org.uk/> - The Children & Young People's Commissioner Scotland was established in 2004, with a main role of promoting and safeguarding children and young people's rights in Scotland. It was established by the commissioner for Children and Young People (Scotland) Act 2003.

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 went 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".

2.78. Various public interests reasons for an inquiry were then considered by the Minister. He explained 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 set out a number of measures that were being taken or would be taken specifically for survivors: the Short-Life Working Group established by Mr Chisholm to consider the detail of what was 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 referred to discussions with In Care Abuse Survivors ("INCAS") and his willingness to make resources available to support survivors who had a need to express their feelings and emotions.

2.79. The Minister said that "[a]n inquiry might be perceived as a means to ensure that there are no residual issues, but it might be perceived, mistakenly, 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"¹⁰⁸, and then said 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

¹⁰⁸ The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1055. 2004. [cited 2020 Feb 20]. Available from:

<https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

more for survivors and continue dialogue with them; and because an inquiry could have unintended consequences”¹⁰⁹.

- 2.80. 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 stated that “we want to move forward on a range of issues”.
- 2.81. Later in the session the Minister referred to the possible (negative) impact that holding a public 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”.
- 2.82. 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

¹⁰⁹The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004, Col 1052. 2004. [cited 2020 Feb 20]. Available from: <https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

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”¹¹⁰.

2.83. On 6 October 2004 the Public Petitions Committee wrote to the Minister for Education and Young People, noting that the Committee had agreed to bid for a debate in the chamber¹¹¹. On 20 October the Minister for Education and Young People’s private office emailed officials requesting a draft response to the letter¹¹². The official who led on issues related to PE535 replied on 1 November 2004 with a suggested draft response¹¹³. The Minister sent the reply later in November, and noted the timescale for the Scottish Law Commission’s review and report on limitation was to be decided. The letter noted officials had met the petitioners on two occasions since 29 September, with a meeting between the Minister and INCAS due to take place on 17 January 2005¹¹⁴.

2.84. On 8 October 2004 an official emailed colleagues responding to coverage of a report on the Catholic Church’s arrangements to prevent child abuse¹¹⁵. The email noted that the Scottish Executive’s main line should be that “the report is a matter for the Catholic Church” and “As for how this ties to the request for an inquiry into allegations of historical abuse in list D schools and other residential establishments, I don’t think these reports strengthen the case for an inquiry or change the Minister’s position. The main focus of any response we make should be a child protection one”¹¹⁶.

¹¹⁰The Scottish Parliament. Public Petitions Committee Official Report, 29th September 2004. 2004. [cited 2020 Feb 20]. Available from: <https://archive.parliament.scot/business/committees/petitions/or-04/pu04-1401.htm>

¹¹¹ A18234147– KNX 1/56 Part 3. Letter from Minister for Education and Young People to Public Petitions Committee. SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE - CONSIDERATION OF PE535. P. 107 - 109. November 2004.

¹¹² A18924267 – Email from PS/Minister for Education and Young People. FW: Petition PE535. 20 October 2004.

¹¹³ A20728701 – Email from official to PS/Minister for Education and Young People FW: Suggested draft reply to PPC letter of 6th October RE consideration of PE535 1 November 2004.

¹¹⁴ A18234147– KNX 1/56 Part 3. Letter from Minister for Education and Young People to Public Petitions Committee. SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE - CONSIDERATION OF PE535. p. 107 - 109. November 2004.

¹¹⁵ It is uncertain to which report from the Catholic Church the officials are referring

¹¹⁶ A18924191 – Email between officials. FW: Lines needed re Catholic Church child protection arrangements. 8 October 2004.

- 2.85. Also on 8 October, and over the following few days, correspondence between officials regarding a survivor's request to access records showed that officials fast-tracked redaction of relevant files to ensure the files would be ready for the survivor's court case¹¹⁷.
- 2.86. On 18 October 2004 officials met Christopher Daly and Helen Holland. An official outlined what the Executive was doing to protect children and discussed institutional abuse, including records. Notes from this meeting stated: "Chris and Helen found this session reassuring and commented that it was very important... Chris and Helen looked over a sample of files provided to illustrate redaction process and were pleased at the 'light touch' to redaction that has been taken. They were not surprised at the sorts of information the files contained, as they had realised it was unlikely that personal information would be held by the Executive. They went on to explain that members of INCAS have great difficulty accessing personal information about their time in care. From organisations such as Quarriers...". The note of the meeting recorded actions undertaken by, and next steps for, the Scottish Executive. A 'postscript' to the meeting stated:

"Helen rang me this morning to apologise for the difficult discussion around the issue of a public inquiry which happened towards the end of yesterday's meeting... I thanked Helen for calling but made clear that an apology was totally unnecessary. Given our conversation with [official] last night I did however take the opportunity to discuss with Helen what a public inquiry looked like (using the Fraser Inquiry as my example), to explain that the description they had given in the course of our discussions (around the need for a listening process, a sympathetic ear and counselling services) did not in my mind equate to a public inquiry and to ask if INCAS could give some thought to what the elements of an inquiry would look like; what was it they were hoping to get from this request? This discussion proved really useful, Helen felt that a public inquiry along the lines of the Fraser inquiry was definitely not what was

¹¹⁷ A18922208 - Email between officials. RE: Letter re request to access files. 8 October – 12 October 2004.

being requested and she took my point that we were perhaps using the term inquiry to mean different things. INCAS are due to have their AGM this Sunday (24th October) and Helen will raise this issue at that time with a view to forming a clear idea of what INCAS would like to see coming out of all this... We ended the call with Helen undertaking to send in a formal response outlining what they see as constituting an inquiry following the AGM”¹¹⁸.

2.87. On 29 October 2004 an official emailed Ministers regarding INCAS, and noted that officials had met Christopher Daly and Helen Holland twice since the Minister for Education and Young People gave evidence to the Petitions Committee. The official noted that she had informed the survivors that a full debate would take place in the Scottish Parliament on 1 December. The correspondence stated that the survivors were clear about what was most important to INCAS, including apologies from the state and institutions, access to appropriate counselling and support for survivors, an explanation of why abuse was able to happen, and compensation. The official noted: “I think that they still pin their hopes on the debate leading to a full public enquiry. If that does not happen, however, they will be happy to continue to explore the other options”. The correspondence also stated “There is a clear sense that there are not adequate [counselling and support] services available” and that there are “significant gaps in provision. Some sort of working group to look at the existing provision and identify gaps... would seem to be the way forward”. Further correspondence in the same email chain noted “the timing of the debate is not ideal, but we hope to have a package of action / proposals ready for 1 Dec that INCAS will find acceptable, albeit not their first choice”¹¹⁹.

2.88. Regarding the issue of an apology and compensation, the email of 29 October noted:

¹¹⁸ A18924698 - Email between officials. RE: Note of a meeting with Chris Daly and Helen Holland of INCAS held on 18th October 2004. 19 October 2004.

¹¹⁹ A18917411 - Email from official to Minister and Deputy Minister for Education and Young People. Historic Abuse and INCAS. 29 October 2004.

“We are considering what you [Ministers] might be in a position to say by the 1st:

We will explore further with OSSE what exactly the risks of a full apology are. The compensation issue is complex and we would be in a better position to consider it once the first main civil action is over and we know whether the courts will hold the Scottish Executive responsible. We might then be in a position where it would be pragmatic to put money into a compensation scheme to save on legal costs. At this stage it is impossible even to calculate the likely costs. Designing such a scheme however will always be a challenge and the outcome will almost inevitably be contentious, particularly re. the amount given, whether that varies with different types of abuse, and what evidence a person would have to produce to become entitled and then whether that evidence would be open to challenge from those who are alleged to have carried out the abuse”¹²⁰.

- 2.89. On 2 November 2004, pre-prepared press lines were sent by an official to the First Minister’s press office. In response to “why aren’t you holding an inquiry?”, the lines were:

“There have been inquiries/reports into residential care that lead to changes in the system. We don’t believe an inquiry into historical events would lead to further changes in current practice.

An inquiry might raise doubts about current residential homes and schools which would not be justified in the light of reforms”¹²¹.

- 2.90. On 2 November an email with a “Background Briefing Note on Committee Debate on Petition PE535” was sent from an official to the Minister for Parliamentary Business and others. It noted a sensitivity surrounding the debate that: “we expect the motion to ask Parliament “to note” the petition.

¹²⁰ A18917411 – Email from official to Minister and Deputy Minister for Education and Young People, “Historic Abuse and INCAS”, 29 October 2004.

¹²¹ A18924900 - Email from official to Press First Minister and others. RE: Child Abuse/List D schools. 2 November 2004.

Ministers could support that position. If however any amendment is tabled to the motion it is likely to explicitly call on the Executive to hold an inquiry. This might interfere with the ongoing productive negotiations with INCAS who now recognise that a traditional public inquiry might not actually be the best way of meeting their needs”¹²². The Minister for Education and Young People noted the email on 9 November 2004.

- 2.91. On 3 November 2004 email correspondence between officials noted: “Just to advise that Mr Daly rang me this lunchtime to ask what the agenda was for the meeting with the Minister on 23rd November”. The official noted: “I made clear that whilst the Minister wished to meet with INCAS pre the debate to discuss the issues (and perhaps begin to move towards agreement in some areas) we fully understood that INCAS would wish to take a stand re the public inquiry point at the debate itself. I added that, on the inquiry point, the Minister was likely to want to ask INCAS what they thought they were asking for as this might be different in its component parts from what a public inquiry actually is. Mr Daly was happy with this position and ended the call by confirming that he is likely to be accompanied by Helen Holland... at the meeting on 23rd”¹²³.
- 2.92. On 5 November 2004 the Public Petitions Committee received a letter from the Minister for Education and Young People in response to its letter of 6 October 2004 (noted above), which included an update and stated that officials had met Christopher Daly and Helen Holland on two occasions since giving evidence to the Committee^{124,125}.
- 2.93. On 12 November 2004 an official provided an updated draft of a briefing on PE535 to a senior official. It covered the petition, action taken by the Petitions Committee, what the petitioners sought, what the Executive was doing and

¹²² A20722863 - Email from official. Background Briefing Note on Committee Debate on Petition PE535. p. 2-3. 2 November 2004.

¹²³ A18925527 – Emails between officials. RE: Phone call with Mr Daly – 3/11/04. 3 November 2004.

¹²⁴ The Scottish Parliament. Parliamentary Business, Official Report, 1 December 2004. 2004. [cited 2020 Feb 20]. Available from:

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

¹²⁵ A18234147– KNX 1/56 Part 3. Letter from Minister for Education and Young People to Public Petitions Committee. SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE - CONSIDERATION OF PE535. p. 107 - 109. November 2004.

why the Executive had decided not to hold an inquiry. The reasons given for not holding an inquiry were:

“Executive has and is reforming further its child protection measures. Over the last twenty years there have already been a number of inquiries and reports into residential care that have led to radical changes in the system. It was not felt therefore that an inquiry into events twenty or more years ago would lead to further changes in current practice which would provide better protection to children in the system now.

Executive believes its actions meet the public interest considerations. Abuse allegations have been and are investigated by the policy. The Executive believes the public understands that most of these events were some time ago and the system has changed completely since then. An inquiry into events twenty or more years ago risks suggesting the system has not changed and improved in that time – which is clearly untrue”¹²⁶.

- 2.94. The updated briefing was sent to the Minister for Education and Young People later that afternoon¹²⁷.
- 2.95. On 18 November 2004 an email between officials was sent entitled “Draft Briefing for Ministerial Debate on Historical Abuse”. It contained a Q&A for the Minister for Education and Young People which was a revised version of the briefing provided for his appearance before the Public Petitions Committee on 29 September¹²⁸.
- 2.96. On 19 November 2004, ‘lines to take’ in the briefing for the Ministerial debate on historical abuse (cleared with the Scottish Law Commission) stated that the Law Commission was expected to publish a discussion paper. The remit of the review was: “To examine the operation of sections 17(2)(b), 18(2)(b) and

¹²⁶ A18922776 – Email between officials. 12-11-04 drft backbenchbrief. 12 November 2004.

¹²⁷ A20722479 – Email from official to Minister for Education and Young People. Draft Briefing Paper on Petition PE535. 12 November 2004.

¹²⁸ A17759083 – FZJ 003-008: Part 1. Email between officials. Draft Briefing for Ministerial Debate on Historical Abuse. p. 15 - 18. 18 November 2004.

19A of the Prescription and Limitation (Scotland) Act 1973 and to make any appropriate recommendations for possible reform of the law”¹²⁹.

- 2.97. On 24 November 2004 an official wrote to various officials with a note of the Minister for Education and Young People’s meeting with INCAS on 23 November. The note included the following:

“One new suggestion arose yesterday. The Minister suggested that he wished to appoint a rapporteur to inquire into why abuse was allowed to happen. Funded by the Executive this might be a Parliamentary appointment (the parliament's role remains subject to discussion). The rapporteur would examine past inspection reports and records (from central Government and other organisations) to gain an understanding of why the systems then in place did not prevent the abuse or identify its extent. They could then compare past practice to the current position and identify any issues which would merit further consideration. The report of the rapporteur could be presented to Parliament and the Executive and would, in any event, be made public.

...

The Minister touched briefly on the issue of compensation by saying that this is not something he has given much thought to at this point in time and that he felt it was more important to put appropriate support services in place and to gain a better evidence base. Lastly, on the issue of an apology, the Minister discussed with INCAS what sort of apology they were looking for and who should make this. It was clear that INCAS felt any apology should come from the First Minister on behalf of the State and should be heart-felt. The Minister indicated that at this stage an apology has neither been ruled in or out of his thinking”¹³⁰.

¹²⁹ A17759083 - FZJ 003/008 Part 1. Briefing for Minister for Education and Young People. LINES TO TAKE. p. 19 - 39. 19 November 2004.

¹³⁰ A18234214 - KNX 1/56 Part 12 - Email between officials. NOTE OF MINISTER'S MEETING WITH INCAS ON 23RD NOVEMBER 2004. p. 445 - 446. 24 November 2004.

- 2.98. On 26 November 2004 an official wrote an email to the Solicitor to the Scottish Executive which attached comments from the Minister for Education and Young People on the possible appointment of a rapporteur:

"I am very grateful for the advice of OSSE which I have seen and read today and for the opportunity to discuss issues with the Lord Advocate yesterday, in the knowledge of the general direction of the advice.

I am clear that in the further Parliamentary handling of this issue the Executive cannot remain silent on the legitimate question being asked as to why abuse was allowed to happen and not stopped. Any failure to respond to this issue adequately will lead to rising pressure on the question of a full 'public inquiry' with all the implications that would bring. Beyond this consideration, however, the more I have looked at the issues here it seems to me the questions need answered from a policy perspective in any event.

I note the advice that the outcome of a rapporteur working on this could have the effect of helping pull together and ease the task of individuals wishing to pursue the Executive. I understand that argument. However, it is our intention to make all the information we have available to us open to public inspection and I am particularly keen to open the old inspection reports to public scrutiny. FOI would facilitate this in any event. So, in my view, all the information is going to be available from which those pursuing us will be able to draw their own conclusions and seek expert advice on the adequacy of the regimes in place to monitor residential establishments in the past as part of any case. It does not seem to me that the effect of the actions of rapporteur will materially alter the nature of the challenges against us, other than to perhaps draw forward in time evidence that will be available anyway. Indeed, arguably, if we are to pitch any remit to examine the issues against the standards of the day when inspections took place - this might have the effect of providing stronger defences, if appropriate. Beyond this, it does seem to me that we also need to know what the view may be of the regimes in place to

be able to judge whether in all circumstances we should be defending what could transpire, in some cases at least, to be the indefensible.

Having considered the matter, and in light of my conversation with the Lord Advocate, I intend to proceed with setting out for Parliament an intention to appoint a rapporteur to look further into the issues to address the question of "why was this allowed to happen and why was it not stopped". I have never had the intention that the rapporteur should examine individual cases, but rather should take a policy look at the issues. OSSE advice would confirm that is the right approach.

I would not intend to set out in any great detail in Parliament what a remit would be, but rather deal with the principle and indicate the detailed remit, etc would be for further discussion. I wouldn't want any misunderstandings about this either so there will need to be some parameters set out. I plan to draft what will go in my contribution to the debate over the weekend and would want advice from OSSE on the content to ensure I do not unwittingly open the Executive to any wider implications than necessary"¹³¹.

- 2.99. On 26 November correspondence between officials noted the need to: "find out from finance colleagues what the financial consequences of the parliament holding an inquiry would be. If there were to cost, say £10-20M, would the Executive have to foot the bill? This is in case an amendment to the motion is successful"¹³².
- 2.100. An official replied to the above request regarding financial consequences on 29 November in an email entitled "Financial implications of parliament holding an inquiry". She stated she had spoken to an official in finance regarding the consequences of the Scottish Parliament deciding to hold an inquiry:

¹³¹ A18234214 - KNX 1/56 Part 12. Email between officials. FW: RESTRICTED: Not re possible appointment of rapporteur in relation to child abuse. p. 341 - 343. 26 November 2004.

¹³² A18234147 – KNX 1/56 Part 3. Email between officials. Happy Monday. p. 119 26 November 2004.

“In summary the Executive would end up footing the bill as all funding for the Scottish Parliament comes from the Scottish Bloc and the Parliament ultimately decides on how much it needs each year. The mechanism is that the Corporate Body put forward an annual budget proposal to the Scottish Commissioner on Public Audit and the Finance Committee. Both of these are made up of MSPs. If both approve the proposal then the Executive receives a request for the approved sum and this amount is top sliced from the monies received from Westminster. The Parliament can also look at amend its budget in year”¹³³.

2.101. The Crown Agent wrote to the Solicitor to the Scottish Executive on 29 November 2004 and stated:

“I have... been able to discuss briefly with the Lord Advocate. Coming to this rather cold I do have concerns - which are shared by the Lord Advocate - about how what is proposed might affect (or trigger) criminal investigations and prosecutions, and in particular how this would relate to decision making by Procurators Fiscal and Crown Counsel. I appreciate that such concerns could be allayed by firming up on the scope and remit of an inquiry.

2. I do not know whether such an inquiry might cut across actual criminal investigations or prosecutions, but given the possible breadth of the inquiry it may be necessary for COPFS to trawl all eleven COPFS areas and for our areas to trawl police forces; I am aware that there is at least one possible prosecution in the Central Scotland area (under consideration by Crown Counsel) and there is no shortage of potential 'new' complainers in that area.

3. It would certainly be necessary to have very clear ground rules as to what the rapporteur could do and say - and when s/he required to defer to the Procurator Fiscal and any police investigation, or indeed report to the Procurator Fiscal, in relation to criminality. It may be easier to regard

¹³³ A18234147 – KNX 1/56 Part 3 - Email between officials. FINANCIAL IMPLICATIONS OF PARLIAMENT HOLDING AN INQUIRY p. 118. 29 November 2004.

aspects of live investigations as out of bounds than to deal with allegations arising in the course of the inquiry.

4. But fundamentally from the position of the prosecution service, it would be necessary at the outset to be clear as to the remit of the rapporteur in relation to decision making by prosecutors. There is, of course, much lore on that subject - but previous inquiries - going back to the Waters Inquiry in 1959 and more recently the Dunblane Inquiry - have recognised that prosecution decision making should not be reviewed by an Inquiry.

5. It would be helpful if this office and in particular... the Deputy Crown Agent could be closely involved in the development of this proposal”¹³⁴.

2.102. Also on 29 November 2004 an official wrote an email to the Head of the Scottish Executive’s Education Department which contained the following:

“I am writing to you in your capacity as Accountable Officer for SEED to draw your attention to the attached email exchange.

As you are aware, the Minister is planning to make a contribution to the debate on Wednesday 1 December about Petition 535. As part of that contribution, he is minded to announce the appointment of a rapporteur to investigate how abuse in children's care homes was able to take place. He intends that the rapporteur would review existing material, and not publish any material relating to individual cases.

We have had a number of very helpful discussions with OSSE colleagues. They are concerned that, even with these limitations on the scope of the work, such an exercise might increase our risk of financial liability arising from current and pending civil cases.

There are at least two alternatives: either that no investigation is carried out - or that an investigation is carried out by a third party (for example

¹³⁴ A18234214 - KNX 1/56 Part 12. Email between officials. FW: Note re possible appointment of rapporteur in relation to child abuse. p. 290 - 291. 29 November 2004.

the Parliament). The first leaves us exposed to the existing legal and financial risks. (It also leaves us exposed to the political risk that failure to announce even a limited inquiry prompts a Parliamentary vote for a much more open ended inquiry than currently envisaged by the Minister). A review by a third party is less predictable, since we have no indication of the likely scope of such a third party inquiry, or how its results might influence the courts. Our view is that potential costs of all three options are high. It is hard to estimate the relative likelihood of these potential costs arising.

OSSE colleagues believe that risk is greater if the Minister asks someone to undertake the rapporteur exercise as outlined above, than if no such exercise is carried out. Specifically, that we would provide the evidence needed by those bringing cases against the Executive. We understand that position, although there is a counterargument that - if the rapporteur was only reading and offering a view on files that were already in the public domain, and made no public comment on individual cases, his/her report would not materially affect the evidence available to any of the parties to the cases.

At this stage our only estimate of total cost is a figure of £30m. This estimate (see para 4.3 in the attached email) was made by OSSE on the assumption that all known cases result in the Executive making a payment at the upper end of the expected scale.

At this stage, it is not clear whether the outcome of the debate would be a process managed by the Executive, or one managed separately (or jointly) by the Parliament. Whether or not it was Parliament or the Executive that carried out the exercise, costs would fall to the Executive.

[An official] has made the above points to the Minister. He has indicated to her that he understand the advice, and the risks associated with his proposed plan of action.

One specific risk that is associated with an investigation commissioned by the Minister is that he is held liable by a third party who claimed that

their legal liability was increased by the outcome of the investigation. That theoretical risk emerged in discussions with OSSE today and has not yet been discussed with the Minister. OSSE have not given any indication of the potential scale of the financial implications of that risk.

Because of the uncertainty surrounding all of the above (since it depends on the outcome of a large number of legal cases), and because OSSE believe that the action being proposed by the Minister might increase his financial liability, it seemed prudent to seek your opinion as Accountable Officer before finalising the speech and supporting material for Wednesday.

Do you have Accountable Officer concerns about either the advice that we have given to the Minister, or the action proposed by the Minister in the attached email?

We will, of course, update you as appropriate as the Minister firms up on the lines he plans to take on Wednesday”¹³⁵.

2.103. Later on 29 November 2004 the official replied and stated the following:

“Thank you for the opportunity to reflect on the issues here from the Accountable Officer perspective. I had of course seen the advice from OSSE and the Minister's response at the time.

Plainly there is no question of propriety or regularity here. The issues are around whether the Minister has taken an appropriate decision in the light of the best available advice. I am satisfied that Mr Peacock has properly considered the views expressed by OSSE and intends to proceed having taken a clear view of the risks associated with his preferred course. His judgement - one he is entitled and best able to take - is that the proposal to appoint a rapporteur is necessary to manage the political risk of a considerably more damaging outcome emerging from the debate or subsequently. As I understand Mr Peacock's position,

¹³⁵ A18234214 - KNX 1/56: Part 12. Email between officials. Re: IMMEDIATE - RAPPORTEUR - LIABILITY ISSUES p. 211 – 213. 29 November 2004.

he is clear that there is no realistic "no investigation" option. The choice is between a relatively controlled investigation with a remit designed as you describe or an investigation whose scope and parameters are set by others. The Minister knows that all the possible ways carry the risk of increased financial liability – he has identified this way forward as having least risk in his assessment. I do not believe that we have any information which would justify challenging his view.

To avoid any doubt that all the issues have been considered, OSSE's concern about possible third party liability should be put to the Minister and he should be asked if this alters his view"¹³⁶.

- 2.104. Following discussion regarding a rapporteur, on 30 November 2004, a series of emails were sent from an official to INCAS and, separately, the Minister for Education and Young People. First, the official wrote an email to the Minister for Education and Young People advising that:

“During the course of discussions with OSSE yesterday, an additional risk associated with the appointment of a rapporteur was flagged. OSSE were concerned that as a result of the work of the rapporteur, a third party may sue the Scottish Executive claiming that their legal liability was increased. The likelihood of such a risk is difficult to quantify but you may wish to consider whether the possibility of such a risk influences your view on the approach to take”¹³⁷.

- 2.105. In another email on 30 November 2004, the same official again wrote to the Minister for Education and Young People, advising that:

“On the issue of an inquiry, there are formal powers contained within the Tribunal of Inquiries Act 1921 (UK Act). That allows formal inquiries to be able to compel witnesses to give evidence and compel documents to be produced, as well as allowing for immunities for those giving

¹³⁶ A18234214 - KNX 1/56 Part 12 - Email between officials. Subject: Re: IMMEDIATE - RAPPOREUR - LIABILITY ISSUES (page 210/211). p. 210. 29 November 2004.

¹³⁷ A18234214 - KNX 1/56 Part 12 - Email to the Minister for Education and Young People. Appointment of rapporteur. p. 190. 30 November 2004.

evidence, including immunity in relation to defamation actions. An inquiry set up under this Act requires a resolution in both Houses at Westminster. The last such public inquiry in Scotland was the Dunblane one. The Bloody Sunday and Shipman inquiries were also set up on this formal basis. The Holyrood inquiry and the Hutton however were not and therefore did not have formal powers.

The Act will shortly be repealed when the (UK) Inquiries Bill is passed. It will allow Scottish Ministers and/or UK Ministers to establish an inquiry with formal powers.

These Acts relate to formal inquiries with particular powers. There are other specific powers to set up inquiries contained in specific legislation including the Social Work and the Education Acts. Beyond such "formal" inquiries, there is nothing that prevents anyone setting up an inquiry. It will just not have formal powers.

Similarly, a rapporteur would have no formal powers and no particular legal status. They would simply be a person appointed to do a specific task with a specific remit.

Let me know if you would like any further information on any of this”¹³⁸.

2.106. Later that day the same official wrote to the Minister with additional information following a further discussion with a person that the Minister advised the official to speak with about the appointment of a rapporteur:

“the term rapporteur is used in a very specific context in the European institutions and that it relates to an elected representative... who is appointed to make a report to a committee or the parliament. The representative’s role is seen as independent... their report, which is in a sense a considered option on the matter, is however then subject to amendment by the political groupings.

¹³⁸ A18234214 - KNX 1/56 Part 12 - Email to the Minister for Education and Young People. Various questions. p. 257. 30 November 2004.

We discussed what we had in mind here and, while he understood the attractions of the term, he wondered whether it might be better to avoid it and use instead words like independent expert/independent report.

You might be interested to know that in a conversation between Helen Holland and [official], Helen mentioned that one of the things they hoped to get from Wednesday was clarity about what the “thing” is that we are describing, both in the sense of the rapporteur and the package”¹³⁹.

- 2.107. On the same day, the official wrote to the Helen Holland about a number of topics, which included the following:

“Investigative work [Rapporteur]

From our discussions with you and your conversation with the Minister it was clear that one of the key questions for survivors was why was no one able to stop the abuse happening to them. Following these discussions the Minister has decided to appoint someone with experience in the field to analyse: What were the policy and regulatory requirements of the time? What systems were in place to monitor the operation of these requirements? How was this monitoring carried out in practice? By answering these questions, through examination of past inspection reports and records, [the rapporteur] will be able to gain an understanding of why the systems then in place did not prevent the abuse or identify its extent; compare past practice to the current position identifying any issues which would merit further consideration; and, produce a report for the Executive [which will be made public]”¹⁴⁰.

- 2.108. On 30 November 2004, an official sent the Minister for Education and Young People a “Briefing Pack for Debate on Petition PE 535”, containing various attachments, including a Q&A paper and background briefing (including on the

¹³⁹ A18234214 - KNX 1/56 Part 12 - Email to the Minister for Education and Young People. rapporteur. p. 256. 30 November 2004.

¹⁴⁰ A18234214 - KNX 1/56 Part 12 – Letter from official to Helen Holland. p.187-188. 30 November 2004.

response in Ireland, a note on Quarriers, the Short-Life Working Group Membership and letters to Michael McMahon MSP)¹⁴¹.

2.109. The Q&A paper for Committee debate on petition PE535 on 1 December 2004 contained (amongst other material) the following:

“Q. Are you going to apologise to those who suffered abuse in List D schools or residential establishments?

A. We have done so. In his statement the First Minister gave a sincere and full apology on behalf of the people of Scotland to those who were subject to such abuse and neglect; who did not receive the level of love, care and support that they deserved and who have coped with that burden all of their lives. [NB based on text of draft apology as at 30/11/04]

Q. Did you consult with survivors in making this decision?

A. Officials had contact with survivors, including meeting representatives of the In Care 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 developing services for survivors.

Q. What will the rapporteur/independent expert do?

A. We want to discuss with other interested parties the remit before finalising it. The work will look at information about what systems were in place at different times to deliver and monitor the care provided in these establishments. It would not look at individual cases. We need to be careful that this process does not in any way prejudice current or future criminal or civil cases.

¹⁴¹ F18184 – Email from official to PS/Minister for Education: BRIEFING PACK FOR DEBATE ON PETITION PE 535. 30 November 2004

Q. Will the rapporteur/independent expert hear evidence from witnesses?

A. No. The purpose of this exercise is to review the information held about systems to deliver and monitor the care provided in these establishments.

Q. What is the Executive's position on acceptance of liability?

A. Ministers regret very much that abuse took place but liability is a matter for the courts to consider.

Q. Are you considering a compensation scheme?

A. No. My priority is to ensure that support is available for survivors and I am looking at practical measures to achieve this.

Q. Will you consider it in the future?

A. We have no plans to do so. We are concentrating our efforts on providing practical and immediate support for survivors.

Q. If the report shows that systems were defective would we admit liability?

A. It will be for the courts to decide on questions of liability”¹⁴².

2.110. Also on 30 November 2004 the Minister for Education and Young People wrote to an official about the speech he intended to give at the Public Petitions Committee the next day. He wrote:

“I have seen the revised speech following the latest advice from OSSE. I am content with the speech as it now stands and assume this will minimise any concerns that at this stage any risk to the Executive is being extended unnecessarily.

¹⁴² A18234214 - KNX 1/56 Part 12 - Draft Q&A document. Q&A FOR COMMITTEE DEBATE ON PETITION PE 535 ON 1 DECEMBER 2004. p. 50-81. 1 December 2004. also attached within email F18184.

The real risk here, of course, is that by not giving ground the pressure for a full public inquiry will become irresistible to Parliament - that is something that needs factored into all considerations of risk and I trust OSSE are doing that”¹⁴³.

- 2.111. At the plenary session of the Scottish Parliament on 1 December 2004, following the statement given by the First Minister, there was a debate on the petition¹⁴⁴. The Presiding Officer noted that a number of civil actions were underway in the courts, and that members should not refer to any particular case or individual circumstance that was, or might come, before the courts.
- 2.112. Michael McMahon moved that the Scottish Parliament should note petition PE535^{145,146}. He pointed out that the Committee had not taken a view on whether or not to recommend that Parliament support the petition’s aims.
- 2.113. During the debate Mr Peacock updated the Scottish Parliament on issues referred to in the evidence he gave on 29 September:

“I made it clear to the 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 have also asked the Scottish Information Commissioner, who was appointed on the recommendation of Parliament and who is completely independent of ministers, to examine what we have been doing to trace and open up our files. I want him to verify that we have been taking all reasonable steps to be open and, if he finds deficiencies in any actions, I want him to highlight those so that I may rectify the situation. I hope that

¹⁴³ A19810503 - KNX 1/56: Part 13 - Email from the Minister for Education and Young People to official. Re: Ministers Speech for 1 December 2004. p. 161. 30 November 2004

¹⁴⁴ Scottish Parliament. Official Report – Plenary, 01 Dec 2004. No date [cited 2020 February 20]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&i=34110>

¹⁴⁵ Scottish Parliament. Journal of the Scottish Parliament –Motion S2M-1998 [Internet] 2005. p. 375. Vol2: 2nd Parliamentary Year, Session 2. [cited 2020 February 2020]. Available from: <https://www.parliament.scot/Journal/JSP2004to2005.pdf>

¹⁴⁶ Scottish Parliament. Petition 535. [cited 2020 February 20]. Available from: <http://archive.scottish.parliament.uk/business/petitions/docs/PE535.htm>

those actions will reassure Parliament and the survivors of abuse that we are being as open as possible.”;

“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”.

2.114. 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”.

2.115. 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”.

2.116. During the debate, in the context of noting that there were various views on appropriate future action, Karen Gillon stated that: “[t]here are strong views on all sides amongst the survivors. Some want a full public inquiry, others do not”.

2.117. 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”.

2.118. 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”.

2.119. 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"¹⁴⁷.

2.120. A question and answer sheet prepared for the statement given on 29 September 2004 contained the question: "did you consult with survivors in making this decision" (not to hold an inquiry)¹⁴⁸. The answer was 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"¹⁴⁹.

2.121. On 2 December 2004 a legal official wrote to another official regarding petition PE535 and the on-going case of *McEwan v Hendon*, and noted that:

"The Pursuer's Counsel is very likely to bring up yesterday's parliamentary debate at the hearing on 13 December. The Pursuer has already lodged a copy of petition PE535 in court, which at the time we found puzzling as, on the face of it, it does not concern the Pursuer. The Pursuer's Counsel may now use this as a vehicle to introduce discussion on the parliamentary debate into the court hearing.

¹⁴⁷ Scottish Parliament. Official Report – Plenary, 01 Dec 2004. No date [cited 2020 February 20]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&i=34110>

¹⁴⁸ This is a briefing prepared for the Minister in advance of the committee appearance, setting out "lines to take" in relation to anticipated questions.

¹⁴⁹ A18234214 - KNX 1/56 Part 12 - LINES TO TAKE. p.3-23. 28 September 2004.

Our difficulty is how we reconcile our position in court with what has been said by Ministers. There is a risk that the Pursuer's Counsel will question how sincere the First Minister's apology was, given that we have an outstanding Note of Argument in the court case to the effect that the Pursuer should not be allowed to bring in an argument (that SED had a general duty to take reasonable care to provide an adequate system

to ensure that no child was exposed to risk of injury) at this late stage in the debate, without giving us prior notice. This is a technical legal argument. Counsel would like specific instructions on how he should respond to such a point if made by the Pursuer's Counsel.

He also anticipates that the Pursuer's Counsel may question our use of the time-bar defence, given the commitments made by Ministers, and will require a line to take on that. He will also need a line on any argument which might be made around our reluctance to produce documents earlier this year for DPA reasons, in light of the commitment to produce them now. I think that can be covered by saying that the files will only be made available in a redacted form with personal details excluded, and accordingly our approach has been consistent, but this might require further thought”¹⁵⁰.

- 2.122. In the period following the refusal of a public inquiry in 2004, calls for an inquiry continued 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 20 November 2006 stated 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 went on to record that whilst officials “respected these views, Ministers had decided against holding an Inquiry. One of the main problems in setting

¹⁵⁰ A19810503 - KNX 1/56 Part 13 - Email between officials. Public Petition PE535 - McEwan v Hendron. p. 626-627. 02 December 2004.

up an inquiry is that it would hold up existing court cases which have probably already taken years to come to court”¹⁵¹.

2.123. On 12 January 2005 an official wrote to the Minister for Justice, with “lines to take” on historical abuse, which described the Executive’s position following the parliamentary debate and First Minister’s apology. The lines included:

“Is this an apology?”

Yes. The FM gave a sincere and full apology on behalf of the people of Scotland to those who were subject to such abuse and neglect.

Why was the apology been so long in coming?

Scottish Ministers have been anxious at all times to do the right thing by the survivors of abuse. They made it clear that they wanted an apology and we have now apologised.

Have you been forced into an apology?

No. We apologised because Ministers - and the public at large - share the profound sorrow that these individuals were subjected to such treatment.

Is this an admission of guilt/liability?

No. We are profoundly sorry that these individuals were subjected to such abuse and neglect and did not receive the level of love, care and support that they deserved. The Scottish Ministers are not responsible for what happened and this is not, therefore, an admission of liability. That is a matter for the courts to determine.

Will the victims receive compensation from the government?

¹⁵¹ B1053921 – Email from official to Mr David Whelan (FBGA). Note of Meeting between FGBA and the Scottish Executive on 20 November 2006. 22 January 2007.

Our focus is on providing immediate, practical support for survivors. It is for those who are responsible to pay compensation. That would be a matter for the courts.

Will there be a public inquiry?

The Minister for Education and Young People has made his position on this issue very clear and concluded that a public inquiry would not add to our current actions and considerations”¹⁵².

The period from 2005 to 2008

2.124. With regards to the 2005 to 2008 period, a number of developments occurred including:

(i) the Scottish Executive had taken steps to provide survivors with access to its records^{153,154};

(ii) the Short Life Working Group on Survivors of Childhood Sexual Abuse, the National Strategy for Survivors of Childhood Sexual Abuse (SurvivorScotland) and the Reference Group on Adult Survivors of Childhood Sexual Abuse were established (covered under chapter 10 of this report);

¹⁵² A19810503 - KNX 1/56 Part 13 - Email to the Minister of Justice. RE: IMMEDIATE: CROSS PARTY GROUP ON SURVIVORS OF CHILDHOOD SEXUAL ABUSE. p. 462 - 465. 12 January 2005.

¹⁵³ A26584680 - Report from the Scottish Information Commissioner. Examination of the Scottish Executive Education Department's Procedures for the Identification and Provision of Access to Records related to Children's Homes and Residential Schools. June 2005.

¹⁵⁴ Note: On 14 January 2005, the Minister for Education and Young People and the Scottish Information Commissioner agreed terms of reference for the Commissioner's review of the Scottish Executive Education Department's work to trace and make available records about institutional children's homes and education (following the Minister asking the Commissioner to carry out a review, announced during the debate on Petition PE535). The Scottish Information Commissioner published his report on 23 June 2005. The findings of the report noted: "My overall conclusion is that the Scottish Executive has taken all reasonable steps to trace and open all historical records that it holds relating to institutional children's homes and residential schools in Scotland" (the report also contains a helpful background section).

(iii) the work of the Scottish Law Commission on prescription and limitation and the case of *M v. Hendron*, which was dismissed in April 2007 on account of time-bar¹⁵⁵ (covered in chapter 15 of this report);

(iv) the appointment of an independent expert (called a “rapporteur” above) to look at the issue of historical abuse (covered under chapter 7 of this report); and

(v) the Tribunals of Inquiry (Evidence) Act 1921, which had been “perceived as inflexible and used infrequently by Government...”¹⁵⁶, was replaced by the Inquiries Act 2005 which provided for the establishment of a statutory inquiry¹⁵⁷ and later on 19 January 2008, the Inquiries (Scotland) Rules 2007¹⁵⁸ came into force¹⁵⁹.

2.125. The records cited above show that these developments (or the beginnings of them) had featured in the context of earlier discussions within the Scottish Executive about a public inquiry.

2.126. It should also be noted that in this period, on 3 May 2007, a Scottish Parliament election was held, which saw the Labour/Liberal Democrat administration succeeded by a minority Scottish National Party government¹⁶⁰.

¹⁵⁵ Refers to case of *A McE v. the Reverend Joseph Hendron and Others. A McE v. The Reverend Joseph Hendron and Others (2007)*. Available from: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=009b86a6-8980-69d2-b500-ff0000d74aa7>

¹⁵⁶ Briefing on the Inquiries Act 2005. Statutory commissions of inquiry: the *Inquiries Act 2005*. 24 September 2018. Available from:

<https://researchbriefings.files.parliament.uk/documents/SN06410/SN06410.pdf>

¹⁵⁷ Briefing on the Inquiries Act 2005. Statutory commissions of inquiry: the *Inquiries Act 2005*. 24 September 2018. Available from:

<https://researchbriefings.files.parliament.uk/documents/SN06410/SN06410.pdf>

¹⁵⁸ *The Inquiries (Scotland) Rules 2007*. Available from:

<http://www.legislation.gov.uk/ssi/2007/560/contents/made>

¹⁵⁹ Scottish Government. Executive Note to the Inquiries (Scotland) Rules. December 2007. Available from: http://www.legislation.gov.uk/ssi/2007/560/pdfs/ssien_20070560_en.pdf

¹⁶⁰ SPICe briefing. Election 2007 .8 May 2007. Available from:

<https://www.parliament.scot/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB07-21.pdf>

- 2.127. Tom Shaw's 'Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995' was published in 2007¹⁶¹. The following records which related to its publication also touched on the matter of a public inquiry.
- 2.128. 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 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"¹⁶². A speaking note prepared by an official to accompany a SCANCE ("Scottish Cabinet Analysis of News and Current Events") note in relation to the publication of the Shaw review included the following lines for Ministers: "[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"¹⁶³.
- 2.129. Further advice prepared by officials in relation to the publication of the Shaw review contained the following lines for Ministers (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"¹⁶⁴.

¹⁶¹ Tom Shaw. Historical abuse systemic Review: Residential schools and children's homes in Scotland 1950 to 1995. Scottish Government; p. 286. [cited 2020 February 21]. Available from: <https://www.fbga.co.uk/historicalAbuseSystemicReview.pdf>

¹⁶² B1707507 – Email from official to Ministers, First Minister, and Cabinet Secretary. Submission: Publication of Historic Abuse Systemic Review – 22 November 2007. 16 November 2007.

¹⁶³ B1709447 - Speaking Note to accompany SCANCE note of 16 November 2007. Publication of Historic Abuse Systemic Review on 22 November. No date.

¹⁶⁴ Tom Shaw. Historical abuse systemic Review: Residential schools and children's homes in Scotland 1950 to 1995. Scottish Government; p. 286. [cited 2020 February 21]. Available from: <https://www.fbga.co.uk/historicalAbuseSystemicReview.pdf>

2.130. The Scottish Law Commission's 'Report on Personal Injury Actions: Limitation and Prescribed Claims' was published in late 2007^{165,166}. 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 Parliament¹⁶⁷. The Minister for Children and Early Years, Mr Ingram, made a statement on 7 February 2008:

"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

¹⁶⁵ Scottish Law Commission. Report on personal injury actions: Limitations and prescribed claims [Internet]. 2007 [cited 2020 February 21]. Available from: <https://www.scotlawcom.gov.uk/files/3412/7989/7451/rep207.pdf>

¹⁶⁶ Note, David Whelan, on behalf of the Former Boys and Girls Abused in Quarriers, was a consultee who submitted comments

¹⁶⁷ B1883525 – Template guidelines. SCANCE: Template and Guidance for Drafting. 7 February 2008

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"¹⁶⁸.

- 2.131. A speaking note to accompany a SCANCE note on the statement provided: "[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

¹⁶⁸ Scottish Parliament. Plenary, 07 Feb 2008. 2008 [cited 2020 February 21]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&i=39672>

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”¹⁶⁹.

- 2.132. 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 then First Minister Mr Salmond was reported as having “pledged to 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”¹⁷⁰.

The period from 2009 to 2013

- 2.133. In the period from 2009 to 2013 the Scottish Government’s response to survivors focused around developing an acknowledgement and accountability forum (the Time to be Heard pilot that would lead to the National Confidential Forum) and the SHRC led InterAction Process. This is briefly expanded on in the paragraphs below. Other chapters of this report cover these matters in more detail. In 2013 the matter of holding a public inquiry returned to prominence within the Scottish Government in relation to media reports of child abuse at Fort Augustus School – this is covered below.
- 2.134. For context in this period, it is also worth noting that the Scottish Government and Glasgow City Council had 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

¹⁶⁹ B1883520 - Speaking note to accompany SCANCE note of 1st February 2008. MINISTERIAL STATEMENT: SUPPORT FOR SURVIVORS 7 FEBRUARY 2008. No date.

¹⁷⁰ House of Lords. Judgements. *Bowden (Ap) V Poor Sisters of Nazareth and Others (Scotland) Whitton (Ap) V Poor Sisters of Naza (2008)*. Available from:

<https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080521/bowden-1.htm>

resourcing. Two further inquiries into cases of child abuse, one relating to Edinburgh and the other to Fife, had already reported by this time¹⁷¹.

- 2.135. In March 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 (addressed by chapter 12 of this report). The framework was published in February 2010¹⁷². 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. These matters, the petition that followed (PE1351) and the response by government, are covered by chapter 13 of this report (acknowledgement and accountability forum / Time to be Heard). In so far as these matters related to the issue of a public inquiry, the following paragraph contains relevant information.
- 2.136. A letter from an official to an ex-resident of Quarriers Homes, dated August 2011, indicated that at that time, Ministers’ preference was for the Time to be Heard forum over a public inquiry: “You mention your 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

¹⁷¹ The former: Marshall K, Jamieson C, Finlayson A. *Edinburgh’s Children: The Edinburgh inquiry into abuse and protection of children in care*. 1999. p. 66. [cited 2020 February 21]. Available from: <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.

¹⁷² Scottish Human Rights Commission. *A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland*. 2010 [cited 2020 February 21]. p 54. Available from: http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedi es.doc

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 assured”¹⁷³.

- 2.137. In December 2011 the Scottish Government agreed to engage with an InterAction process (a facilitated negotiation within a human rights framework) to develop an Action Plan to implement the recommendations in the SHRC Framework¹⁷⁴. Participants (including survivors) 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. This is covered in this report in more detail in chapter 12 (SHRC Framework and Interaction Process); particular interaction events relating to why an inquiry was established in 2014 are covered in chapter 3 (why a public inquiry was established in 2014).
- 2.138. In August 2013 officials emailed Ministers regarding media reports of the Fort Augustus child abuse case, noting that the NSPCC was likely to support calls for an independent inquiry. Additionally, the chain of correspondence included a reply from an official noting STV and Good Morning Scotland had called asking if the Scottish Government would support calls for an independent inquiry. An official noted that: “We understand from Police colleagues that it would be very unusual – and likely inappropriate – to undertake any form of inquiry into allegations of abuse while any investigation is ongoing”¹⁷⁵.

¹⁷³ B5000949 – Email attaching letter from the Justice Directorate – Law Reform Division. MACCS Case Mr Findleton. 12 August 2011.

¹⁷⁴ Scottish Human Rights Commission. History of InterAction [Internet]. 2020 [cited 2020 February 19]. Available from:

<https://www.shrcinteraction.org/WhatisanInterAction/History/tabid/1190/Default.aspx>

¹⁷⁵ A6600297 – Email chain between officials. FW: UPDATE – MEDIA REPORTING OF FORT AUGUSTUS CHILD ABUSE CASE. 20 August 2013.

2.139. Officials liaised with Ministers on media lines and in response the Cabinet Secretary for Education and Lifelong Learning agreed that¹⁷⁶: “we retain (and emphasise) that there is a live police investigation but that we go on to strongly condemn the alleged abuse and to say that we will consider what action may be appropriate once the investigation is complete”. An official later wrote: “I think the cab sec’s office will be commissioning more wide ranging advice later today on the options / pro / cons etc for an inquiry. The cab sec wishes to explore this issue. In the meantime, we must be careful not to rule anything out (or in)”¹⁷⁷.

2.140. In the same chain of correspondence, an official requested background to other public inquiries with pros and cons. Another official replied:

“Public inquiries have significant potential as a means of investigating the incidence, causes and effects of institutional child abuse. They can examine the past without the restrictions placed on courts, and can commission their own research and listen to survivors in a non-adversarial setting. An extensive independent review into historical abuse in residential schools and children’s homes in Scotland from 1950 to 1995 has already been conducted and was published in 2007.

Furthermore, public inquiries can be both expensive and time-consuming. These are potential drawbacks to consider when choosing this process to redress historical cases of child abuse; survivors may feel the money directed to an inquiry would be better spent directly on helping them to heal. An additional inquiry could delay the opportunity for individuals to access immediate and more tangible forms of redress.

Public inquiries are most likely to make their distinctive contributions by holding organisations and/or the government (not individuals) accountable for abuse. Scottish Government is aware that mechanisms for determining State liability direct and across the board in relation to

¹⁷⁶ A6600297 – Email chain between officials. FW: UPDATE – MEDIA REPORTING OF FORT AUGUSTUS CHILD ABUSE CASE. 20 August 2013.

¹⁷⁷ A6600297 – Email chain between officials. FW: UPDATE – MEDIA REPORTING OF FORT AUGUSTUS CHILD ABUSE CASE. 20 August 2013.

international human rights abuses are not currently available in Scotland”

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2.141. On 19 August 2013, the Cabinet Secretary for Education and Lifelong Learning, Mr Russell, and the First Minister requested a briefing note on the Fort Augustus Abuse Case from Child Protection Policy officials^{179,180}. Officials provided this on 20 August 2013, and their advice noted that the significant and ongoing media coverage of historical child abuse at the Fort Augustus Abbey School and Carlekamp Preparatory School included calls for an independent inquiry. The briefing stated:

“The media is now leading with calls for such an inquiry and reporting that leading children’s charities (Children 1st and the NSPCC), the Children’s Commissioner, the Liberal Democrats and Labour are backing calls for this... Current holding lines reflect that Ministers cannot comment about the detail of a case while the subject of a live police investigation or court proceeding”¹⁸¹.

2.142. Later on 20 August 2013 senior officials provided advice to the Cabinet Secretary for Education and Lifelong Learning regarding “whether to hold an inquiry into Fort Augustus historic child abuse case”. The advice noted: “While the police investigation into alleged abuse is still going on, Ministers will be unable to comment about the detail of the case, to avoid prejudicing potential court cases”. Regarding an inquiry, the advice said: “An inquiry might be the means to acknowledge the victims’ experience and might encourage other victims to come forward. Before deciding on a remit, Ministers would need to know the findings of the police investigation in order to focus the scope of the inquiry in a way which advanced the survivors’ interests. They might also want to consult the survivors at an appropriate point. Another factor to bear in mind

¹⁷⁸ A6600297 – Email chain between officials. FW: UPDATE – MEDIA REPORTING OF FORT AUGUSTUS CHILD ABUSE CASE. 20 August 2013.

¹⁷⁹ A6599995 – Email chain between officials and office of Cabinet Secretary for Education and Lifelong Learning. FW: Fort Augustus Abuse Case – SCANCE please. 19 August 2020

¹⁸⁰ A6599801 Email between officials. FW: Fort Augustus – briefing note for the first minister. 19 August 2013.

¹⁸¹ A6602801 – Email from an official to First Minister and Cabinet Secretary for Education and Lifelong Learning. RE: Fort Augustus Historic Child Abuse Case. 20 August 2013.

as investigations proceed is that the list of alleged victims is likely to grow longer and may spread to other institutions”. The advice also considered the timing of any inquiry, options other than an inquiry and existing support for survivors. The advice concluded by recommendation that it would be “premature to decide on an inquiry into Fort August Abbey School until the facts are clearer”¹⁸².

- 2.143. On 21 August 2013, an official sent a note entitled “Fort August support for survivors” to the First Minister and Cabinet Secretary for Education and Lifelong Learning, further to the briefing provided the previous day¹⁸³. The note outlined the measures that were already in place to support survivors from Fort Augustus and their families, including services, SurvivorScotland and ICSSS. It also noted that the National Confidential Forum would be available in due course.
- 2.144. Also on 21 August 2013, Cabinet discussed recent reports of historical physical and sexual abuse. Mr Russell noted that “Scotland’s Commissioner for Children and Young People, Tam Baillie, had – in view of the gravity of the allegations – called publicly for an independent inquiry”. At this meeting: “Cabinet members agreed it would be helpful to set out the range of inquiry and/or investigation options (short of a full public inquiry) that might be available. The range of alternative options should, as far as possible, avoid the length, cost and complexity associated with public inquiries but might usefully retain the power to compel witnesses, if required”¹⁸⁴.
- 2.145. At the same meeting on 21 August 2013, Cabinet discussed the Fort Augustus case. An email with the readout noted that: “Ministers accept there shouldn’t be any inquiry into Fort Augustus while the police investigation is ongoing... However, separately, Ministers wish briefing on the range of other options,

¹⁸² A6610300 – Email from official to First Minister and Cabinet Secretary for Education and Lifelong Learning. RE: Fort Augustus Historic Child Abuse Case. 20 August 2013.

¹⁸³ A6609714 - Email from official to First Minister and Cabinet Secretary. RE: Fort Augustus Historic Child Abuse Case: Follow Up. 21 August 2013.

¹⁸⁴ A26635115 – SC(13)24th Conclusions. 21 August 2013.

short of a full public inquiry, to investigate similar cases in future. They are keen that any inquiry would have power to compel witnesses”¹⁸⁵.

- 2.146. On 26 August 2013, a senior official sent an email to other officials which noted that work was ongoing to: “advise Ministers on possible SG reactions to the Fort Augustus case on child abuse. So far there has been good liaison across the office to pull together advice for Ministers. There was discussion about this at last week’s Cabinet, following which [an official] in Justice Directorate is leading on preparing advice on alternatives to an inquiry which might be used in due course in this case, and, separately, in similar cases in future...The Permanent Secretary has expressed an interest in next steps”.
- 2.147. The email stated: “There are a lot of different SG interests involved in this” and identified officials from the following areas: child protection, mental health of abuse survivors, liaison religious groups, schools, inspection, communications, legal, police, and prosecution. Finally, the email stated: “it would be helpful to convene a short meeting of those involved so that we can be sure that we are all clear about who is responsible for which dimension and discuss where this may go next”¹⁸⁶. The meeting was planned for 28 August, and a briefing previously sent to the First Minister and Cabinet Secretary on the issue was shared with attendees¹⁸⁷.
- 2.148. An email between officials on 28 August 2013 provided an update about what was discussed at the meeting that day. It noted “that Ministers were not minded to hold a public inquiry [into Fort Augustus] but had asked for information about action that could be taken short of a full public inquiry”. The email said that at the meeting an official: “noted the uncertainty over the purpose of any such inquiry and what Ministers were seeking to achieve. She felt that their focus was on the survivors and their families and what could be done to help them”. The email said that another official spoke about the SurvivorScotland Strategy and the National Confidential Forum, and she

¹⁸⁵ A6611892 – Email between officials. Fort Augustus – Readout from Cabinet. 21 August 2013.

¹⁸⁶ A6653789 – Email between officials. FW: restricted-policy: Fort Augustus: issues for Ministers. 26 August 2013.

¹⁸⁷ A6653829 – Email from official to meeting attendees (officials). Restricted – Fort Augustus Meeting. 28 August 2013.

stated: “this was helpful in positioning us as central to any forward planning. People were clear... that a great deal had already been done in terms of inquiries and reviews”. The general consensus of the meeting “was that the Catholic Church should commission an independent inquiry and that SG should encourage them privately to do so”¹⁸⁸.

- 2.149. In early September 2013, correspondence and attachments indicated a briefing was sent to the Permanent Secretary regarding “Child abuse cases: Options for Inquiry or Investigation” (including historical cases)^{189,190}. This followed Cabinet’s agreement on 21 August 2013 that an exercise should be undertaken to examine the range of inquiry or investigation options currently available or which might be developed. The attachment comprised a Cabinet paper addressed from the Cabinet Secretary for Education and Lifelong Learning, to the First Minister, Deputy First Minister, Lord Advocate, and Cabinet Secretaries (and dated 11 September 2013). The paper set out the result of the exercise to examine the range of inquiry or investigation options. Three options were provided in the paper: (i) Police Scotland investigation, (ii) an inquiry – statutory or non-statutory, or (iii) an inspection. Factors to be considered included: avoiding the risk of prejudicing any criminal trial; what the scope of the inquiry or investigation should be; who should lead it; and whether it is necessary to have powers to compel people to give evidence. The paper noted that only statutory inquiries had powers of compulsion. A final paper was submitted as a Note for Cabinet for discussion on 18 March 2014, and is discussed below.
- 2.150. From 2012 to 2014 the Scottish Government participated in the SHRC led InterAction process (noted above) to develop an Action Plan to implement the recommendations in the SHRC Framework. This is covered more fully in chapter 12 of this report (SHRC Framework and Interaction Process). A draft Action Plan was published in August 2013 and consulted on in early 2014.

¹⁸⁸ A6657884 – Email between officials. Fort Augustus Meeting 28 August 2013. 28 August 2013

¹⁸⁹ A6685055 – Email with attachment between officials. RE: Brief to Perm Sec. 3 September 2013.

¹⁹⁰ A6653889 – Briefing from Cabinet Secretary for Education & Lifelong Learning. Child Abuse Cases: Options for Inquiry or Investigation.

The draft Plan included a commitment calling for action to review previous inquiries and consider what added value a national inquiry may have.

Events in 2014 that led up to the establishment of a public inquiry

2.151. On 15 January 2014, officials received a request from communications colleagues to provide information in response to an enquiry from a journalist. The journalist “is looking for a comment on calls from Helen Holland – from In Care Abuse Survivors – to establish a similar inquiry to the one in Northern Ireland”. Officials responded with lines, including:

“In Northern Ireland, the Inquiry appears to be a discrete response, not in the context of a wider long-term Strategy. In Scotland, the NCF sits within a wider policy context, including the Survivor Scotland Strategy and wider justice initiatives”¹⁹¹.

2.152. The Public Petitions Committee published a ‘Report into Tackling Child Sexual Exploitation in Scotland’ on 14 January 2014¹⁹². The Committee’s Inquiry and associated Report about this issue followed Petition PE1393 lodged by Barnardo’s Scotland on 8 July 2011. That Petition sought improved guidance and research in this area, and the Committee proposed the debate highlight the findings of its final report. The Committee then held a debate on this issue on 28 January 2014. In a briefing for this debate, sent by the Child Protection Team to the Minister for Children and Young People, Annex M discussed issues related to calls for a public inquiry into historical abuse¹⁹³. The Annex provided the Minister with up-to-date information regarding historical abuse, the Fort Augustus Abbey School investigation, and calls for a public inquiry.

2.153. Regarding historical abuse and in particular the Fort Augustus investigation, the Annex stated there was: “no appetite for a public inquiry in Scotland. The

¹⁹¹ A7580797 – Email between officials. RE: Media inquiry – In Care Abuse Survivors calls for inquiry. 15 January 2014.

¹⁹² Scottish Parliament. Inquiry into tackling child sexual exploitation in Scotland. No date [cited 2020 February 21]. Available from:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/60242.aspx>

¹⁹³ A7660812 – Email between officials. FW: Parliamentary Debate – Public Petitions Committee Report into Tackling Child Exploitation in Scotland – Tuesday 28 February 2014. 24 January 2014.

Scottish Government has decided instead to invest resources in the health and wellbeing of former residents, including survivors and to establish the National Confidential Forum as a public health initiative which sits within a wider policy context, including the Survivor Scotland Strategy and wider justice initiatives. The police investigation must take priority and we must not prejudice or jeopardise the investigation or any criminal court actions which may follow”.

- 2.154. Regarding the Northern Ireland Inquiry into institutional abuse, the Annex said: “In Scotland there have been a number of inquiries and a review into child abuse in care which have made a significant impact on our policy and practice. Furthermore the Scottish Human Rights Commission has recommended that there should not be an inquiry but a review to consider what added value an inquiry would have and should scope potential costs”.
- 2.155. Regarding the Damages Bill and apology legislation, the Annex said: “The Scottish Government will introduce a Damages Bill, which was announced as part of the 2013-14 Programme for Government Statement, this session... The Scottish Government extends a cautious welcome to Margaret Mitchell’s proposal for an Apology Bill, particularly if a greater use of apologies would result in better outcomes for those who have suffered harm, including survivors of historic abuse. The Scottish Government is unable to form a final view on the proposal until the finalised proposal is available and have had an opportunity to consider the detail and its potential implications”¹⁹⁴.
- 2.156. At Cabinet on 18 March 2014, members discussed a paper entitled “Options for Inquiry or Investigation”¹⁹⁵. The paper identified that a non-statutory inquiry had certain shortcomings as problems arise, including: giving those involved a voice; recovering relevant documents; and securing attendance of reluctant witnesses. It further noted that for these reasons most modern inquiries are set up in terms of the Inquiries Act 2005. It noted: “An inquiry under the 2005 Act may be established where a Minister considers that particular events have

¹⁹⁴ A7660812 – Email between officials. FW: Parliamentary Debate – Public Petitions Committee Report into Tackling Child Exploitation in Scotland – Tuesday 28 February 2014. 24 January 2014

¹⁹⁵ A26660439 - SC(14)10th Meeting Paper. 18 March 2014.

caused, or are capable of causing, public concern, or that there is public concern that events may have occurred... It is generally accepted to be robust”¹⁹⁶.

2.157. On 25 March 2014 an official wrote a letter to a survivor, responding to his email of 11 March to Ms Sturgeon, Deputy First Minister. The official stated:

“In your e-mail you ask about a public inquiry. As you may be aware, in Scotland, there have been a number of inquiries into child abuse in care. The Scottish Government also commissioned Tom Shaw to undertake a systemic review of the systems of laws, rules and regulations which governed residential schools and children’s homes between 1950 and 1995. These inquiries and Review have made a significant impact on policy and practice in Scotland. As such we decided to focus on the prevention of abuse in residential care and providing support for survivors, rather than initiating a further inquiry. This was announced in a statement to Parliament by the Minister for Children and Early years on 7 February 2008”¹⁹⁷.

2.158. In an FMQ briefing dated 29 April 2014, regarding a public inquiry, it was stated:

“Scotland has held a number of inquiries (for example, the independent inquiry into abuse at Kerelaw School published in 2009) and reviews (including the Historical Abuse Systemic Review in 2007). We note that the Interaction Action Plan does not recommend a Public Inquiry. It noted that ‘discussions [on the value of an inquiry] articulated doubts regarding the value and possible benefits’. Concerns included that an inquiry might:

- take a long time
- outcomes might not offer tangible support

¹⁹⁶ A26660439 - SC(14)10th Meeting Paper. 18 March 2014.

¹⁹⁷ A8078486 – Letter from an official. MACCS – Case 2014/0010021 – Final response, 25 March 2014.

- be expensive
- have potential for conflict and further trauma

We support the Action Plan’s proposal that there should be ‘a review of the lessons learnt from previous inquiries and related processes’ and consideration of ‘what added value a National Inquiry would have’. We have already responded to this by commissioning CELCIS to undertake a review of the high level changes that have taken place in the residential child care sector”¹⁹⁸.

2.159. The SHRC led InterAction process (within which the Scottish Government and survivors were participants) had produced an Action Plan, published 17 June 2014. Regarding the possibility of an inquiry, it said:

“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 take or whether other processes would be preferable. Care needs to be taken to ensure that any such process is well designed and contained”¹⁹⁹.

2.160. On 8 July 2014 an official sent a briefing to Ministers about the UK Government’s recent announcement of two inquiries into allegations of child sexual abuse. The briefing noted²⁰⁰:

¹⁹⁸ A8310810 – SurvivorScotland Briefing. JUSTICE FOR SURVIVORS OF HISTORIC INSTITUTIONAL CHILD ABUSE. 29 April 2014.

¹⁹⁹ Centre for excellence for looked after children in Scotland. SHRC Interaction on historic abuse of children in care – Action plan on justice for victims of historic abuse of children in care [Internet]. 2013 [cited 2020 February 21]. p. 11. Available from: <https://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

²⁰⁰ A8825810 – Email from official to Minister and Cabinet Secretaries. RE: Submission to Ministers: UK Inquiries into Historical Sexual Abuse. 8 July 2014.

“It is important that we are seen both not to be reactive in responding to the Home Secretary’s announcement, or complacent about the position here in Scotland. We are not aware of allegations of this scale or nature in Scotland, and some at least are to do with Westminster itself. That leads to the conclusion that we would not have a rational basis for following the Home Office. But you don’t know what you don’t know, so it would be unwise to say or imply that similar things did not or could not happen here.

The best response therefore is to:

- Restate our abhorrence of the alleged acts
- Point to what we have done since devolution to investigate crimes of this sort, learn lessons and heal victims
- Invite those with evidence to contact the police
- Confirm that we are in touch with the Home Office about the scope of their inquiries and will make sure that any additional lessons arising from them for the Scottish system are taken on board.”²⁰¹.

2.161. On 10 July 2014 an FMQ Briefing addressed questions including whether Scotland would hold a public inquiry into historical child abuse – the suggested response highlighted actions the Scottish Government had already taken to commission the Tom Shaw review, report into child abuse at Kerelaw Residential school, provide funding to ICSSS, and the forthcoming National Confidential Forum. The briefing made further points about how the culture, legislation and policy around child protection had changed considerably over past decade. Finally, the briefing made the point that: “We recognise the need for adult survivors of abuse to be supported and heard and are leading the way in funding specialist services to ensure survivors get the help they need,

²⁰¹ A8825810 – Email from official to Minister and Cabinet Secretaries. RE: Submission to Ministers: UK Inquiries into Historical Sexual Abuse. 8 July 2014.

mentioning funding into services, the National Confidential Forum and the InterAction process”²⁰².

2.162. The conclusions of a Cabinet meeting held on 14 July 2014 record:

“Mr Russell said that it was possible the Scottish government might face calls to legislate to introduce a new offence relating to the mandatory reporting of information concerning the sexual abuse of children. This followed a statement from Peter Wanless CB, Chief Executive of NSPCC, which had been reported in the media as advocating mandatory reporting. Mr Wanless was currently leading a UK Government inquiry into how the Home Office had responded to child sex abuse allegations in the 1980s... Scottish Government officials had discussed the issue of mandatory reporting with a number of children’s charities...and had confirmed that, thus far, charities were not calling for mandatory reporting of child sexual abuse allegations in Scotland. Instead, the charities had indicated their view that reporting of child sexual abuse was already addressed adequately in the Criminal Justice and Licensing (Scotland) Act 2010 and under common law. Further, the charities had suggested that the Getting it Right for Every Child (GIRFEC) approach, including the ‘Named Person’^{203,204} provisions contained in the Children and Young People (Scotland) Act 2014, provided adequate assurance around these issues in Scotland”²⁰⁵.

2.163. The conclusions reported, in the discussion, the point was made: “it was important that a balance should be struck between giving the public reassurance that the law in Scotland in Scotland was sufficiently robust on this issue without suggesting complacency. Therefore, rather than ruling out any strengthening of the law in relation to mandatory reporting of child sexual

²⁰² A8885674 – Email chain between officials. RE: FMQ briefing – Inquiries into Historic Child Abuse. 10 July 2014.

²⁰³ Scottish Parliament. Meeting of the Parliament – Thursday 19 September 2019. p. 51. [cited 2020 February 21]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12260&mode=pdf>

²⁰⁴ Scottish Parliament. Children and Young People (Information Sharing) (Scotland) Bill. No date.

Available from: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105493.aspx>

²⁰⁵ A26659918 – SC(14(24th)) Conclusions (Revised). 14 July 2014/

abuse at this stage, it would be useful to set out the current framework of child protection measures in Scotland and indicate that Ministers were open to suggestions of further ways to enhance child protection”²⁰⁶.

2.164. Finally, the conclusions reported that Cabinet agreed:

“(a) The Permanent Secretary should ensure that appropriate action was taken within the Scottish Government to establish: that any allegations about the cover-up of systematic sexual abuse of children had been properly considered; and whether there was any evidence that any such allegations that might have existed had been suppressed by persons in positions of power; and

(b) A clear statement about the range of current child protection and survivor support measures should be drawn up that might form the basis of a Parliamentary Statement in August. This would be used to reassure the public about the robustness of the current measures, but also to signal Ministers’ willingness to respond positively to ways in which the current framework might be enhanced.

(Action: Cabinet Secretary for Education and Lifelong Learning; Cabinet Secretary for Justice; Permanent Secretary; Children and Families Directorate)”²⁰⁷.

2.165. Between 17 and 23 July 2014 officials corresponded regarding historical child abuse and Scotland’s response to the inquiries announced by the UK Government^{208,209,210}. This included the development of a cross-Directorate action plan. On 23 July 2014 officials corresponded regarding draft advice to Ministers: “address[ing] the action points raised by Cabinet on 15 July... we expect this to be discussed again at Cabinet on 5 August”. The draft advice included background, a key issues section, and what Scottish Government’s

²⁰⁶ A26659918 – SC(14)24th Conclusions (Revised). 14 July 2014.

²⁰⁷ A26659918 – SC(14)24th Conclusions (Revised). 14 July 2014.

²⁰⁸ A9005561 – Email chain between officials. For HSCMB this morning – FW: Historic Child Abuse. 23 July 2014.

²⁰⁹ A9005574 - Email chain between officials. FW: HISTORIC CHILD ABUSE. 21 July 2014.

²¹⁰ A9005583 - Email chain between officials. FW: HISTORIC CHILD ABUSE. 17 July 2014.

response could cover, including noting the 2004 apology, Tom Shaw’s review, the cataloguing of files, new public records legislation, the National Strategy for Adult Survivors of Childhood Sexual Abuse, ICSSS and National Confidential Forum^{211,212}.

- 2.166. A briefing regarding historical abuse of children in Scotland was sent to Ministers by an official on 25 July 2014. The purpose of the briefing was to “provide advice on what the Scottish Government’s response should be in light of the two reviews announced by the Home Office into Historic Abuse”. This was noted as being in the context of the Cabinet discussion on 14 July. The paper suggested Ministers take the following position:

“The UK Government are seeking to respond to a specific set of concerns. We have no evidence or allegations which suggest that there is a Scottish dimension to these particular concerns; nor of parallel situations in Scotland. If such evidence or concerns come forward, we will institute the necessary searches and enquiries without delay.

We are not complacent; we have created a framework to provide survivors with a climate of trust and support which will encourage and enable those with concerns to come forward and to be heard, and we are focusing our efforts on enhancing our offering to survivors.

We are equally focused on building on our preventative approach to such abuse, and ensuring our child protection systems are as robust as possible for children and young people growing up in Scotland today”²¹³.

- 2.167. With regards to the ‘lack of specific allegations in Scotland’, the briefing noted: “We are not aware of allegations in Scotland of the sort of systematic abuse o[r] cover up that have been well established and the subject of extensive public comment, as is the case elsewhere in the UK. The Scottish Government, like other public bodies, MSPs and others in public life receive

²¹¹ A8916991 – Email between officials. FW: Historic Abuse of children in Scotland. 23 July 2014.

²¹² A8916991 – Email from official to another. FW: Historic Abuse of children in Scotland. 23 July 2014.

²¹³ A9005445 – Email chain with email from official to Cabinet Secretaries. Historic Child Sexual Abuse – Advice to Ministers – 25 July 2014. p. 47. 5 August 2014.

fairly regular allegations of specific incidences of abuse, which we direct to the police”²¹⁴.

- 2.168. With regards to the potential for a public inquiry, the briefing noted: “This has been a live issue for survivors and a sense that Scottish survivors may somehow miss out as a consequence of the Home Office inquiries. There is scope to work collaboratively with survivors to undertake scoping work and research to identify what could be the focus (if anything) of a public inquiry. Again, action to make reparation is likely to diminish this lobby to some extent”²¹⁵.
- 2.169. Following the briefing sent to the Cabinet Secretary for Education and Lifelong Learning on 25 July 2014, his private secretary wrote to officials and stated that the Cabinet Secretary asked for “work on a cabinet paper to be undertaken so that it can be agreed by the end of this week to be tabled at cabinet on the 12th of August”. An official replied to confirm that “Mr Russell does not want a substantive discussion today at Cabinet because he wants to see some more work done on this, here’s a summary of the output of the meeting, which is basically a commission for a detailed Cabinet paper for next week”. The official went on to summarise what the Cabinet paper should cover, including that “we have not had substantive credible allegations [of cover ups of abuse]” and the SG response will “focus on the contrasting practice from England and Wales”²¹⁶.
- 2.170. On 4 August 2014 an email was sent by a Crown Office official to the Lord Advocate and Permanent Secretary, which said that: “There is significant experience and expertise in Scotland in investigating and prosecuting allegations of historical sexual abuse, including those relating to adults who abused their positions of trust in educational and care institutions, and bringing them to conclusion before the courts” and “Any allegations made today will be

²¹⁴ A9005445 – Email chain with email from official to Cabinet Secretaries. Historic Child Sexual Abuse – Advice to Ministers – 25 July 2014. p. 47. 5 August 2014.

²¹⁵ A20735871 – Email from official to Cabinet Secretaries. Historic Child Sexual Abuse – Advice to Ministers – 25 July 2014. P. 47. 5 August 2014. Also appears to be in A9005445.

²¹⁶ A9005464 – Email between officials and office of Cabinet Secretary for Education and Lifelong Learning. FW: Historic Child Sexual Abuse – Advice to Ministers – 25 July 2014. 5 August 2014.

thoroughly investigated and victims will be supported throughout the criminal justice system”²¹⁷.

2.171. On 7 August 2014, an official sent a briefing to the Ministers for Public Health, Community Safety and Legal Affairs, and Children and Young People, in preparation for their meeting with survivors on 13 August. It noted that “at a meeting between Ministers on 3 June it was agreed that all three Ministers should meet with the survivors”²¹⁸.

2.172. On 12 August 2014, Cabinet discussed SC(14)79 Cabinet Paper on Historical Child Sexual Abuse, presented by the Cabinet Secretary for Education and Lifelong Learning. The purpose of the paper was stated as: “Cabinet is invited to note the Scottish Government’s position in relation to the two inquiries announced by the Home Office into historical child sexual abuse”²¹⁹.

2.173. The paper stated:

“The situation in England and Wales is being driven by specific allegations of systematic historic abuse by high profile individuals, of institutional failure and in one case of Government involvement in cover up activity. In Scotland the pattern of allegations is different, and those that bear any parallel with cases in England & Wales have been previously and thoroughly investigated. For this reason I do not believe that there is a basis for a separate inquiry in Scotland at present, although we would wish to review this position if credible new information came to light.

On this basis, I propose that our position should be the following:

In relation to historic sexual abuse:

²¹⁷ A9005470 – Email from official to the Lord Advocate and Permanent Secretary. Discussion – 5 August – Historic Allegations of Child Abuse. 4 August 2014.

²¹⁸ A11930343 – Briefing to Ministers from official. Ministerial meeting with survivors of childhood abuse – Wednesday 13 August 2014 – 15.00 To 16.00. 7 August 2014.

²¹⁹ A26657810 - Cabinet paper. SC(14)79. Historic Child Sexual Abuse, 12 August 2014.

- Through the Shaw Review, we have already undertaken a thorough examination of historic child abuse in residential care.
- There is considerable experience of investigating and prosecuting allegations of historic sexual abuse in Scotland, and Scottish experts are commonly sought out to lead investigations elsewhere in the UK. In addition, the Crown Office through the National Sexual Crimes Unit has developed an expertise in investigating and prosecuting historical institutional sexual abuse.
- The people of Scotland can be assured therefore, that any new allegations that may surface will be thoroughly and effectively investigated, and that survivors will be supported throughout the criminal justice system.
- There are also arrangements in place to support survivors who do not wish in the first instance to report their abuse to the Police.

In relation to child protection:

- We are focused on building on our preventative approach to abuse, and ensuring our current child protection systems are as robust as possible. To that end, I have invited Jackie Brock (Chief Executive of Children in Scotland) to co-ordinate a report that will consider the recent changes that Scottish Government has implemented to address the safety of children and young people and the safeguards that have been put in place.
- There are currently no calls from external stakeholders in Scotland for mandatory reporting of child sexual abuse or for the creation of a specific criminal offence. We agree with the majority opinion that this would be a retrograde step.

In relation to survivor support:

- We will continue to provide support to survivors of abuse, and are focused on enhancing and developing this framework”²²⁰.

2.174. The paper also stated: “Graeme Pearson MSP (Labour) has called for an independent inquiry to be instigated in Scotland, and this is likely to be the focus of any Parliamentary interest. We have the option of a Parliamentary statement on our general approach to these matters. That should be kept under review in the light of developments, which include the possibility of an opposition or member led debate before the pre-Referendum period”²²¹.

2.175. The paper’s Annexes discussed additional information, including historical allegations in Scotland (Annex A). With regards to educational and care institutions, it noted: “There are on-going investigations into allegations of historical sexual and physical abuse of children”.

2.176. Regarding support for survivors of abuse, the Annex noted:

“The Scottish Government recognised over a decade ago the need to reconcile modern society with past abuses in care. That led to a series of specific steps to meet the particular challenges faced by Scotland’s care and protection systems. These included:

- In 2002 Chris Daly, a survivor of in care and institutional abuse, submitted a petition to the Scottish Parliament’s Petitions Committee. This in turn led to a formal apology by the then First Minister, Jack McConnell in 2004, on behalf of the people of Scotland by the then First Minister Jack McConnell MSP to all survivors.
- A Systemic Review of past abuse led by Tom Shaw, which covered a period of 1950 to 1995 and which led to major improvements in the way the care system protects children. Published in 2007.

²²⁰ A26657810 - Cabinet paper. SC(14)79. Historic Child Sexual Abuse, 12 August 2014.

²²¹ A26657810 - Cabinet paper. SC(14)79. Historic Child Sexual Abuse, 12 August 2014.

- A cataloguing of files relating to the management of care units which can be accessed by any member of the public on request to the Scottish Government.
- Legislation (Public Records (Scotland) Act 2011) to ensure all relevant bodies properly manage (and retain) files of those who had been in residential care”.

2.177. The Annex went on to note that support for survivors could be enhanced in two ways: working to ensure key parts of the public sector workforce were supported to have greater awareness of needs of survivors; and expanding capacity and capability to respond to negative impacts on life chances of survivors and to give survivors a role in shaping and informing their support. It also noted: “the further development of mental health services to support people who have suffered trauma (currently underway) will also help those survivors who require specialist care”²²².

2.178. Under ‘Parliamentary and Other Handling Issues’, the paper noted:

“Some survivors have petitioned the Scottish Parliament for a public inquiry into historic abuse and it is believed that the announcement of the UK inquiries has prompted renewed interest from those survivors.”

“It is anticipated that the introduction of the National Confidential Forum, the high profile of the UK inquiries and the massive publicity in connection with Operation Yewtree will drive up demand for support for survivors with more people disclosing historic abuse and seeking support. In addition, the SHRC InterAction process has raised expectations among survivors of further government action and support.”

“A tripartite Ministerial meeting with survivors of historic abuse is scheduled for 13 August, and it would be helpful to have the Scottish Government’s position clear in advance of that”.

²²² A26657810 - Cabinet paper. SC(14)79. Historic Child Sexual Abuse, 12 August 2014.

2.179. Under 'Presentation', the paper noted:

"There will continue to be calls from a number of survivors, and from MSPs, for an independent inquiry in Scotland. This is a highly sensitive and distressing matter, which has given rise to a considerable amount of justified public concern. Great care will be required to establish and hold a position which:

- Fully acknowledges the gravity of the issues raised, including the damage the survivors have suffered and their need for continuing support
- Points to the thorough Inquiries already conducted in Scotland
- Is open to the possibility that new allegations might emerge which would lead us to set up a new Inquiry
- Actively makes it possible for new allegations to be made to the Police and considered sympathetically
- But in the absence of such allegations, focusses the Government's attention on the important tasks of improving the system of protection for children now, while supporting survivors of abuse".

2.180. In the conclusions for the Cabinet meeting on 12 August 2014, the following points were reported:

"(a) The paper provided the degree of assurance that Cabinet had been seeking about the handling of previous allegations and the robustness of the current measures. However (and as the paper acknowledged), it was important that all aspects of the issue were kept under active review and that the Government signalled its willingness to respond positively

to any proposals to improve the arrangements. The review being conducted by Ms Brock²²³ was evidence of that willingness;

(b) Police Scotland was currently considering the setting up of a Child Abuse Investigations Unit which would complement the work of the existing National Sex Crime Unit located within the Crown Office. This was seen as an important development and one that should be reflected in the paper and any subsequent public or Parliamentary communications;

(c) The need to secure corroboration had, in the past, been a contributory factor in the difficulty of securing convictions for offences of this type. This lent further weight to the Government's proposals to end that policy;

(d) The suggestion that had arisen in connection with the inquiries initiated by the UK Government that a new system for the mandatory reporting of child abuse should be introduced with an associated new criminal offence was likely to be counter-productive. Public sector professionals in Scotland who came into contact with children were normally under an obligation as part of their professional code to report any such concerns to the appropriate authorities. Continuing this approach was likely to offer a better quality and more child-centred approach in abuse cases;

(e) Although there had been no demands thus far for a Parliamentary statement, it would be sensible to be in a position to be able to make such a statement any time after the start of the new Parliamentary year the following month"²²⁴.

2.181. The conclusions stated that Cabinet agreed:

²²³ This refers to a report entitled "Safeguarding Scotland's vulnerable children from child abuse: A review of the Scottish system". The full report was published in 2014 and is available from: https://www.celcis.org/files/4215/2595/5534/Safeguarding_Scotlands_vulnerable_children_from_sexual_exploitation.pdf [cited 2020 Feb21].

²²⁴ A26657725 – Cabinet Paper. SC(14)26. Conclusion (Revised 2). 12 August 2014.

“(a) To welcome the paper and the reassurance that it offered, noting the specific further work in hand and the commitment to keep the arrangements under review and to make any changes to those arrangements that might be necessary or desirable;

(b) That there was, at present, no basis to hold a separate inquiry in Scotland (but noted that this position would be reviewed if credible new information came to light); and

(c) That preparations should be put in place to allow Ministers to be in a position to make a statement to Parliament at the start of the new Parliamentary year the following month.

(Action: Cabinet Secretary for Education and Lifelong Learning; Children and Families Directorate)”²²⁵.

2.182. On 13 August the Ministers for Public Health, Community Safety and Legal Affairs, and for Children and Young People met SurvivorScotland officials and survivors^{226,227}. Earlier the same day, a survivor sent a “Briefing for Ministers” to an official, for circulation at the meeting²²⁸. The briefing began with a call for an inquiry and questions regarding why the present Scottish Government is not undertaking one.

2.183. At the meeting, David Whelan discussed points for consideration. The note of the meeting stated: “On the call for a Public Inquiry David said that he was supportive of a review but there should then be consideration of an Inquiry and what kind of Inquiry this should be. He said that he had met Nicola Sturgeon, the Deputy First Minister, a few years ago and she was in favour of an Inquiry suggesting that an SWSI Inquiry might be appropriate”. Helen Holland was recorded as having said: “She said the current government had been in office for seven years and had allowed things to go slow. The State was responsible and survivors deserved more. She felt this was a Justice issue. An Inquiry

²²⁵ A26657725 – Cabinet Paper. SC(14)26. Conclusion (Revised 2). 12 August 2014.

²²⁶ A9080824 – Meeting note. SurvivorScotland note of meeting with Ministers. 13 August 2014.

²²⁷ A9200222 – Email between officials. Survivors Meeting with Ministers. 27 August 2014.

²²⁸ A9159385 – Email from survivor to an official. Briefing for Ministers 13/08/2014. 13 August 2014.

would help organisations as well as survivors”. Christopher Daly’s perspective was recorded in the following terms: “Chris said initially he had been unsure about an Inquiry but as two inquiries had now been announced in England he felt there should be one here. This was the first time in seven years that the Government had agreed to meet them and discuss things. He said they were tired of talking”.

2.184. The note of the meeting also stated:

“Mr Matheson said they would consider all the points made to them and come back with a response. He also said that they would respond to the Human Rights InterAction Plan.

Ms Cunningham clarified a few points on time bar saying that this applied only in Civil Law not Criminal Law. She understood that people think that this should be in just one portfolio but the issues raised did concern all three Ministers. She would like to find out more about some of the models suggested today and to try and find a way to deliver something that works.

Ms Campbell highlighted that considerable progress that had been made for children over the years. She stressed that this did not mean that they could become complacent. She welcomed the opportunity to hear everyone’s views. There were particular issues which would need to be taken forward and lessons to be learnt from the past. Ministers would consider these more deeply.

Helen asked about the timescale for a response and if the response would say why they wouldn’t agree to any of the commitments. [REDACTED] asked if the response could include mandatory reporting.

Ministers advised that they would be providing a full response before the InterAction in October”²²⁹.

²²⁹ A9080824 – Note of meeting from SurvivorScotland. MEETING WITH THE MINISTER FOR PUBLIC HEALTH, MINISTER FOR COMMUNITY SAFETY AND LEGAL AFFAIRS AND MINISTER FOR CHILDREN AND YOUNG PEOPLE. 13 August 2014.

- 2.185. On 27 August 2014 an InterAction Survivors' Event took place, with 28 survivors attending²³⁰. There was a discussion at the event in respect of survivors' views about an inquiry²³¹. According to the draft report of that event that synthesised the discussion: "[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 recorded: "[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"²³².
- 2.186. On 14 October 2014, a draft 'Review of Developments in Services for Children in Care in Scotland' was circulated by Professor Kendrick (University of Strathclyde), which included a section on historical abuse, and referred to petition PE535²³³.
- 2.187. On 22 October 2014 officials corresponded regarding the 27 August InterAction event, having received a report of the meeting which discussed the subject of holding an Inquiry²³⁴. An official commented that it "all comes back to being heard publicly rather than via the NCF, for which there is a fear that it will not reach out enough to the public understanding nor form a historic record of what went on... Our views were guided by the belief that survivors wanted to have personal recognition for what has happened to them individually, but from the report attached below it appears as much about the public's

²³⁰SHRC. SHRC Interaction on Historic Abuse of Children in Care Interaction Survivors' Event 27 August 2014. 2014. [cited 2020 Feb 21]. Available from:

<https://www.shrcinteraction.org/Portals/23/InterAction-Survivors-Event-August-2014.pdf>

²³¹ A9497632 – Email from CELCIS. InterAction Report in Respect of Survivor Event 27.08.14 Inquiry. 14 October 2014.

²³² A9724951 – Email between officials. FW: Historic abuse enquiry - survivors' views. Contains draft confidential report: InterAction Survivors Event, Views on Inquiry, dated 27 August 2014. 22 October 2014.

²³³ A9653618 – Email from Andrew Kendrick to officials. RE: Updated Review. 14 October 2014.

²³⁴ A9724951 – Email between officials. FW: Historic abuse enquiry - survivors' views. 22 October 2014

increased understanding of in care abuse in generally. Is this something we need a rethink on?”²³⁵.

2.188. On 24 October 2014, a survivor sent an official an email which contained “my contribution towards any Terms of Reference of Inquiry into Institutional Child Abuse”²³⁶.

2.189. On 27 October 2014, the Cabinet Secretary for Education and Lifelong Learning and several Ministers attended the final InterAction Event (a ‘Recall Day’). The report of this event stated:

“On the issue of public inquiry, Mr Russell made it clear that it had not been ruled out. He highlighted that there have already been a number of investigations and reviews which have had led to significant improvements in the care sector. He is committed to listening to both sides of the argument regarding the need for an inquiry” and that “All survivors who attended the event supported the call for an inquiry”²³⁷.

2.190. At a Cabinet Meeting on 28 October, the day following the InterAction Recall Event, Mr Russell told Cabinet that, at that event he had announced: “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)”²³⁸.

2.191. Cabinet agreed that:

“(a) Mr Russell should develop a full set of proposals, on a cross-portfolio basis, for consideration at the meeting of the Cabinet planned for the

²³⁵ A9724951 – Email between officials. FW: Historic abuse enquiry - survivors' views. 22 October 2014.

²³⁶ A9625945 – Email - CSA Inquiry briefing note for Mike Russell. 24 October 2014.

²³⁷ SHRC. Report of InterAction Event held on 27 October 2014 in the Mitchell Library, Glasgow. 2014. [cited 2020 Feb 21]. Available from:

https://www.shrcinteraction.org/Portals/23/InterAction_Event_October_2014_Report.pdf -

²³⁸ A26657341 – Cabinet Paper SC(14)31. Conclusions. 28 October 2014.

following week, informed by specialist legal and procedural advice from the Lord Advocate and others, as required; and

(b) Proposals should address the nature, scope and legal basis of an inquiry, including how it would interact with current investigatory processes and current, planned or potential prosecutions, as well as the wider set of initiatives to support survivors, such as the National Confidential Forum, and the work undertaken by Police Scotland to co-ordinate investigations of alleged child abuse”²³⁹.

2.192. Following his statement at the InterAction Event on 27 October, Mr Russell received letters from Christopher Daly (on 31 October) and another survivor²⁴⁰ (on 2 November). Both called for a public inquiry. The letter from Christopher Daly said:

“...during the Interaction process I was more concerned that Survivors should have something tangible that would meet their everyday needs. Those needs are now closer to being met with the Scottish Government commitments to a Survivors Fund and the raft of other commitments.

My own personal opinion is I’m now in favour of a far reaching thorough public inquiry. That view has been shaped by the backing by the SHRC stating the door should remain open to such an inquiry taking place. Furthermore CELCIS (Centre for Excellence for Looked after Children in Scotland) also backs such an inquiry. Most importantly however was the general consensus among my peers in favour of a full, open and honest inquiry.

I therefore urge; Cabinet Secretary Michael Russell, Aileen Campbell MSP, Michael Matheson MSP and Roseanna Cunningham MSP to action a tribunal of inquiry which would be the judicious decision. As with the raft of other commitments the Inquiry should be timely.

²³⁹ A26657341- Cabinet Paper SC(14)31. Conclusions. 28 October 2014.

²⁴⁰ A9623628 – Email to official. Submission to Mike Russell – Public Inquiry. Contains letter from [REDACTED] to Michael Russell, 30 October 2014. 2 November 2014.

To conclude acknowledgement and appreciation has to be given to all those who have worked hard to take a huge leap forward... Recognition has to be given to the Scottish Government civil servants also. Thank you also Cabinet Secretary and Aileen Campbell MSP, Michael Matheson MSP and Roseanna Cunningham MSP”²⁴¹.

- 2.193. On 31 October, Mr Russell also received a letter co-signed by Jennifer Davidson (Director, CELCIS) and Professor Andrew Kendrick, which stated “We would commend to you that a National Inquiry is an appropriate mechanism, alongside other actions, to secure the fulfilment of survivors’ human rights... Much has been learned from past reviews and inquiries and it is important that effort is not duplicated. An Inquiry, however, will offer a significant contribution to justice for survivors of historical abuse in care”²⁴².
- 2.194. A draft response to a Freedom of Information request dated 31 October 2014 stated that, at the InterAction Recall Day Event, the Cabinet Secretary had “promised to carry out a prompt review of the added value of a National Inquiry and advised that the door remains open to such an inquiry taking place”²⁴³.
- 2.195. Following the Cabinet Secretary for Education and Lifelong Learning’s attendance at the InterAction Recall Event, FBGA circulated a ‘Case for an Inquiry’ document to Scottish Government officials (dated 31 October 2014)²⁴⁴. It listed on pages 8 and 9 the arguments for having an inquiry.
- 2.196. On 3 November 2014 an official sent a draft Cabinet Paper to the Cabinet Secretary for Education and Lifelong Learning²⁴⁵. The paper was on the topic of a possible inquiry into historical child abuse, and was intended for discussion at the Cabinet meeting on 4 November 2014 (a draft had been

²⁴¹ A9623605 – Email from Christopher Daly to official. Letter attached sent today hard copy. Contains letter from Christopher Daly to Michael Russell, 31 October 2014. Institutional Child Abuse in Scotland Consideration of a Public Inquiry. 1 November 2014.

²⁴² A9623821 – Email from CELCIS. Russell Inquiry. Contains letter from Jennifer Davidson and Andy Kendrick to Michael Russell. 31 October 2014

²⁴³ A9725786 – Email between officials. FOI (2). Draft response to Freedom of Information request Fol/14/01622 dated 31 October 2014. 31 October 2014

²⁴⁴ A9624152 – Email from Secretary of FBGA. FBGA, The case for a National Inquiry. 31 October 2014.

²⁴⁵ A9623706 – Email from an official to Cabinet Secretary for Education and Lifelong Learning. RE: Cabinet Paper - Possible Inquiry into Historic Child Abuse - November 2014. on 3 November 2014.

previously circulated on 31 October by the same official)²⁴⁶. Correspondence regarding the paper included Mr Russell requesting more information about what Wales were doing and assurance that the Law Officers were content with the paper^{247,248}. The correspondence also covered Mr Russell's concern about how an inquiry would ensure survivors had public acknowledgement of their experiences, whilst also ensuring that there was no prejudice to current or future criminal proceedings²⁴⁹.

- 2.197. Cabinet Paper SC(14)99 (considered by Cabinet on 4th November 2014) set out the Scottish Government's position on the issue of child protection and historical child abuse. Mr Russell stated that he would make a statement to the Scottish 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"²⁵⁰.
- 2.198. 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

²⁴⁶ A9623786 – Email from an official to PS's Deputy First Minister, Cabinet Secretaries, Ministers, Lord Advocate and Solicitor General. Cabinet Paper – Possibly Inquiry into Historic Child Abuse – November 2014. 31 October 2014.

²⁴⁷ A9623635 – Email from an official to Cabinet Secretary for Education and Lifelong Learning. RE: Cabinet Paper – Possible inquiry into Historic Child Abuse – November 2014. 31 October 2014.

²⁴⁸ A9623658 – Email from PS/Cabinet Secretary for Education and Lifelong Learning to official. RE: Cabinet Paper – Possible Inquiry into Historic Child Abuse – November 2014. 3 November 2014.

²⁴⁹ A9623712 – Email from PS/Cabinet Secretary for Justice to Cabinet Secretaries, Ministers and officials. RE: Cabinet Paper. Possible Inquiry into Historic Child Abuse, November 2014. 3 November 2014.

²⁵⁰ A26657165 - Cabinet Paper SC(14)99. Historic Abuse of Children in Care: Proposed Inquiry. 4 November 2014.

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 noted that: "[t]he purpose of an inquiry would be to satisfy survivors' needs for a public acknowledgement and validation of their experience"²⁵¹.

2.199. On 4 November 2014 email correspondence between officials contained comments regarding Cabinet discussions: "Just wanted you to be aware the Cabinet paper was not agreed. Mr Russell has agreed to take a further paper developing the paper he took to Cabinet today at a future date to be agreed with the Deputy First Minister. Mr Russell will still be making his statement next week"²⁵².

2.200. A further email between officials regarding the Cabinet meeting stated:

"The FM²⁵³ had 'grave reservations' about an inquiry, and thought that it should be focused on the criminal prosecutions... DFM²⁵⁴ and MR²⁵⁵ were in agreement, and that a further paper should go to Cabinet in the next few weeks (potentially early December?). This paper would be more detailed in terms of remit of inquiry etc. and it would look at the possibility of a having a Royal Commission on a statutory footing, and

²⁵¹ A26657165 - Cabinet Paper SC(14)99. Historic Abuse of Children in Care: Proposed Inquiry. 4 November 2014.

²⁵² A27005112 – Email from PS/Cabinet Secretary for Education and Lifelong Learning. Cabinet Today. 4 November 2014.

²⁵³ First Minister.

²⁵⁴ Deputy First Minister.

²⁵⁵ Mr Michael Russell.

possible chairs etc. MM²⁵⁶ commented that we shouldn't forget the important work of the NCF²⁵⁷.

The statement on the 11 November will continue, and will state that we are considering the possibility of an inquiry, and that we want to actively listen to opinions on the issue, and learn from the mistakes of the inquiry in England and Wales and not rush into something . . . I will be in contact under separate cover to request additional briefing and Q and A that may be required for the statement”²⁵⁸.

2.201. The final conclusions from the 4 November Cabinet meeting noted key points, including:

“Development of the outline proposals presented in the paper had been informed by discussion with the Law Officers, with a view to ensuring that any inquiry process would not prejudice current or future criminal or civil proceedings. In addition, active dialogue with survivors and relevant organisations had been, and would continue to be, an integral part of the Government’s work in this area.”

“The aims of any inquiry should, in summary, be to raise public awareness and understanding of the extent of the historic abuse of children in care, to hear the experiences of people affected and, finally, to consider to what extent those aspects of practice, policy or legislation that might have made abuse less difficult had since been addressed.”

“While many witnesses would give evidence voluntarily, the need to have a complete record would tend to favour some form of statutory inquiry, although it was not yet possible to reach a definitive conclusion on this point, given the number of competing factors at play. Whatever the status of any inquiry, however, the choice of a suitable chair would be of

²⁵⁶ Mr Michael Matheson.

²⁵⁷ National Confidential Forum.

²⁵⁸ A9623864 – Email between officials. FW: Important: Cabinet Read Out. 4 November 2011.

paramount importance, and the right mix of specialist advisers would be of almost equal significance.”

“An inquiry should be about more than prosecution or reparation (although it should complement both those aims): it must also help survivors move forward in their lives and should therefore dovetail with a number of other current initiatives sponsored by the Scottish Government and others, such as the work of SurvivorScotland, the InterAction process and the National Confidential Forum”²⁵⁹.

2.202. The conclusions also noted that the following points were made in discussion:

“The fact that parallel inquiries had been commissioned in England and Wales and in Northern Ireland meant that, in the long run, some form of inquiry process would be required in Scotland, whatever the problems experienced elsewhere.”

“Consultation on any draft remit, among survivor groups and others, appeared a sensible proposal and might increase the chance of securing buy-in from the outset.”

“it would be vital to ensure that any process of inquiry or other such exercise did not detract from the primary objective of bringing perpetrators of serious crimes to justice”

“Some who continued to call for public inquiry might reconsider this idea if they had a greater degree of confidence in the capacity of the appropriate authorities to prevent and detect wrongdoing and to bring perpetrators to justice.”

“The work of an inquiry would, however, also address wider objectives such as the need to hear testimonies, to create and preserve a national public record and to hold institutions to account. While no inquiry should downplay criminality, prosecution was different from (and no substitute

²⁵⁹ A26656456 – Cabinet Paper SC(14)32. Conclusions. 4 November 2014.

for) the work of an inquiry, and the parallel processes should be mutually reinforcing”

“The costs associated with statutory public inquiries such as the Penrose Inquiry, the Vale of Leven Inquiry and the McKie Fingerprint Inquiry were elevated, as illustrated in Annex C of the paper, and the timescales over which such inquiries took place were typically highly extended. Given the complexity of child abuse cases, the historical nature of many cases and the range and nature of the institutions involved, a statutory inquiry along the lines suggested might be both long and costly; this would not necessarily be in the best interests of all concerned.”

“If a public inquiry were to be established, it might nevertheless be difficult to avoid granting it statutory status – either initially or at some subsequent point. For while many might testify voluntarily, it was unlikely that the power to compel evidence would not need to be invoked at some point, and only an inquiry established under statute could offer this facility. Statutory status might thereby help address the need to produce a fair and balanced report which would provide a comprehensive account of the facts on all sides.”

“It would be important to ensure that the work of bodies such as the National Confidential Forum and the InterAction process should be allowed to continue alongside any public inquiry into historic child abuse”

²⁶⁰

2.203. The conclusions ended on this topic by confirming that Cabinet:

“(a) Noted the range of options for delivering a possible inquiry into the historic abuse of children in care, their likely costs, and the interaction with the broader range of Government activity in this area;

²⁶⁰ A26656456 – Cabinet Paper SC(14)32. Conclusions. 4 November 2014.

(b) Noted the need to continue to consult with survivors of abuse and with relevant organisations as part of Ministers' ongoing commitment to democratic participation;

(c) Agreed that further consideration should be given to the legal status, remit and timescale of any possible inquiry, as well as the period to be covered, with a view to developing further detailed proposals for Cabinet in due course, which should be informed by discussion with experts in the field of public inquiries (such as Rt Hon Lord Gill);

(d) Agreed that, in the course of Mr Russell's planned statement to the Parliament on 11 November on child protection, it should be made clear that active consideration was being given to the principle of an inquiry, taking account of the experience elsewhere in the UK and internationally, but that it would be premature to announce an inquiry on that occasion; and

(e) Agreed that Mr MacAskill should obtain assurances from Police Scotland that the remit of the NCAIU would be sufficiently broad as to provide a proper route for the investigation of individual cases, whenever they had arisen.

(Action: Cabinet Secretary for Education and Lifelong Learning; Cabinet Secretary for Justice; Children and Families Directorate; Safer Communities Directorate)"²⁶¹.

2.204. On 7 November 2014 an official sent the Cabinet Secretary for Education and Lifelong Learning an email with a draft briefing pack for the upcoming parliamentary statement on child protection and historical abuse. The pack discussed commitments made by the Scottish Government in response to the SHRC InterAction Action Plan, announced two weeks previously.

2.205. The briefing pack provided 'top lines' for the Minister, including "We are listening to survivors and considering an inquiry", and further:

²⁶¹ A26656456 – Cabinet Paper SC(14)32: Conclusions. 4 November 2014.

“We are carrying out a review of the added value of a National Inquiry.

The door remains open to such an inquiry taking place.

We will be engaging with survivors as part of this process”²⁶².

2.206. The briefing pack also answered the below questions²⁶³:

“Why give statement now, before decision made on public inquiry on historical child abuse?

There has been a considerable number of significant events, reports and actions relating to child protection and child sexual exploitation recently. These have included the publication of the Care Inspectorate and Jackie Brock reports on Child Protection, the development of the National Action Plan on Child Sexual Exploitation and the Scottish Government response to the InterAction report. I considered that it would be helpful to update parliament of this work as well as setting out our next steps.”

“What support is available to survivors of abuse?

We currently fund 25 organisations across Scotland to provide support services for survivors of abuse. You can find out about these services on the SurvivorScotland website. We also fund In Care Survivors Service Scotland who offer support including counselling, advocacy, befriending and support to track down and access records. The National Strategy for Survivors of Child Abuse has now been in place for nine years. Over the next year we propose to review the Strategy to consider what has been achieved since its launch in 2005 and to consider what still has to done. As part of that we will look at other models of care, including some of those that survivors have identified. Our aim is to have a revised Strategy that reflects where we are now and identifies clearly what

²⁶² A9725657 – Email from official to Cabinet Secretary for Education and Lifelong Learning. Child Protection – Historical Child Abuse – Parliamentary Statement – Briefing for Cab Sec ELL. 7 November 2014.

²⁶³ A9725657 – Email from official to Cabinet Secretary for Education and Lifelong Learning. Child Protection – Historical Child Abuse – Parliamentary Statement – Briefing for Cab Sec ELL. 7 November 2014.

actions are required and the timescale for those actions. We will be seeking the support of all our stakeholders in the development of that Strategy”.

“When will the SG announce its decision on whether to establish a public inquiry?

During the InterAction event I listened to Survivors who are calling for an inquiry. I promised at that event to carry out a prompt review of the added value of a National Inquiry and advised that the door remains open to such an inquiry taking place. We will be engaging with survivors as part of this process.”

“Which organisations is the SG talking to about establishing a survivor fund?

The Scottish Government will be engaging with a wide range of organisations including care providers and, as agreed in the response to the InterAction, with survivors. Organisations involved in the interaction process will also be consulted. We will also look to learn more about other models of support in other countries which might inform our thinking in Scotland”²⁶⁴.

2.207. On 10 November 2014, the Cabinet Secretary for Education and Lifelong Education announced a public awareness campaign for tackling child abuse and a summit (within the Child Exploitation Action Plan). The draft news release stated:

“The national action plan was unveiled as Education Secretary Michael Russell made a statement on child protection to the Scottish Parliament. It has been drawn up by the Scottish Government and a national Ministerial Working Group on CSE made up of a range of experts

²⁶⁴ A9725657 – Email from official to PS/Cabinet Secretary for Education and Lifelong Learning. Child Protection – Historical Child Abuse – Parliamentary Statement – Briefing for Cab Sec ELL. 7 November 2014.

including Police Scotland, Children in Scotland, Aberlour, Barnardos and the Crown Office”²⁶⁵.

2.208. It also stated the following, with regards to the possibility of an inquiry:

“Mr Russell also updated MSPs on Ministers’ recent InterAction meeting with survivors of historic abuse in care, including the Government’s on-going consideration of whether a further inquiry is needed and what form that might take to create a better national understanding, place the facts on the record and provide people with the opportunity to move on.”

“Today I also give my assurance that we will reach a decision on whether a further public inquiry will be convened by Christmas. I will listen closely to views on all sides of the debate, to ensure whatever we decide is well-informed and meaningful – rather than unduly raising expectations about what an inquiry may or may not deliver for survivors”²⁶⁶.

2.209. On 10 November 2014, the Cabinet Secretary received an updated briefing²⁶⁷ and speaking note for his Parliamentary Statement on 11 November. This version showed a decision was still required on ‘whether an inquiry is appropriate, and if so what type’, as opposed to only a final decision on ‘what type’. It also referred to the Police Scotland National Child Abuse Investigation Unit.

2.210. On 11 November 2014, an official emailed the Cabinet Secretary for Education and Lifelong Learning and the Minister for Education and Young People with a briefing for the parliamentary statement on child protection and historical abuse²⁶⁸. It included ‘lines to take’ which provided an answer to a question about lifting “time-bar” on historical abuse cases: “The Scottish Government

²⁶⁵ A9701790 – Email between officials. FW: Urgent: Child Protection – Historical Child Sexual Abuse Inquiry – DRAFT NEWS RELEASE – 7 November. 11 November 2014.

²⁶⁶ A9701790 – Email between officials, FW: Urgent: Child Protection – Historical Child Sexual Abuse Inquiry – DRAFT NEWS RELEASE – 7 November. 11 November 2014.

²⁶⁷ A9701826 – Email from official to PS/Cabinet Secretary for Education and Lifelong Learning. Immediate – Updated briefing and speaking note –parliamentary statement – 11 November 2014. 10 November 2014.

²⁶⁸ A9725657 – Email from official to Cabinet Secretary and Minister. Child Protection - Historical Child Abuse - Parliamentary Statement - Briefing for Cab Sec ELL - 11 November 2014. 7 November 2014.

is committed to working with the legal profession and survivors to try and understand why there may be barriers around obtaining legal aid and the exercising of judicial discretion, the outcome of that work will provide a basis from which to consider the next steps”.

2.211. During the Ministerial statement on child protection made to the Scottish Parliament on 11 November 2014, 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 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”²⁶⁹.

2.212. On 11 November 2014, SHRC emailed InterAction participants with SHRC’s press release following Mr Russell’s statement to Parliament. The press release stated that SHRC “has welcomed the Scottish Governments commitment to taking action on a national inquiry into historic child abuse...”²⁷⁰.

2.213. Also on 11 November 2014, officials corresponded regarding action points following on from the Cabinet Secretary’s statement that day. These included:

“Setting up a further Interaction meeting – the purpose of the meeting is to explore further the paper produced for the last meeting regarding an inquiry. Mr Russell has indicated it would be helpful if Ms Campbell, Ms Cunningham and Mr Mathieson [*sic*] could attend also...”;

“Involving other survivors – Mr Russell made it clear in his statement that he wanted to explore options for an inquiry with survivors. He is conscious that there have already been survivors – outside the group represented at the Interaction process – who have been in touch wanting to share their views. Mr Russell would be grateful for some advice asap about how best to engage with other survivors in the discussion about an inquiry. He would be happy, for example, for a separate meeting to be arranged but would welcome advice on how best to take this forward”

“Correspondence from survivors – Mr Russell is content that correspondence from survivors receive official responses at his stage [*sic*]. He has indicated, however, that he would like to see

²⁶⁹Scottish Government. Michael Russell - Ministerial Statement on Child Protection. 2014. [cited 2020 Feb 21]. Available from: <https://news.gov.scot/speeches-and-briefings/michael-russell-ministerial-statement-on-child-protection>

²⁷⁰ A9717889 – Email from Emma Hutton (SHRC) to InterAction participants. SHRC response to Cabinet Secretary’s statement today. 11 November 2014.

correspondence from survivors. He has emphasised that responses should indicated [sic] that he is sighted on their correspondence and be as helpful as possible”;

“National Confidential Forum – Mr Russell has indicated that he would find it helpful to more fully understand the role of the National Confidential Forum. I would be grateful for a short briefing note on this as soon as possible”;

“Cabinet paper – as you know Mr Russell has agreed to take a further paper to cabinet. I will finalise a date with Beth in the DFMs office and the Cabinet Secretariat as soon as possible and let you know”;

“Further statement – Mr Russell committed to concluding the consideration re the question of an inquiry before Christmas and to update parliament. I will speak to Nicola Dove about securing a date”
271.

- 2.214. On 12 November 2014, Professor Andrew Kendrick wrote to InterAction participants regarding Mr Russell’s parliamentary statement on historical abuse. He noted “Much of [the statement] reflected what was said at the InterAction on 27th October”. He further wrote that Mr Russell asked for an InterAction meeting to focus on the issue of a public inquiry, and that “We now need to consider how we will structure this InterAction in order to come to a clear conclusion about the role and format of an Inquiry”²⁷².
- 2.215. On 13 November 2014 an official wrote to the Cabinet Secretary for Education and Lifelong Learning, with briefing and related documents. This included a note on the NCF and a draft letter for Mr Russell to send to a survivor, thanking him for his “thoughtful comments on matters for consideration regarding any inquiry into historic child abuse” and wishing to “reassure you that I am

²⁷¹ A9710775 – Email from PS/Cabinet Secretary for Education and Lifelong Learning. Actions following on from Mr Russell’s statement. 11 November 2014.

²⁷² A9718087 – Email from Andrew Kendrick to members of InterAction. Parliamentary Statement and InterAction on Inquiry. 12 November 2014.

absolutely committed to serious and meaningful engagement with survivors. I am clear that survivors are integral to this process”²⁷³.

2.216. Between 19 and 21 November 2014, officials corresponded by email regarding the Cabinet Secretary’s preferences about the InterAction group and engaging more widely with survivors. This included that Mr Russell requested that the planned InterAction review meeting on 15 December 2014 be an ‘open meeting’ so that “other survivors could be invited to join”. The correspondence also stated Mr Russell’s intention to take a further paper to Cabinet on 9 December. It was also stated:

“His intention would be to seek Cabinet’s agreement to him announcing the Scottish Government’s intention to hold an inquiry and consult further with survivors and others on the format. He is keen, however, to explore with Cabinet what shape such an inquiry may take and as such he would want the paper to be more focused than the last paper. On this, Mr Russell has asked me to set up a meeting with [officials] to discuss his ideas. We will set this up early next week. He has indicated that, if possible, it would be helpful for Ms Campbell, Ms Cunningham and Mr Mathieson [*sic*] to be involved in this discussion also.

Broadly speaking he is of the view that neither a statutory inquiry nor a Royal Commission would be appropriate. He considers that a bespoke structure will be required and as such he would be grateful if officials and SGLD could prepare some advice on how this might be achieved for his consideration ahead of the cabinet paper being finalised.

The aim of such an inquiry would be to establish facts and causes - what happened to victims of historic child abuse and why did it happen? Mr Russell is in agreement with others such as CELCIS that any inquiry must have a sharp focus and be time limited.

He considers that setting up an inquiry along the lines of the NI model is what is required. He is of the view, however, that the national confidential

²⁷³ A9718832 – Email from official to Minister Private Office. Briefing on Engagement with Survivors and response to survivor. 13 November 2014.

forum already offers parts of the structure for receiving and listening to testimony from victims and would like consideration to be given to how/ whether the NCF could be redefined to work with/ be part of an inquiry. Consideration would require to be given also to how testimony from organisations could be received.

Mr Russell is of the view that this short term inquiry should be linked into and run in tandem with the setting up of a centre of excellence, bringing together a multi-disciplinary team of academics, historians, child care and health practitioners. The purpose of such a centre would be to build and maintain a record of experiences of those who were in institutional care, offer support to survivors and also research and advise on best practice in relation to child protection going forward. Mr Russell recognises that some of these functions rest with the NCF and as such would welcome your views on how such a centre could compliment and work with the NCF.

Mr Russell will expand on these ideas at the meeting next week and would welcome your views on them then”²⁷⁴.

2.217. In subsequent correspondence, officials considered whether the NCF could be the mechanism for the inquiry if it was expanded²⁷⁵ and considered models for a historical child abuse inquiry in Scotland²⁷⁶.

2.218. On 25 and 26 November 2014 officials corresponded regarding a letter addressed to the First Minister²⁷⁷ from a survivor. As well as calling for an inquiry, the letter included the following statements:

“I am writing to you personally given my alarm over the apparent failure in Government at the removal of Michael Russell MSP from the SCOTS Cabinet...The very person with whom we believed that we go move

²⁷⁴ A9811383 – Emails between officials. FW: Immediate Interaction – Legal Advice Note re possible inquiry (NI etc.) – SGLD to policy – 21 November 2014. 24 November 2014.

²⁷⁵ A9811383 – Emails between officials. FW: Immediate Interaction – Legal Advice Note re possible inquiry (NI etc.) – SGLD to policy – 21 November 2014. 24 November 2014.

²⁷⁶ A9811383 – Emails between officials. FW: Immediate Interaction – Legal Advice Note re possible inquiry (NI etc.) – SGLD to policy – 21 November 2014. 24 November 2014.

²⁷⁷ Ms Sturgeon became First Minister on 20 November 2014 and there followed a Cabinet reshuffle.

forward [sic] on the issue of past institutional abuse within Scotland has been removed, both myself and my colleagues were promised ministerial meeting with him personally in next week or so”

“Michael was the first minister from the executive whom I met who both actually listened and was proactive regarding abuse... I’m left thinking what’s going on, my colleagues are left thinking that the executive believes past institutional abuse in Scotland is some political football which matters not”

“Thus I am requesting now, today an urgent meeting with yourself and Mr Swinney on this matter...We seek direct inclusion”²⁷⁸.

2.219. The First Minister’s private secretary noted that: “The First Minister has received [the survivor’s] letter and will consider it personally before responding in due course”²⁷⁹.

2.220. On 27 November 2014, a document prepared by officials entitled “Scottish Human Rights InterAction / Inquiry – Stakeholder Engagement”, stated:

“4. Following the interaction event on 27th October in his statement on Child Protection to Parliament on 11 November Mr Russell, committed to considering an Inquiry into Historic Abuse and in doing so, joining with survivors and agencies in taking the issues forward together and in ensuring that the views and experience of survivors was integral to the decision making and action process going forward.

5. As a first stage in taking this work forward Mr Russell requested SHRC to host a further meeting between Ministers and participants of the final interaction event specifically around the issue of inquiry. Mr Russell stressed the need for this to happen as soon as possible. After

²⁷⁸ A9810155 – Emails between officials. RE: FM letter – Historic abuse. 25 November 2014 – 26 November 2014.

²⁷⁹ A9810155 – Emails between officials. RE: FM letter – Historic abuse. 25 November 2014 – 26 November 2014.

discussion with the interaction review group a decision was taken to incorporate this into the open event planned for the 15th December.

6. Additionally Mr Russell also asked officials to organise a further engagement opportunity with a small group of survivors so that he might hear first-hand their views and experiences. A small group of survivors who are being supported by one of SurvivorScotland funded organisations, Open Secret have agreed to meet on the afternoon of the 4th December. A brief and details of this are being prepared for Ms Constance and will be with private office as soon as possible.

7. Given the event on the 15th December was to a large extent influenced by Mr Russell's desire to have early engagement with survivors around the issue of inquiry. Officials in the Survivor Scotland team have attempted to ensure that the event itself offers Ms Constance the opportunity to hear from a broad range of survivors which may compliment and broaden the advice already given by others including [a survivor]. Expectation from survivors on the consultation and engagement process promised by Mr Russell is high and any decision to decline attendance at this stage would pose significant reputational risk.

8. The event on the 15th December would be an ideal opportunity for Ms Constance in her new role as Cabinet Secretary to secure trust and show her continued commitment on the issue of an inquiry and in doing so listening to survivors' views and issues in forming her decision. We would advise the Cabinet Secretary for Education and Lifelong Learning to view the ask [*sic*] of the SHRC to reconvene an 'open' interaction event to further discuss the issue of an inquiry as the first step in a wider more democratic participation process that will not only seek views on the issue of inquiry but also for the other recommendations of the SHRC action plan"²⁸⁰.

²⁸⁰ A9810496 – Email from an official to herself. Survivor stakeholder engagement event 15th December 2014. 26 November 2014.

- 2.221. On 26 November 2014 an official sent to the Cabinet Secretary for Education and Lifelong Learning an “Options paper re: Potential Inquiry Into Historic Child Abuse”²⁸¹. The proposed draft terms of reference for an inquiry were set out in Annex A and reflected initial discussions with survivors. The paper outlined three main options for an inquiry, namely: (1) a statutory inquiry under the Inquiries Act 2005; (2) a non-statutory inquiry or Royal Commission; and (3) a bespoke statutory inquiry which could be established under primary legislation.
- 2.222. The Cabinet Secretary for Education and Lifelong Learning undertook to fulfill the commitment made by her predecessor to return to the Scottish Parliament before Christmas with a decision. At the meeting of Cabinet on 2 December 2014 it was 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”²⁸².
- 2.223. On 3 December 2014 a document set out “Links between the National Confidential Forum and an Inquiry”. It noted:
- “The purpose of the Forum is specifically to not be an inquiry. The reports it will produce in time can and should be made use of by any inquiry however in coming forward to the Forum people will be clear through a preparatory process and with access to follow-up support, exactly what they are signing up for. It may be that people could consent to their testimony being made available to the inquiry however the Forum as constituted will not keep the individual testimonies.”
- “In giving evidence to the Petitions Committee on Institutional Child Abuse (Victims’ Forum and Compensation) (PE1351) on 1 March 2011 Tom Shaw, the Chair of Time to be Heard and Anne Carpenter, one of

²⁸¹ A9846075 – Options Paper. Potential Inquiry Into Historic Child Abuse. 26 November 2014.

²⁸² A26654918 – Cabinet Paper. SC(14)36. Conclusions. 2 December 2014.

the Commissioners were quite clear that acknowledgement and accountability should be separate entities”²⁸³.

2.224. On 4 December 2014, the Cabinet Secretary for Education and Lifelong Learning met survivors to hear their views on an inquiry and support²⁸⁴.

2.225. In early December 2014, the First Minister replied to a member of the public who had requested a meeting regarding his concerns about historical child abuse²⁸⁵. The First Minister stated she was unable to meet him in the near future, however pointed him towards the upcoming open meeting of the SHRC InterAction on 15 December, with contact details for the organiser.

²⁸³ A9849590 – Document. Links between the National Confidential Forum and an Inquiry. Not dated.

²⁸⁴ A9816676 - Briefing document. Meeting with Survivors of Childhood Abuse. 4 December 2014.

²⁸⁵ A9852497 – Letter from First Minister to [REDACTED]. In response to request for meeting regarding concerns about historic child abuse. December 2014.

CHAPTER 3

WHY A PUBLIC INQUIRY WAS ESTABLISHED IN 2014

- 3.1. This chapter covers why, following the events above, the Scottish Government decided to announce the establishment of a public inquiry at the end of 2014. This chapter responds to point 6 of the section 21 notice in respect of why the Scottish Government decided to establish a public inquiry in 2014.
- 3.2. On 9 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 the Scottish Parliament during the week commencing 15 December 2014²⁸⁶. 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 groups²⁸⁷. Cabinet agreed to establishing an inquiry that day.
- 3.3. On 11 December 2014 officials corresponded about the upcoming Survivors Open Event²⁸⁸. A subsequent letter to Graeme Pearson MSP noted that the purpose of the meeting was to have the opportunity to hear from survivors on commitments made by the Scottish Government in response to the InterAction Action Plan, particularly views on an inquiry, and that Ministers in attendance would not be making any speeches or presentations but would participate in roundtable discussions²⁸⁹.

²⁸⁶ A26654557 - Cabinet Paper. SC(14)116. Historic Abuse of Children in Care: Proposed Inquiry. 9 December 2014.

²⁸⁷ A26653843 – Cabinet paper. SC(14)37. Conclusions. 9 December 2014.

²⁸⁸ A9958952 – Emails between officials and officials from Strathclyde University. RE: Survivors Open Event. 17 December 2014.

²⁸⁹ A9920469 – Letter. From Cabinet Secretary for Education and Lifelong Learning to Graeme Pearson MSP. December 2014.

- 3.4. On 12 December 2014 an official liaised with the Cabinet Secretary for Education and Lifelong Learning regarding a draft parliamentary statement on an inquiry²⁹⁰.
- 3.5. The InterAction Open event was held on 15 December 2014²⁹¹ and was attended by the Cabinet Secretary for Education and Lifelong Learning, the Minister for Community Safety and Legal Affairs, and the Minister for Children and Young People. More detail on this event is recorded in chapter 12 of this report on the InterAction Process and in the briefing prepared for the event²⁹².
- 3.6. On 17 December 2014, Ms Constance, Cabinet Secretary for Education and Lifelong Learning, made a statement to the Scottish 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 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

²⁹⁰ A9959046 – Emails between officials and Cabinet Secretary for Education and Lifelong Learning. RE: Parliamentary Statement on Historical Abuse Inquiry – 17 December 2015. 17 December 2014.

²⁹¹ Scottish Government. Ministerial Statement Education Secretary – Statement on historical child abuse. 2014. [cited 2020 Feb 20] <https://news.gov.scot/speeches-and-briefings/education-secretary-statement-on-historical-child-abuse>.

²⁹² A9821654 - Briefing for Cabinet Secretary and Ministers. Scottish Human Rights Commission Interaction – Open Meeting. 15 December 2014.

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 prosecutions”²⁹³.

²⁹³Scottish Government. Ministerial Statement Education Secretary – Statement on historical child abuse. 2014. [cited 2020 Feb 20] <https://news.gov.scot/speeches-and-briefings/education-secretary-statement-on-historical-child-abuse>

CHAPTER 4

WHY PETITION PE535 WAS CLOSED IN APRIL 2008

- 4.1. This chapter specifically addresses why, on 15 April 2008, the Public Petitions Committee²⁹⁴ agreed to close consideration of both Petition PE535²⁹⁵ and Petition PE888²⁹⁶. Christopher Daly said in his evidence to the Inquiry that he thought that Petition PE535 was closed down too soon. This chapter of the report addresses point 2 of the section 21 notice in so far as it asks why Petition PE535 was closed on 15 April 2008.
- 4.2. The reasons why the petitions were closed is, of course, a matter for the Committee.
- 4.3. The Convener of the Committee had 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 petitions²⁹⁷.
- 4.4. 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”²⁹⁸.

²⁹⁴ The Scottish Parliament. Public Petitions Committee Tuesday 15 April 2008. 2008. [cited 2020 Feb 20] p. 3. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=3115&mode=pdf>

²⁹⁵ The Scottish Parliament. Petition 535. Not dated. [cited 2020 Feb 20] Available from:

<http://archive.scottish.parliament.uk/business/petitions/docs/PE535.htm>

²⁹⁶ The Scottish Parliament. Petition 888. 2005. [cited 2020 Feb 20] Available from:

<https://archive.parliament.scot/business/petitions/docs/PE888.htm>

²⁹⁷ The Scottish Parliament. Public Petitions Committee Official Report, Session 3 Report, 15 April 2008. 2008. [cited 2020 Feb 20] Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=3115&mode=pdf>

²⁹⁸ The Scottish Parliament. Public Petitions Committee Official Report, Session 3 Report, 15 April 2008. 2008. [cited 2020 Feb 20] Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=3115&mode=pdf>

CHAPTER 5

WHY A PUBLIC APOLOGY WAS GIVEN ON 1 DECEMBER 2004

BUT A PUBLIC INQUIRY WAS NOT ANNOUNCED

- 5.1. This chapter responds to point 3 of the section 21 notice, which specifically asks, why a public inquiry was not announced when the public apology was given by the First Minister on 1 December 2004. This follows on from chapter 2 (reasons for not establishing a public inquiry, 2002 to 2014).
- 5.2. A public apology and an inquiry had been called for in Petition PE535. How the public apology was drafted (and background information) is explained in chapter 6 (an explanation of the reasons why the specific terms of the public apology were determined upon).
- 5.3. On 1 December 2004, regarding the apology, the then First Minister said: “I want to speak on one subject that should unite us, whatever opinions might be expressed in the debate that follows”²⁹⁹. However, for the reasons set out above, the Scottish Executive’s position at the time was that a public inquiry was not necessary or the right course of action. Towards the end of the debate that day Mr 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”.

²⁹⁹The Scottish Parliament. Official Report Plenary, 01 Dec 2004. 2004. [cited 2020 Feb 20] Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&i=34110> - 1 December 2004.

CHAPTER 6

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

- 6.1. This chapter responds to point 4 of the section 21 notice which asks for an explanation of the reasons why the specific terms of the public apology made by the First Minister in 2004 were determined upon. The following paragraphs provide background information before covering the drafting of the apology, and in particular, the legal advice which was a factor in the apology being made on behalf of the people of Scotland.
- 6.2. At the Public Petitions Committee on 29 September 2004, Karen Gillon asked Mr Peacock, Minister for Education and Young People: “acknowledging something is not apologising for it. Are you formally apologising for the actions of the state in respect of child abuse?”. Mr 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”³⁰⁰.
- 6.3. On 1 October 2004, a letter³⁰¹ was received by an official, from survivor Christopher Daly responding to the Executive’s “Invitation to a presentation on child protection measures and viewing of redacted files”. Within the letter, Christopher Daly enclosed a letter from Archbishop Mario Conti to himself, which “closes the door for any further correspondence with him on the matter”. Christopher Daly stated: “I feel that if there was an apology from the First

³⁰⁰ The Scottish Parliament. Public Petitions Committee Official Report 29 September 2004. 2004. [cited 2020 Feb 20]. Available from:

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

³⁰¹ A26990425 – Letter from Christopher Daly to official. Invitation to a presentation on child protection measures and viewing of redacted files. 1 October 2004.

Minister on behalf of the State and an apology from the Catholic hierarchy it would be a more honest open way forward... An apology and acknowledgement of past wrongs would be cleansing for all concerned not least survivors. I look forward to hearing from you soon and to further discussion on how to progress this matter which is very much stalemate in my view”.

6.4. On 18 October 2004, officials met survivors Christopher Daly and Helen Holland. The meeting was primarily for the purposes of discussing access to files and child protection issues, however notes from the meeting indicated a broader discussion regarding an inquiry and an apology.

6.5. The notes stated:

“[Helen Holland] made clear however that for the majority of members [of INCAS] an apology from the First Minister would go a long way to removing the hurt that survivors feel as this would publicly acknowledge what they had gone through and for many would be enough as allow them to move on with their lives. Helen also made the point (which is not new to us) that by using the evidence which already exists from past court cases INCAS members see no reason why the First Minister can’t stand up and say that there is evidence that systematic abuse took place in Scotland and apologise for this”³⁰².

6.6. On 29 October 2004, in a submission³⁰³ to Mr Peacock and his Deputy Minister regarding the Minister’s appearance before the Petitions Committee on 29 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

³⁰² A18925507 – Email between officials. RE: NOTE OF A MEETING WITH CHRIS DALY AND HELEN HOLLAND OF INCAS HELD ON 18TH OCTOBER 2004. 19 October 2004.

³⁰³ A18918620 – Submission (by email) from official to Minister for Education and Young People. Historic abuse and INCAS. 29 October 2004.

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”.

- 6.7. On 9 November 2004, Mr 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?”³⁰⁴. The official was also asked to find out what the position was on apologies for child abuse in Australia and America.
- 6.8. On 12 November 2004, an email between officials noted: “We discussed this morning the possibility of the FM making a statement on Child protection issues (including, potentially, an apology for historic abuse)”³⁰⁵.
- 6.9. On 18 November 2004, an email³⁰⁶ from an official was sent to Mr Peacock’s private secretary which included a “final 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”. The email noted that the “final draft” had been “cleared by [the Office of the Solicitor to the Scottish Executive]”.
- 6.10. At a meeting with Helen Holland and Christopher Daly on 23 November 2004, Mr Peacock discussed with them what sort of apology they were looking for and who they felt should make this. A briefing³⁰⁷ ahead of the meeting noted that INCAS wanted: “an apology from the State and from other institutions - of prime importance to INCAS (they were unanimous in calling for this at their AGM held on 24/10/04) is that the Church, State and other institutions make an unreserved apology for the abuse which occurred”³⁰⁸. The note of the

³⁰⁴ A18860635 – Email from Minister for Education and Young People to officials. REQUEST FOR INFORMATION FROM MR PEACOCK: ABUSE IN RESIDENTIAL CARE. 9 November 2004.

³⁰⁵ A18918675 – Email between officials. POSS CHILD PROTECTION STATEMENT. 12 November 2004.

³⁰⁶ A19554488 – Email between officials. FW: PETITION PE535; POTENTIAL STATE RESPONSE. 18 November 2004.

³⁰⁷ A20722491 – Email between officials, Briefing for meeting with INCAS on 23/11 and draft speech for debate on 1/12. 19 November 2004 (also within A18920760).

³⁰⁸ A18920760 - Email between officials. FW: BRIEFING FOR MEETING WITH INCAS ON 23/11 AND DRAFT SPEECH FOR DEBATE ON 1/12. 19 November 2004.

meeting stated, 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”³⁰⁹.

- 6.11. The Minutes of the Scottish Cabinet meeting at 9:30am on 24 November 2004³¹⁰ note that Mr Peacock provided an update on the upcoming Petitions Committee debate on 1 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”.

- 6.12. The Minutes record that Cabinet agreed: “Advice should be provided to the First Minister and Deputy First Minister on the wording of any apology”.
- 6.13. On 25 and 26 November 2004, officials exchanged emails and noted that a draft of the First Minister’s statement had been reviewed by legal officials, with two changes³¹¹.
- 6.14. On 30 November 2004, at 11:58am, in an email from an official to Mr 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

³⁰⁹ A18926992 – Emails between officials. NOTE OF MINISTER’S MEETING WITH INCAS ON 23RD NOVEMBER 2004. 24 November 2004.

³¹⁰ A26666181 – Cabinet Paper SC(04)35. Conclusions. 24 November 2004.

³¹¹ A20723339 - Emails between officials. RE: RESTRICTED: statement re historic abuse. 25 and 26 November 2004.

and FM cannot be seen as having any democratic or legal remit to speak on their behalf³¹².

- 6.15. On 30 November 2004, at 2:34pm the Lord Advocate sent an email to the First Minister³¹³, which said:

“I have just seen the draft statement for the first time. It is, of course, your decision on what to say. There is a risk that any apology, however crafted, will be used against Ministers.

At presently drafted the apology is pretty unequivocal: it is on behalf of the Government and people of Scotland. It is done in a context of recognition of institutional abuse, and a recognition of the role of government in regulating such institutions.

I consider that at present there is a strong possibility that this could be taken as an admission of neglect, and failure by the predecessors of Scottish Ministers and opens the door to establish fault and liability against Ministers. There are at present some 1300 claims and the potential liability is enormous.

You should also be aware that the institutions where the abuse occurred and who, arguably, should bear the primary responsibility will be only too pleased to see Ministers seemingly accepting liability in order to minimise their exposure to actions for damages”.

- 6.16. On 30 November 2004, at 4:01pm, a note recorded action points from a discussion between the First Minister and Mr Peacock. The note was contained in an email from the First Minister’s private secretary to the Minister’s private secretary³¹⁴. It stated, 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

³¹² A18826716 - Email from official to Minister for education and Young people. Various Questions. Issue around apology and inquiry. 30 November 2004.

³¹³ A20606051 - Email from the Lord Advocate to the First Minister. RE: Institutional Abuse – Apology. 30 November 2004.

³¹⁴ A21926246 - Email on behalf of the First Minister to Minister for Education and Young People. RE: Institutional Abuse- Apology. 30 November 2004.

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”.

- 6.17. On 30 November 2004 at 4:11pm, an email from an official to the First Minister and Minister for Education and Young People attached an updated version of the First Minister’s statement, which included revised text for the apology³¹⁵. The email noted that the revised text had been prepared by legal officials, following the Lord Advocate’s advice earlier that day, and had been approved by the Lord Advocate.
- 6.18. On 30 November 2004, at 5:30pm, an email 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”³¹⁶.
- 6.19. On 30 November 2004 at 7:48pm, officials (including the Minister for Education and Young People’s private office) shared with each other by email a copy of the updated version of the First Minister’s statement³¹⁷.
- 6.20. The Minutes of the Scottish Cabinet meeting at 9:30am³¹⁸ on 1 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

³¹⁵ A18924350 - Email from the Lord Advocate’s private office to the private offices of the First Minister and Minister for Education and Young People. FW: RE: apology25nov. 30 November 2004. Also available at KNX 1/56 Part 12, page 175.

³¹⁶ A19201703 - Email between officials. Re: Survivors of child abuse in institutional care. 30 November 2004.

³¹⁷ A18234214 - KNX 1/56 Part 12. Email between officials. Ministers Speech for 1 December 2004. p. 222. 30 November 2004.

³¹⁸ A26666279 – Cabinet Paper SC(04)36th. Conclusions. 1 December 2004.

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.

- 6.21. The First Minister gave an apology on behalf of the people of Scotland in his statement at the Scottish Parliament on 1 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".

- 6.22. 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".

CHAPTER 7

THE TOM SHAW REVIEW

- 7.1. This chapter responds to point 5 of the section 21 notice and provides an explanation of Tom Shaw’s ‘Historical Abuse Systemic Review: Residential Schools and Children’s Homes in Scotland 1950 to 1995’, including the approach to engagement with survivor groups and campaigners. Records related to these points have been included in this chapter and relevant information has been drawn from the Review’s report. Further background on the appointment of an independent expert (initially referred to as a “rapporteur”) can be found in chapter 2 of this report (reasons for not establishing a public inquiry, 2002 to 2014).
- 7.2. During the debate at the Petitions Committee on 1 December 2004, Mr 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 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”³¹⁹.

- 7.3. On 29 June 2005 an official wrote a minute to the Minister for Education and Young People which recommended that: “The Minister appoints Tom Shaw, former Chief Inspector of the Education and Training Inspectorate, Northern Ireland to be the Independent Expert”. The minute included a short-list of all the candidates for the position (Annex A of the minute). The candidates were decided on after discussions with INCAS. It was said that all candidates had merits and experience but “on the whole we felt Mr Shaw was not only the best candidate but also the most independent of those listed”³²⁰.
- 7.4. A number of exchanges took place between officials during 2005 regarding the appointment of an independent expert to review historical child abuse. On 31 January 2005 an official wrote³²¹ to a legal official and said: “I have tried to set out, from a policy perspective, what Ministers hope to achieve by appointing an independent expert to look at the issue of historic abuse. I’d be grateful for your advice on how that should be expressed so as to ensure that we minimise the risks flagged by [officials] in previous discussions about this issue before the parliamentary debate”. Later in the year, for example, on 20 April³²², 10 August³²³ and 24 August 2005³²⁴, the remit of the independent expert was discussed between officials and Ministers.
- 7.5. 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

³¹⁹ Scottish Parliament. Official Report – Plenary, 01 Dec 2004. No date [cited 2020 February 20]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&i=34110>

³²⁰ B1801916 – Emails between officials. Appointment Minute to ministers and PQ. 29 June 2005.

³²¹ A19810503 - KNX 1/56: Part 13. Emails between officials. Independent expert remit p. 359 - 362. 31 January 2005.

³²² A19810504 - KNX 1/56 PART 15. Email from official to the Minister for Education and Young People. RE: Draft remit of independent expert-URGENT by noon, Friday p. 125. 20 April 2005.

³²³ A19810504 - KNX 1/56 PART 15. Emails between officials. As discussed - draft covering submission re independent expert p. 115. 19 August 2005.

³²⁴ B106534 – Email from official to Minister for Education and Young People. RE: Independent Expert—remit. 24 August 2008.

the 1985 end date. 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 limited³²⁵.

- 7.6. Following the email of 24 August 2005 from an official to the Minister for Education and Young People in which she advised that the most significant legislation on the welfare of children in residential care was the 1995 Act and not 1985 as previously advised, the Minister indicated he would like to extend the proposed remit from 1985 to 1995. The remit was updated accordingly³²⁶.
- 7.7. The Minister for Education and Young People wrote to Mr Shaw on 25 August 2005 confirming his appointment as the independent expert: "Given your background as a former Chief Inspector of Education in Northern Ireland, I have confidence in the skills and experience you bring to this task and I look forward to reading your final report"³²⁷.
- 7.8. The appointment letter also outlined the remit of the independent expert and set the following objectives:

"to identify what regulatory requirements and powers were in place from time to time over that period and which provided for the provision, regulation and inspection of such schools and homes and for the welfare and protection from abuse of children resident in them;

to identify, and review the adequacy of any systems, whether at national, local or organisational levels, intended to ensure compliance with those

³²⁵ B106029 - Email from an official to Minister for Education and Young People. Independent expert—remit. 24 August 2005.

³²⁶ B106534 – Email chain between officials and Minister for Education and Young People. RE: Independent expert—remit. 24 August 2005.

³²⁷ A19810504 - KNX 1/56 PART 15. Letter from the Minister for Education and Young People to Tom Shaw. Historic Abuse in Children's Homes and Residential Schools – Appointment of Independent Expert. p. 143 - 144. August 2005.

requirements and with any prescribed procedures and standards from time to time including systems of monitoring and inspection;

to review the practical operation and effectiveness of such systems”³²⁸.

7.9. Mr Shaw accepted and began his work in September 2005.

7.10. On 2 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 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”^{329,330}.

³²⁸ B109135 – Email from Minister Education and Young People to Tom Shaw. HISTORIC ABUSE IN CHILDREN’S HOMES AND RESIDENTIAL SCHOOLS - APPOINTMENT LETTER AND REMIT FOR INDEPENDENT EXPERT. 25 August 2005.

³²⁹ B488232 – Meeting minutes. Historic Abuse Systemic Review. 11 April 2006.

³³⁰ B530626 – Emails between officials. FW: Meeting. Letter from Tom Shaw attached. 2 May 2006.

7.11. In an email dated 28 June 2006 to the Minister for Education and Young People, which contained a progress update report from Mr Shaw, 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 within this email) 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 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”. The official also highlighted two other issues that had arisen in Mr Shaw’s first update, namely “addressing a mixed response to his questionnaire from local authorities” and “identifying the relevant legislation and guidance in place in the period 1950 to 1995”. On these two issues the official reported “we have facilitated a meeting between ADSW and Mr Shaw and a way forward has now been identified, involving local authority archivists identifying some of the information requested. Mr Shaw is content with this solution. We have agreed that a university research assistant will assist him with this task over the next 6 weeks. Archivists from local authorities have

also agreed to check that the list he is compiling contains all the relevant legislation and guidance of which they are aware”³³¹.

7.12. Tom Shaw’s ‘Historical Abuse Systemic Review: Residential Schools and Children’s Homes in Scotland 1950 to 1995’ was published in 2007.

7.13. In the summary section, page 3 detailed what the Review was asked to do:

“The remit was to carry out an investigation against the background of abuse suffered by children in residential schools and children’s homes in Scotland between 1950 and 1995. I could, if necessary, consider materials outwith these periods if I felt these would be relevant.

I was to consider:

- The laws, rules, regulations and powers that governed how these schools were run, regulated and inspected;
- What systems were in place to make sure these laws, rules, regulations and powers were followed and
- How these systems worked in practice.

To do this I would:

- Have access to government records; and
- be expected to seek the co-operation of local authorities and other organisations that ran children’s residential schools and homes.

I was not permitted to:

- report on the facts or circumstances of any individual cases of abuse; or
- take submissions from individuals.

³³¹ B652538 - Email official to Minister for Education and Young People. Update on work of Tom Shaw--RESTRICTED—POLICY. 28 June 2006.

I felt it was essential to talk to the people who had lived and worked in children's residential schools and homes. So I later sought, and received, permission to meet and receive information from individuals"

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- 7.14. Within the summary on page 4, Mr Shaw set 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. My researcher and I interviewed people who had worked in services involved with child care services, reviewed files held in the National Archives of Scotland and the Scottish Executive Education Department.... in other archives held in various locations in Scotland and England. I sought expert advice on aspects of the legal framework and commissioned two specialist reviews. I established an advisory group of people from backgrounds relevant to my review"³³³.
- 7.15. The Review recommendations fell under three headings: (1) current provision to ensure the welfare and safety of looked after and accommodated children; (2) provision for former residents; and (3) records relating to both current and former residents.
- 7.16. In relation to records, the review identified "an urgent need to take action to preserve historical records to ensure that residents can get access to records and information about their location". A review of public records legislation was recommended and that the government should invite the National Archives of Scotland (NAS) to establish a national records working group to address issues specific to children's historical residential services records³³⁴.

³³² The Scottish Government. Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995. [Internet] 2007 [cited 2020 Feb 20] Available from: <https://www.webarchive.org.uk/wayback/archive/20180517084446/http://www.gov.scot/Publications/2007/11/20104729/27>

³³³ The Scottish Government. Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995. [Internet] 2007 [cited 2020 Feb 20] p. 4. Available from: <https://www.webarchive.org.uk/wayback/archive/20180517084446/http://www.gov.scot/Publications/2007/11/20104729/27>

³³⁴ The Scottish Government. Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995. [Internet] 2007 [cited 2020 Feb 20] pp. 155-157. Available from:

- 7.17. In a news release published on 22 November 2007, the Scottish Government said: “This independent review helps us understand how the system worked at the time and sheds light on the failings of those systems which should have protected children. We are in full agreement with the principles of the findings and recommendations but we must consider with partners and survivors how we can most effectively take forward the lessons to be learned. This is a far reaching report and it is right that we give detailed and serious consideration to all the issues covered. It identifies the significant improvements which have been made but we can be in no doubt, further work is essential to make sure our children are safe and protected within residential homes and school”³³⁵.
- 7.18. In a statement given on 7 February 2008, Mr Ingram, Minister for Education and Young People, said: “The Scottish Government is pleased to accept the recommendations of the Shaw review in full”. The Minister went on to expand on how the Scottish Government would take steps to implement the recommendations made by Mr Shaw, including engaging with key stakeholders³³⁶.
- 7.19. At the launch of the In Care Survivors Service Scotland on 25 November 2008, Mr Shaw gave a key note speech giving a progress report of his review “one year on”³³⁷.
- 7.20. On 13 June 2012, an official submitted a briefing to the Cabinet Secretary for Justice and Minister for Community Safety and Legal Affairs, which included an update on progress implementing Mr Shaw’s recommendations. It noted that: “Over the last six years virtually all of the recommendations in the Review that concern the role of central government have been implemented and work

<https://www.webarchive.org.uk/wayback/archive/20180517084446/http://www.gov.scot/Publications/2007/11/20104729/27>

³³⁵ B1723005 – Email between officials. Emailing 22092138. Contains a weblink to a news release issued by Scottish Government welcoming publication of the review by Tom Shaw. 22 November 2007.

³³⁶ B1957684 – Emails between officials. Ministerial Statement. Fw: Ministerial Statement around Tom Shaw Report. 7 February 2008. Statement also available at:

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

³³⁷ National Records of Scotland. Tom Shaw Historic Abuse Systemic Review: One Year On SurvivorScotland: Progress and Potential - Scottish Government Seminar [Intrenet]. 2009. [cited 2020 Feb 20] pp. 6 - 11. Available from:

<https://webarchive.nrscotland.gov.uk/20170716025511/http://www.gov.scot/Publications/2009/03/18141125/0>

is ongoing to meet the outstanding recommendations in relation to providing a historical record of residential childcare”³³⁸. The briefing expanded on what had been done to-date at that point and what was planned by way of the National Confidential Forum, which would create an historical record of the experience of survivors.

- 7.21. Chapters 8, 9, 11 and 14 of this report on the Public Records Review, the National Residential Child Care Initiative, In Care Survivor Services Scotland and the National Confidential Forum, respectively, provide further information on the work done to address Mr Shaw’s recommendations.

³³⁸ A7103362 – Emails between officials. FW: Victims and Witnesses Bill - Submission to Minister - Response to Stage 1 report and briefing for Stage 1 debate. See page 44 of briefing on the NCF. 13 June 2012.

CHAPTER 8

PUBLIC RECORDS REVIEW

- 8.1. This chapter responds to point 5 of the section 21 notice and provides an explanation of the Keeper of the Records of Scotland's review of public records legislation, including the approach to engagement with survivor groups and campaigners. It goes on to address a particular issue, which although not specifically related to the Keeper's review, bears on record keeping and is mentioned in Mr Shaw's review; the issue related to the destruction of certain records in 2004.
- 8.2. The Keeper's review was intended, in part, to address survivors' concerns about records, and follows on from recommendations in Mr Shaw's review. This chapter begins by noting the background to the Keeper's review and goes on to explain the outcome of that work, which concerned recording keeping in, but also beyond, the Scottish Government.
- 8.3. Chapter 2 of this report (reasons for not establishing a public inquiry, 2002 to 2014) contains information on what the Scottish Executive did to make its records available to survivors prior to the Keeper's review, which related to the Scottish Executive's response to Petition PE535 (calling for a public inquiry and an apology).

Background

- 8.4. The Shaw review recommended that the Scottish Government commission a review of public records legislation which should lead to new legislation being introduced to meet records and information needs in Scotland. It also recommended that the Scottish Government should invite the National Archives of Scotland ("NAS") to establish a national records working group to address issues specific to children's historical residential services records³³⁹.

³³⁹ The Scottish Government. Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995. pp. 156-157. 2007. [cited 2020 Feb 20] Available from: <https://www.webarchive.org.uk/wayback/archive/20180517084446/http://www.gov.scot/Publications/2007/11/20104729/27>

- 8.5. In his statement to the Scottish Parliament on 7 February 2008, Mr 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”.

The Keeper’s review

- 8.6. The Keeper undertook a review of public records legislation and the report was published in October 2009³⁴⁰.
- 8.7. The review focused on failed record keeping in the residential child care sector, and the effect of public records legislation. Evidence was sought across a broad spectrum, consulting professionals in child care services, policy formation, information governance, social work, the police, records and archives, and scrutiny bodies. Opinion was also sought from former residents, particularly survivors of abuse. A specialist advisory group to provide further information and opinion was established. Consultants were commissioned to investigate problems encountered in creating, managing and using records in the sector, by means of an online survey, focus groups and structured interviews. Research was undertaken into records legislation and the results of similar inquiries³⁴¹.
- 8.8. On consulting with survivors, the Keeper’s report stated: “The Review sought opinion directly from former child care residents and attended events specifically organised for survivors of abuse. The Review team ran a workshop at the SurvivorScotland Strategy conference held in November

³⁴⁰The National Archives of Scotland. Report to Scottish Ministers on the recommendations of ‘The Report into the Historical Abuse Systemic Review of Residential Schools and Children’s Homes in Scotland, between 1950 and 1995’ by Tom Shaw, as submitted by the Keeper of the Records of Scotland. October 2009. [cited 2020 Feb 20] Available from: <https://www.nrscotland.gov.uk/files/record-keeping/public-records-act/Keepers%20Review%20Report.pdf>

³⁴¹ B3210233 – Email from the Keeper of the Records to Ministers. Review of Public Records Legislation. 11 September 2009.

2008 which was attended by significant numbers of survivors. This helped to provide the Review with an alternative view". It went on to state: "The creation of the new In Care Survivors Service Scotland will go some way towards addressing many of those information needs, but it does not address the issue of long-term retention" (10.3 of the Review report)³⁴².

- 8.9. The Keeper concluded that existing legislation was no longer fit for purpose: "The Shaw report is clear evidence of the failure by many organisations to pay attention to records... The Keeper believes there is a good opportunity to build on the lessons of the Shaw report and improve record keeping across the public sector through a limited piece of legislation" (14.1 of the Review). His recommendation was to improve record keeping across the public sector through new legislation which would fulfil Mr Shaw's key records recommendations.
- 8.10. The Scottish Government proceeded to develop and introduce legislation. The Minister for Culture and External Affairs, at the beginning of the stage 1 debate on the Public Records (Scotland) Bill, said: "[Shaw's] powerful and compelling evidence showed the human cost of record-keeping failures"³⁴³.
- 8.11. The first part of the Bill contained the main provisions relating to records management. The second part dealt with minor amendments. The first Part placed an obligation on the Keeper to produce a model records management plan for public authorities to follow and also to produce guidance on the form and content of such plans. This part also gave the Keeper powers to carry out a compliance review of an authority's records management practices and to issue warning notices where it was found to be failing in its obligations.
- 8.12. The policy memorandum which accompanied the Bill stated: "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

³⁴² National Records of Scotland. <https://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011>

³⁴³ The Scottish Parliament. Meeting of the Parliament 10 February 201. Not dated. [cited 2020 Feb 20] Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=6102&mode=html>.

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 professional record keepers, together with survivors of abuse and former residents of care homes”³⁴⁴.

- 8.13. The policy memorandum noted the public consultation on proposals for new public records legislation ran from 22 June until 4 August 2010. The consultation paper³⁴⁵ gave the background to the proposals (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). The consultation paper was circulated to relevant public authorities, stakeholder groups and interested organisations and individuals. 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.
- 8.14. A total of 87 responses³⁴⁶ to the consultation were received from a number of public and private bodies, organisations, survivor groups and individuals. More than half of respondents felt that lasting improvements to record keeping required new legislation. The Former Boys and Girls Abused of Quarriers

³⁴⁴ The Scottish Parliament. Public Records (Scotland) Bill Policy Memorandum. 2010. [cited 2020 Feb 20] Available from:

[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).

³⁴⁵ The National Records of Scotland. Consultation on proposals for a new Public Records (Scotland) Bill From the Keeper of the Records of Scotland on behalf of Scottish Ministers. 2010. [cited 2020 Feb 20] Available from:

<https://webarchive.nrscotland.gov.uk/20180111160839/http://www.gov.scot/Publications/2010/06/22154359/0>

³⁴⁶ National Records of Scotland. A consultation paper about proposed public records legislation: From the Keeper of the Records of Scotland on behalf of Scottish Ministers: Consultation Responses. 2010. [cited 2020 Feb 20] Available from:

<https://webarchive.nrscotland.gov.uk/20190118221543/https://www2.gov.scot/Publications/2010/09/01153617/0>

(FBGA of Quarriers) raised concerns about subcontractors, charities, religious bodies and other independent and private bodies who may not be covered by the legislation. They said that: “Issues concerning management, retention and storage of... children’s records by private bodies and charitable and religious bodies have to be clearly defined in the legislation”. They went on to say:

“past experience reflects that the system of Children’s file-record keeping in Scotland within Local Authorities, Private, Public, Charitable and Religious bodies is wholly inadequate and a failure. As such only legislation backed up by scrutiny and compliance measures will address such issues going forward in our view. We doubt very much that improvements can be made without such legislation and compliance policies in place in the future”.

They concluded: “FBGA’s primary concern is Children in Care and their records within the care system and former residents experiences to-date of such institutions and religious bodies given the past failures and the Tom Shaw recommendations, it is our view that these Children’s record keeping issues are addressed forthwith by the Scottish Government and the Keeper”.

- 8.15. The Public Records (Scotland) Bill³⁴⁷ was introduced before the Scottish Parliament on 7 October 2010. Stage 1 commenced on 27 October 2010 with the Education, Lifelong Learning and Culture Committee as the lead committee. The stage 1 debate took place on 10 February 2011, with stage 2 consideration of amendments, on 2 March 2011. The Bill was passed following the stage 3 parliamentary debate on 16 March 2011, with Royal Assent given on 20 April 2011.
- 8.16. The 2011 Act affects named public authorities in Scotland including local authorities, the NHS, Police Scotland and courts, as well as the Scottish Government and Scottish Parliament³⁴⁸. Those affected must prepare and implement a records management plan (RMP) which sets out proper

³⁴⁷ Public Records (Scotland) Bill 2010. Available from: <https://www.parliament.scot/parliamentarybusiness/Bills/22476.aspx>

³⁴⁸ Public Records (Scotland) Act 2011. Available from: <http://www.legislation.gov.uk/asp/2011/12/section/2/enacted>

arrangements for the management of their records. The RMP must be agreed with the Keeper and regularly reviewed. The 2011 Act also reaches into the private and voluntary sectors: an authority's RMP must set out the arrangements for the management of records created or held by the authority and records created or held by contractors relating to functions that are carried out on behalf of the authority³⁴⁹. Where authorities fail to meet their obligations under the 2011 Act, the Keeper has powers to undertake records management reviews and issue action notices for improvement. Compulsory elements of the RMP include requirements for a records manager, a policy strategy, destruction arrangements, archiving and information security. The Keeper publishes a report on RMPs which can be found online³⁵⁰.

Destruction of certain local authority records in 2004

- 8.17. On 15 April 2013, Christopher Daly submitted a Freedom of Information ("FOI") request³⁵¹ to the Scottish Government seeking information about the destruction of certain records (in relation to residential schools and children's homes). In his letter, he quoted from Chapter 5 (page 130) of the Shaw report: "An archivist was instructed to destroy all senior management team records in 2004". He went on to explain: "My request is to have a more detailed explanation of the circumstances that led to the records destruction. Including who gave the order to destroy these and why?". The quote from page 130 of the review appeared to relate to responses from a survey of local authority archivists carried out by Mr Shaw as part of his review and pertains to a (unspecified) local authority's records which according to its archivist were ordered to be destroyed in 2004.
- 8.18. On 17 April 2013, the official allocated to responding to the FOI request sought advice from colleagues in a series of emails. Colleagues from National Archives Scotland, the Freedom of Information Team and the Legal

³⁴⁹ F4088613 – Briefing from National Records of Scotland to the Cabinet Secretary for Culture and External Affairs. Dated 9 November 2011.

³⁵⁰ National Records of Scotland. Assessment Process Public Records (Scotland) Act 2011 Methodology. Not dated. [cited 2020 Feb 20] <https://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/assessment-process>

³⁵¹ A6005492 – Emails between officials. Fw: Freedom of Information Request Chris Daly. 17 April 2013.

Directorate were contacted as well as colleagues from the Looked After Children Unit. Documentation evidencing the steps taken to respond fully to the FOI request between 17 April 2013 and 5 May 2013 is footnoted ^{352, 353, 354, 355, 356, 357, 358, 359}.

- 8.19. The advice from officials noted that Mr Shaw had established a confidentiality policy when undertaking his Review so he would not name individuals or organisations. Ultimately, the relevant information was found not to be held by the Scottish Government.
- 8.20. On 3 May 2013, the Scottish Government responded officially³⁶⁰ to Christopher Daly: "We do endeavour to provide information whenever possible however following a search of our paper and electronic records, I have established that the information that you require is not held by the Scottish Government. However, you may wish to contact National Records of Scotland who may be able to help you further".

³⁵² A6007384 - Emails between officials. FOI request for information relating to the Historical Abuse Systemic Review. 23 April 2013.

³⁵³ A6005492 – Emails between officials. Fw: Freedom of Information request Chris Daly. 17 April 2013.

³⁵⁴ A6007196 – Emails between officials. Fw: Freedom of Information request Chris Daly. 17 April 2013.

³⁵⁵ A6007229 – Emails between officials. FW: Freedom of Information request Chris Daly. 17 April 2013.

³⁵⁶ A6011301 – Emails between officials. RE: FOI Request for information relating to the Historical Abuse Systemic Review. 2 May 2013.

³⁵⁷ A6005511 – Emails between officials. RE: Freedom of Information Request Chris Daly. 17 April 2013.

³⁵⁸ A6005561 – Emails between officials. RE: Freedom of Information Request Chris Daly. 17 April 2013.

³⁵⁹ A6005535 – Emails between officials. RE: Freedom of Information Request Chris Daly. 17 April 2013.

³⁶⁰ A5862788 – Email from officials to Christopher Daly. Freedom of Information Request. 3 April 2013.

CHAPTER 9

THE NATIONAL RESIDENTIAL CHILDCARE INITIATIVE

- 9.1. This chapter of the report responds to point 5 of the section 21 notice and provides an explanation of the National Residential Childcare Initiative (“NRCCI”), including the approach to engagement with stakeholders.
- 9.2. Following the publication of the Shaw report, in 2008 the Scottish Government commissioned a strategic review of residential childcare, the NRCCI.
- 9.3. In his statement to the Scottish Parliament on 8 February 2008, Mr 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”³⁶¹.
- 9.4. 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 were met³⁶².
- 9.5. The NRCCI published a report ‘Securing Our Future – A Way Forward for Scotland’s Secure Care Estate’³⁶³ in February 2009. The report made a total

³⁶¹The Scottish Parliament. Official Report Plenary, 07 Feb 2008. 2008. [cited 2020 Feb 20]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&mode=html>

³⁶²CELCIS, Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report. [Internet]. 2009. [cited 2020 Feb 20]. Available from: <https://www.celcis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>

³⁶³SIRCC. Securing Our Future: A way forward for Scotland’s Secure Care Estate. [Internet]. 2009. [cited 2020 Feb 20]. Available from: http://www.wecanandmustdobetter.org/files/3314/2779/2923/Securing_our_future_report.pdf

of nine recommendations, which can be read in full in the report. The report's aim was to "propose possible solutions to the challenges facing Scotland's secure care estate". The Scottish Government and COSLA (Convention of Scottish Local Authorities) released a joint response in April 2009³⁶⁴. They pledged to "facilitate a series of targeted good practice events with local authorities, children's hearings, prosecutors and courts to develop a partnership approach to improving outcomes for young people and for their communities".

- 9.6. On 24 April 2009, the NRCCI project manager sent an email to stakeholders attaching a copy of a NRCCI "Stakeholder Report"³⁶⁵. The introduction to that report explained:

"This stakeholder report has been prepared for the National Residential Child Care Initiative (NRCCI), led by the Scottish Institute for Residential Child Care (SIRCC). These views were collated through a series of 4 consultation events across Scotland and on-line responses for those unable to attend the events.

The report provides an insight into the responses of participants to questions identified by the NRCCI working groups as part of the stakeholder engagement process. All of the responses have been inputted and collated for each questions. They have subsequently been analysed to enable the key themes to be identified and these are provided alongside a summary of the points within these themes".

- 9.7. The NRCCI published its next set of reports entitled 'National Residential Child Care Initiative: Higher Aspirations, Brighter Futures' in December 2009. Four reports were published: (1) Higher Aspirations, Brighter Futures – Overview; (2) Higher Aspirations, Brighter Futures – Workforce; (3) Higher Aspirations, Brighter Futures – Commissioning; and (4) Higher Aspirations, Brighter

³⁶⁴ Scottish Government. Securing our Future Initiative: A Way Forward for Scotland's Secure Care Estate: A response from the Scottish Government and COSLA. 2009. [cited 2020 Feb 20]. Available from: <https://www2.gov.scot/Publications/2009/04/23163903/3>

³⁶⁵ B2881042 – Email from Kelly Bayes, NRCCI Project Manager to stakeholders. STAKEHOLDER REPORT. 24 April 2009.

Futures – Matching Resources to Needs³⁶⁶. These reports made a number of recommendations. In the overview report the full recommendations were outlined from each of the separate reports³⁶⁷.

9.8. Under the heading “Who was involved?” in the overview report, it stated:

“[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 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”³⁶⁸.

³⁶⁶ CELCIS, Higher Aspirations, Brighter Futures. 2009. [cited 2020 Feb 20]. Available from: <https://www.celcis.org/knowledge-bank/search-bank/higher-aspirations-brighter-futures/>

³⁶⁷ CELCIS, Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report. [Internet]. 2009. [cited 2020 Feb 20]. pp. 17-38. Available from: <https://www.celcis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>.

³⁶⁸ CELCIS, Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report. [Internet]. 2009. [cited 2020 Feb 20]. pp. 17-38. Available from: <https://www.celcis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>.

- 9.9. A list of contributors (which includes Who Cares? Scotland) was 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.
- 9.10. The Scottish Government (together with COSLA) accepted the reports and their key recommendations. The recommendations were set out in the overview report³⁶⁹. The recommendations called for “joined-up action by Government, elected members, providers of residential child care and all those working with and for children and young people. High-quality residential care which focuses on promoting happy, healthy and valued lives for all children and young people is the basis of these recommendations. Taking action will ensure we turn rhetoric into reality”³⁷⁰.
- 9.11. Joint responses from the Scottish Government and COSLA were given in speeches by Councillor Isabel Hutton (COSLA’s spokesperson for Education, Children and Young People) and Mr Ingram (Minister for Children and Early Years) at the launch of the reports by NRCCI on 2 December 2009.
- 9.12. During his speech, Mr Ingram said: “Today represents the conclusion to the work of the NRCCI and I am delighted to be here and to have the opportunity to respond on behalf of the Scottish Government to the reports and recommendations launched today. I understand that you have a copy of the full response by the Scottish Government and COSLA in your delegate packs. I do not intend to respond to each of the recommendations in detail during my speech. Instead, I would urge you to take the time to read our joint response³⁷¹ in the context of the NRCCI reports”. The Minister then expanded on the five priority themes coming out of the NRCCI report that included a call for the Scottish Government and COSLA to take action in conjunction with their

³⁶⁹CELCCIS, Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report. [Internet]. 2009. [cited 2020 Feb 20]. pp. 17-38. Available from: <https://www.celccis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>.

³⁷⁰CELCCIS, Higher Aspirations, Brighter Futures: National Residential Child Care Initiative Overview Report. [Internet]. 2009. [cited 2020 Feb 20]. pp. 17-38. Available from: <https://www.celccis.org/files/4414/3878/4503/NRCCI-overview-report.pdf>.

³⁷¹ B3368736 – Submission. Response to the report of the National Residential Child Care Initiative: Higher Aspirations, Brighter Futures. November 2009.

partners. The themes were: culture change, workforce, commissioning, improving learning outcomes and improving health outcomes. Mr Ingram closed his speech by saying: “The key message that I will be taking away from today is that there is a lot that can be done, and that must be done. The key message I want you to take away is that the Scottish Government and COSLA are committed to working with you to make it happen. Today is really about planning the practical steps. I don’t want to launch any more reports. I want to look back in the not too distant future and tell the world about how we made a difference for Scotland’s most vulnerable children, and I know that’s what you want too”³⁷².

- 9.13. Within the joint response document, published by the Scottish Government and COSLA, under the heading “Next Steps”, it said:

“It is clear from the reports that the challenges facing residential childcare are inextricably linked to broader issues for looked after children. So much of the answer lies in generic changes centred around culture, leadership, planning and joined-up working between universal and specialist services. We have an opportunity now to bring connected work on looked after children together, recognising that just as they have the same need for high-quality care wherever they are placed, we must have that same aspiration whatever the sector. In this way we will maximise our joint impact and strengthen the voice of looked after children. Accordingly, we are proposing to establish a high-level governance group on Improving Outcomes for Looked After Children, which will be drawn together by the Director of Children, Young People and Social Care in the Scottish Government and comprise key partners who together are committed to driving a programme of reform for our most vulnerable children. Through that group we will develop and monitor an ambitious but focused implementation programme. This will be based on supported peer learning, enabling us to draw on the strengths and

³⁷² B3468293 – Email from official to Minister for Children and Early Years. NRCCI launch event (Wednesday 2nd December 09) - event briefing. 2 December 2009.

opportunities that exist across the country, not least in the young lives that deserve the best we can give them”³⁷³.

- 9.14. The joint response recognised that ‘the challenges facing residential childcare are inextricably linked to broader issues for looked after children’. It was proposed that the Scottish Government’s Director for Children, Young People and Social Care draw together a high-level governance group on ‘Improving Outcomes for Looked After Children’, comprised of key partners committed to driving reform³⁷⁴.
- 9.15. The Looked After Children Strategic Implementation Group (LACSIG) was established in 2010 to promote and coordinate improvements in the way services worked for vulnerable children and their families. Between its Programme Board and various thematic working groups, LACSIG was able to bring a wide variety of professional expertise – from strategic, operational and practice levels – together around difficult questions of policy and implementation. This was particularly true in respect of ‘care planning’, where LACSIG was instrumental in developing the Scottish Government’s permanence programme³⁷⁵. LACSIG was operational from 2010 to 2012 and was carried out in partnership with the Scottish Institute for Residential Child Care (SIRCC). SIRCC was the predecessor of what is now the Centre for Excellence for Looked After Children in Scotland (CELCIS)³⁷⁶.

³⁷³ B3368736 – Submission. Response to the report of the National Residential Child Care Initiative: Higher Aspirations, Brighter Futures. p. 3. November 2009.

³⁷⁴ B4341873 – Briefing for Adam Ingram on SCRA Report Article in Herald 29 Oct. Looked After Children Strategic Implementation Group. November 2010.

³⁷⁵ Scottish Government. Looked After Children: Permanence and Care Excellence (PACE). Not dated. [cited 2020 Feb 20] Available from: <https://www.gov.scot/policies/looked-after-children/permanence-and-care-excellence/>

³⁷⁶ CELCIS. A short history of CELCIS. 2019. [cited 2020 Feb 20]. Available from: <https://www.celcis.org/about-us/sircc/>

CHAPTER 10

THE NATIONAL STRATEGY FOR SURVIVORS OF CHILDHOOD SEXUAL ABUSE

- 10.1. This chapter of the report responds to point 5 of the section 21 notice and provides an explanation of the National Strategy for Survivors of Childhood Sexual Abuse, including the approach to engagement with survivor groups and campaigners. In 2005, the Scottish Executive launched the National Strategy for Survivors of Childhood Sexual Abuse. This set out a strategic way forward to improve services for survivors, to ensure greater priority and joined-up working in national and local mainstream services, and aimed to improve the lives of those who suffered childhood trauma. 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 (CSA), survivors and other parties³⁷⁷. As part of this chapter there is also information on the Short Life Working Group on Survivors of Childhood Sexual Abuse and the Reference Group on Adult Survivors of Childhood Sexual Abuse.

Scottish Parliament Cross-Party Working Group

- 10.2. The Scottish Parliament Cross Party Group was initially set up in February 2001. A letter from the Scottish Parliament dated 23 September 2002 outlined that³⁷⁸:

“this Cross Party Group on Survivors of Childhood Sexual Abuse was first established following a petition to the Parliament from Kingdom Abuse Survivors Project in Fife, who provides support services to adult male and female survivors³⁷⁹. The Group agrees that within the spectrum

³⁷⁷ A26654557 – Cabinet Paper SC(14)116. Historical Abuse of Children in Care – Proposed Inquiry. December 2014.

³⁷⁸ A17374337 – ATD 1/30 Part 2. Letter of Invitation from Marilyn Livingstone to the Cross Party Group ‘One Year On Event. p. 71 - 73. 23 September 2002.

³⁷⁹ Scottish Parliament. Public Petitions Committee Official Report, Tuesday 24 October 2000. 2000 [cited 2020 February 14]. Available from:

<https://archive.parliament.scot/business/committees/historic/petitions/or-00/pu00-1502.htm>

of survivors, we will include children, young people and adults both male and female. Membership of the Group includes MSPs, survivors, representatives and practitioners from various relevant agencies, as well as individuals and allies with an interest in the furtherance of a strategic response to childhood sexual abuse by the Scottish Executive”.

- 10.3. On 3 October 2002 the Cross Party Working Group met³⁸⁰. The minutes show that they discussed Open Secret’s³⁸¹ conference where there had been interest shown in the proposal for a national strategy to address the impacts of childhood sexual abuse. They discussed the need for the proposed strategy to include scrutiny of the legal system. The issue of support for Nazareth Homes survivors was raised by a representative from the Moira Anderson Foundation.
- 10.4. On 23 October 2002, Ms Macdonald, Vice Convenor of the Cross Party Group on Survivors of Childhood Sexual Abuse wrote to Mr Chisholm, Minister for Health and Community Care, and attached a paper entitled ‘Scottish Parliament Cross Party Group on Survivors of Childhood Sexual Abuse – One Year On’³⁸². The paper outlined some of the work carried out by the Cross Party Group over the previous 18 months since its launch in February 2001:

“The Cross Party Group relates to survivors of childhood sexual abuse as children, young people and adults, both male and female. The term ‘survivor,’ is one that is widely used by people who have suffered abuse and survived it and preferable to that of victim. Membership of the Group is diverse and includes a wide representation of professionals working across Scotland in the field of child abuse. In addition, the Group includes several MSPs, who cover a wide political spectrum. Most importantly of

³⁸⁰ A17666676 - LSF 3/82 Part 1. Minutes of the Scottish Parliament Cross-party Working Group on Survivors of Childhood Sexual Abuse. p. 43. 3 October 2002. Further information on the background to the establishment of the Cross-Party Working Group, its remit and membership, can be found in this file.

³⁸¹ A community service for survivors of childhood abuse. Further information available from: <https://www.wellbeingScotland.org/services/open-secret-falkirk>

³⁸² A17374337 – ATD 1/30 Part 2. Letter from Anne Macdonald, Vice Convenor of the Cross Party Group on Survivors of Childhood Sexual Abuse to Minister for Health & Community Care. Scottish Parliament Cross Party Group on Survivors of Childhood Sexual Abuse – One Year On. p. 19-22. 23 October 2002.

all, many survivors themselves are key members of the Group and their experience is crucial in informing its work.

Initially we decided to attempt to draw up the basis of a National Strategy and formed several sub groups to look at issues of Education & Awareness Raising, Funding, The Criminal Justice System and Mental Health. These groups have met and collated a great deal of important information, which will inform any future work the Executive may carry out.

We also devised a questionnaire³⁸³ to be distributed to both statutory and voluntary organisations across Scotland to ascertain what services are available for survivors from region to region, the gaps identified by the various agencies, their funding arrangements, and their opinion on the requirement for a strategic response to this issue. We are heartened by the number of responses received and detail offered by the various agencies asked to participate...

Due to the courage of survivors in pursuing criminal charges against their abusers and placing their experiences in the public domain, we now have evidence of the extent of the effects of the trauma of childhood sexual abuse. Yet, despite the continuing press coverage of high profile cases, the body of written evidence from survivors and workers in this field during the latter part of the 20th Century, we still find ourselves at the beginning of the 21st Century, with no local or national framework to address the issue itself, or the needs of survivors...

This is not a new population that we are highlighting. Survivors are currently involved in our social and health services, but not receiving, in most cases, the appropriate form of help to deal with the underlying effects of sexual abuse. Appropriate services must be developed across Scotland to assist survivors, past and present, as well as securing consistent long term funding to those projects already in place...

³⁸³ A17375298 – ATC 22/2 Part 1. Scottish Parliament Cross-Party Working Group on Survivors of Childhood Sexual Abuse. Survey of Support Services 2002. p. 258-289. 2002.

The Scottish Executive has implemented a National Strategy to address Domestic Abuse in Scotland; we wish to see a similar initiative for sexual abuse. A clear message from the Executive that it is taking this matter seriously by implementing a National Strategy will give hope to the thousands of survivors across Scotland and reduce the unnecessary stigma attached to incest and child sexual abuse. Scotland has, with our own Parliament, a unique opportunity to lead the way by implementing such a strategy. We hope you will support our work and make this request become a reality”.

- 10.5. On 30 October 2002, the Cross Party Group’s ‘One Year On Event’ took place. Following the event, a note was provided to officials by the Principal Medical Officer, from the Medical Division of the Scottish Executive, which noted that:

“The event was well attended, with nearly 70 people present. In addition to Mr Chisholm, Dr Richard Simpson, Deputy Minister for Justice was in the audience and subsequently joined the panel for discussion. Ms Cathy Jamieson MSP, Minister for Education and Young Children, sent her apologies.

The evening opened with an outline from Anne Macdonald (Project Manager, Kingdom Abuse Survivors Project (Kirkcaldy) and Vice-Convenor of the CPG) of the work of the CPG and what it looked for from the Executive.

- a statement that CSA was a priority
- services to support survivors
- a properly defined care pathway available in each part of Scotland
- an adequate resource to underpin these
- a public awareness campaign
- an overhaul of the judicial system
- respect for survivors

- adequate sentences for perpetrators.

She was concerned that the services set up to deal with domestic abuse were receiving a lot of referrals of people who were CSA survivors, threatening to overwhelm their main purpose. She expressed concern about male survivors of CSA, citing difficulties in disclosure, and a particular worry individuals possibly had about them being seen as perpetrators...

In his speech Mr Chisholm implicitly accepted that a response was needed from the Executive/Health Department and agreed to examine the provision and co-ordination of support for survivors of childhood sexual abuse. He mentioned that I [Principal Medical Officer] would be taking this forward within the Department and to establish a Short Life Working Group to examine the main issues of concern...

The main point which came out of the rest of the [panel] discussion was widespread concern about how heavily the present system of voluntary organisation funding bore on small local voluntary organisations”³⁸⁴.

- 10.6. On 31 October 2002, the Principal Medical Officer provided a further paper to officials “to raise with colleagues the question of how best to progress a departmental focus on the problems experienced by adult survivors of childhood sexual abuse”³⁸⁵. The paper was entitled “A strategy for the care and treatment of adult survivors of childhood sexual abuse?”³⁸⁶.
- 10.7. On 14 November 2002, a briefing from an official to the Minister for Education and Young People, Ms Jamieson, mentioned:

“on support to adult survivors of childhood abuse (generally not just in institutions), the Executive has been in contact with the Parliamentary

³⁸⁴ A17374337 – ATD 1/30 Part 2. Note of meeting. Cross Party Group On Adult Survivors Of Childhood Sexual Abuse, 30 October 2002, Edinburgh City Chambers. p. 16 – 18. 31 October 2002.

³⁸⁵ A17374337 – ATD 1/30 Part 2. Discussion paper by Principal Medical Officer. A Strategy for the Care & Treatment of Adult Survivors of Childhood Sexual Abuse. p. 12 – 14. 31 October 2002.

³⁸⁶ A17666676 - LSF 3/82 Part 1. Internal Minute from Principal Medical Officer to officials. A strategy for the Care and Treatment of Adult Survivors of Childhood Sexual Abuse?. p. 34 and 37. 31 October 2002.

Cross Party Group in the adult survivors of childhood sexual abuse. Progress has been made on a number of relevant areas: the expansion of the Framework for Mental Health Services in Scotland to incorporate and acknowledge the importance of Psychological Treatments; the research report *Beyond Trauma: Mental Health Care Needs of Women Survivors of Childhood Sexual Abuse* has been published and issued to health and local authorities, inviting these agencies to respond to its findings. However, the Executive has not agreed to the cross party group's call for a national strategy"³⁸⁷.

Short Life Working Group on Survivors of Childhood Sexual Abuse

- 10.8. On 3 January 2003, the Principal Medical Officer updated colleagues following a meeting of the Cross Party Parliamentary Group on 30 October 2002. He stated that at the meeting, the Minister for Health and Community Care gave a commitment "to provide a Departmental response to the plight described then of survivors of Childhood Sexual Abuse, in particular the patchiness of services". He continued: "At our meeting there was agreement that the creation of a Short Life Working Group, to report within six months, would be an appropriate way forward. Ideally, it would be chaired by a Consultant in Public Health medicine, would comprise individuals from various strands of service provision, and, if possible, would include people with personal experience of such service use... As a first step to the preparation of a submission to the Minister recommending such a course of action, I agreed to prepare a draft remit, and enclose a copy for your consideration. I should be glad of your response by the evening of 9th January"³⁸⁸.
- 10.9. A briefing regarding the creation of a Short Life Working Group for Survivors of Childhood Sexual Abuse was sent to the Minister for Health and Community Care by the Principal Medical Officer on 21 January 2003. The purpose of the briefing was "To advise the Minister of proposals to deliver his commitment,

³⁸⁷ A17374337 – Briefing from official to Minister for Education and Young People. PE535 – MR CHRISTOPHER DALY. p. 2-11. 14 November 2002.

³⁸⁸ A17666676 - LSF 3/82 Part 1. Emails between officials. Childhood Sexual Abuse Survivors SLWG. p. 12. 3 January 2003.

given at a meeting of the Cross Party Parliamentary Group on 28 October [2002], to produce guidance for local service providers in for the organisation of care for survivors of childhood abuse". The paper recommended that in order "to deliver on this commitment and to involve the relevant constituencies of interest it is proposed that a Short Life Working Group be established to be chaired by a Consultant in Public Health Medicine. Membership will be drawn from the range of current and potential service provides including the voluntary sector, together with users of such services or their representatives". The paper invited the Minister to agree "that a Short Life Working Group be established for the purpose stated; the remit, and associated timetable; and that consideration be given and approaches made to potential members"³⁸⁹.

10.10. A response to the briefing was sent to the Principal Medical Officer on 22 January 2003 which stated "Mr Chisholm has seen your minute of 21 January and is content to agree your recommendations"³⁹⁰.

10.11. The first meeting of the Short Life Working Group on Survivors of Childhood Sexual Abuse was held on 7 May 2003³⁹¹ where the Principal Medical Officer explained that "the genesis for Ministerial interest in survivors' needs lay in [a] research report published in 2001³⁹². Follow-up work had involved the Executive issuing a letter to NHSScotland and local authorities inviting agencies to respond to the research findings, and Ministerial involvement in the work of the Parliament's Cross Party Working Group on Adult Survivors of CSA. Ministers across the Executive have acknowledged that CSA is a sizeable problem, with survivors' needs impacting across the broad spectrum of public service responsibilities. He [Principal Medical Officer] had been

³⁸⁹ A17666676 – LSF 3/82 Part A. Briefing from Principal Medical Officer to Minister for Health and Community Care. Survivors of Childhood Sexual Abuse (CSA) Creation of a Short Life Working Group. p. 8 -11. 21 January 2003

³⁹⁰ A17666676 – Email from Minister for Health and Community Care to Principal Medical Officer. RE: Survivors of Childhood Sexual Abuse (CSA): Creation of a Short Life Working Group. p. 6. 22 January 2003.

³⁹¹ A17375298 – ATC 22/2 Part 1. Note of meeting of SLWG on Survivors of Childhood Sexual Abuse, Wednesday 7 May, Media Centre 2, St. Andrew's House, Edinburgh. p. 210-214. 7 May 2003.

³⁹² Nelson, S, Phillips, S. Beyond Trauma: Mental Health Care Needs of Women Survivors of Childhood Sexual Abuse : Final Report. 2001. Commissioned by Edinburgh Association for Mental Health and Edinburgh University. Details at:

https://openlibrary.org/books/OL18539681M/Beyond_trauma

asked by the Health Minister to lead efforts to help drive forward improvements in health and social care responses, and that Mr Chisholm had high hopes for positive outcomes from the Group's efforts. Although prompted by the Health Minister this is an issue which cuts across many service areas and boundaries, and on which all Scottish Ministers are keen to see action taken". The remit of the Short Life Working Group was outlined as follows³⁹³:

"Short Life Working Group on the Care Needs of People who are Survivors of Childhood Sexual Abuse (CSA).

Remit:

Using knowledge of the best evidence-based practice, and experience of the most appropriate ways to provide services in a local area, and accepting the recent World Health Organisation estimate (2002) (<http://www.who.int/whr/2002/en/>) that the prevalence of non-contact, contact and intercourse types of CSA totalled 21% in women and 2% in men is as valid for Scotland as elsewhere, to consider:

- Ways of improving the commissioning and management of care for all people in Scotland who are CSA survivors, in the community, in primary health-care services and in secondary health services, (obstetrics and gynaecology, substance misuse and mental health in particular).
- What supports could be offered to voluntary organisations, to the Primary Health Care Team, to local authority services and to community mental health teams in providing appropriate help to CSA survivors.
- The training requirements for staff in all organisations, particularly in the matters of disclosure and immediate response.

³⁹³ A17375298 – ATC 22/2 Part 1. Letter from Principal Medical Officer to Consultant – Invitation to join Short Life Working Group on Survivors of Childhood Abuse. Appendix A - Remit of the Short Life Working Group. p. 230 - 233. 4 February 2003.

- How individuals who are CSA survivors and who require help should be assisted to access skilled care at the level they need.
- How the accumulated experience of CSA survivors and the expertise of voluntary organisations can best be utilised in partnership with the local statutory organisations to increase public awareness of the impact CSA has on public mental health, and what can be done by the local community to change this.
- How the continued care of a young person already in receipt of help for an experience of CSA can be assured as that person moves into adulthood.
- What should be the particular focus of any research in Scotland into the prevalence and treatment of CSA survivors”.

10.12. The Short Life Working Group subsequently met between June 2003 and October 2003 and over the course of these meetings took evidence from a range of professionals and services, and met the Cross Party Group^{394,395,396,397}. Mr Chisholm commissioned a report to identify how best to respond to survivors' care needs. The work of the Short Life Working Group resulted in a report entitled: “The Report of the Scottish Executive Short-Life Working Group on the care needs of people who have survived childhood sexual abuse - Services for Adult Survivors of Childhood Sexual Abuse”³⁹⁸.

10.13. The Short Life Working Group held an event (Improving Care Responses for Adult Survivors of Childhood Sexual Abuse Conference) on 28 April 2004 at

³⁹⁴ A17375298 – ATC 22/2 Part 1. Note of meeting of SLWG on Survivors of Childhood Sexual Abuse. p. 149–151. 3 June 2003.

³⁹⁵ A17375298 – ATC 22/2 Part 1. Note of meeting of SLWG on Survivors of Childhood Sexual Abuse. p. 152–155. 26 June 2003.

³⁹⁶ A17375298 – ATC 22/2 Part 1. Note of meeting of SLWG on Survivors of Childhood Sexual Abuse. p. 101–104. 19 August 2003.

³⁹⁷ A17375298 – ATC 22/2 Part 1. Note of meeting of SLWG on Survivors of Childhood Sexual Abuse. p. 55 - 58. 2 October 2003.

³⁹⁸ A19136316 - The Report of the Scottish Executive Short-Life Working Group on the care needs of people who have survived childhood sexual abuse - Services for Adult Survivors of Childhood Sexual Abuse. No date.

which they presented the report cited above, and during which two survivors talked about their experiences of service responses³⁹⁹.

- 10.14. The Short Life Working Group submitted its findings in late July 2004 to the Scottish Executive for official comment on “how existing strategies will address existing shortcomings”⁴⁰⁰. It found that “childhood sexual abuse is under-reported and that whilst many survivors were receiving health and social care services, these were not co-ordinated in ways that would respond sensitively and holistically to meet the complex needs of individuals effectively”⁴⁰¹.
- 10.15. On 23 September 2004 an official sent a briefing⁴⁰² to the Minister for Education and Young People prior to his appearance before the Petitions Committee. A ‘Q & A lines to take’ document was attached, which was subsequently revised^{403,404}. In the version marked as ‘final’⁴⁰⁵, the document provided answers to a number of questions. An anticipated, potential, question regarded survivor engagement. The question was “Why did you exclude In Care survivors from participating in the work of the Short Life Working Group membership?” and the suggested response was:

“That's inaccurate and unfair. The remit was to identify and recommend how best to improve care services for survivors of sexual abuse, requiring members of the SLWG to have knowledge and expertise from across the health and social care sector - invitations to participate issued in May 2003 - before INCAS was established and known to Executive officials. It's focus went beyond those who were abused in a residential institution. The survivor perspective was important however, that is why

³⁹⁹ A19136316 - The Report of the Scottish Executive Short-Life Working Group on the care needs of people who have survived childhood sexual abuse - Services for Adult Survivors of Childhood Sexual Abuse, Appendix B - Testimonies of Survivors. p. 35–41. No date.

⁴⁰⁰ A17759083 – FZJ 003/008 Part 1. Briefing from official to Deputy Minister for Health and Community Care. p. 5–14. 22 December 2004.

⁴⁰¹ A20785232 – Email chain between officials, attaching briefing to Minister for Health and Community Care. FW: Adult Survivors of Childhood Sexual Abuse. 13 May 2005.

⁴⁰² A18922406 – Email from an official to Minister for Education and Young People. Briefing for Minister's Appearance at PCC – 29 September. 23 September 2004.

⁴⁰³ A18922419 – Email between officials. Immediate – Revised Q & A Briefing for Minister's appearance before PPC 29/09/04. 28 September 2004.

⁴⁰⁴ A18922560 – Email between officials. FW: Immediate – Revised Q & A Briefing for Minister's appearance before PPC 29/09/04. 28 September 2004.

⁴⁰⁵ A18922327 – Email between officials. FINALQ&ADOC. 28 September 2004.

5 voluntary sector care providers were invited to participate, together with the Scottish Parliament's Cross Party Group for Survivors - I understand that INCAS did have some representation on the CPG, and so would have received regular feedback from their representative on progress.

It would have been inappropriate and insensitive to have asked any representative on the Group if they had been a victim of in-care abuse. My officials have recently met with INCAS to explain the processes involved, and how the report will now be taken forward. I hope they have been reassured. They have been provided with a copy of the report, and I would be happy to consider their views on it"⁴⁰⁶.

10.16. A briefing on the report of the Short Life Working Group was sent to the Deputy Minister for Health and Community Care from an official on 22 December 2004. The paper noted "Given its cross-cutting nature, a number of Ministers are involved in considering appropriate next steps... The report acknowledges that concerted, long-term, action is necessary and while survivors of CSA, the Cross Party Group and voluntary sector agencies will understand that the scale of the task will take time to deliver, they expect firm commitments now. Annex A contains more detailed material on the sensitivities, particularly funding issues, and our recommendations provided are based on these...". The paper recommended that "given the cross-departmental Ministerial interests... all responsible Ministers meet and agree a collective response, ideally before Mr Kerr [Minister for Health and Community Care] meets with the Cross Party Group on 13th January 2005"⁴⁰⁷.

10.17. On 13 January 2005, the Minister for Health met the Cross Party Group on Survivors of Childhood Sexual Abuse. It was highlighted that "the Minister acknowledges current challenges in the system about service demand and need for additional money. Minister understood reasons behind call for a national strategy, but mentioned strategies already exist, suggested further

⁴⁰⁶ A18922327 – Email between officials. FINALQ&ADOC. 28 September 2004.

⁴⁰⁷ A17759083 – FZJ 003/008 Part 1. Briefing to Deputy Minister for Health and Community Care from official. Report of the Short Life Working Group – (SLWG) On Improving Care Services for Adult Survivors of Childhood Sexual Abuse (CSA). p. 5–15. 22 December 2004.

thought should be given to achieving the same outcomes. Minister agrees to convene a meeting of relevant Ministers, but noted the Executive needs to work with the group to ensure Executive's response is appropriate"⁴⁰⁸.

10.18. On 2 February 2005, the Minister for Health and Community Care met other relevant Ministers (Ms Jamieson, Mr Chisholm and Mr Peacock) to discuss handling the report of the Short Life Working Group. During the meeting the following points were made:

- "The needs of survivors require a co-ordinated response, touching on policies within Health, Communities, Education and Justice.
- Many survivors do not have specific additional needs and so lessons should be learnt from this. However, the survivors need to feel that they have ownership and so the Executive should help them to develop solutions.
- There is a further group considering In-Care survivors with funding already committed to this work, but there is a need to ensure the work links closely with the more general approach, whilst being aware of the sensitivity of 'badging' the groups together.
- Individual problems are very different, but they are currently treated very differently in different parts of the country.
- Funding some of the recommendations, e.g. homelessness, would show Executive commitment.
- Ministers should agree a way forward before any external work is pursued, including the appointment of any consultants"⁴⁰⁹.

10.19. On 13 May 2005, an official sent a Minute to the Minister for Health and Community Care regarding "A Strategy for the Care and Treatment of Adult Survivors of Child Sexual Abuse". The purpose of the minute was "to advise

⁴⁰⁸ A20785232 – Email chain between government officials, attaching briefing to Minister for Health and Community Care. FW. Adult Survivors of Childhood Sexual Abuse. 13 May 2005-23 May 2005.

⁴⁰⁹ A19123912 – Email from official to Minister for Health and Community Care. Meeting: Survivors of Childhood Sexual Abuse: 2 February 2005. 7 February 2005.

the Minister on how to put in place a coherent strategy for survivors of childhood sexual abuse (CSA)". The minute: outlined the remit, aims and aspirations of the Cross Party Group on Survivors of Childhood Sexual Abuse (Annex A); summarised the remit, findings and recommendations of the Short Life Working Group on the care needs of people who have survived childhood sexual abuse (Annex B); reviewed evidence-based research about successful interventions (Annex C); described Scottish Executive wide initiatives that were benefiting or would benefit adults survivors (Annex D); outlined Cosgrove recommendation 26⁴¹⁰ (Annex E) and how this could be implemented as part of wider training proposals; and analysed the above elements and translated them into a statement of intent "to bring about necessary change within a 3 year timeframe". The minute recommended: "the Minister consent to creation of Reference Group which would include adult survivors to help us implement an national strategy"; agree priorities to demonstrate to external stakeholders that the Scottish Executive was taking concerns seriously and would act quickly; indicate whether he wished the Department to find £3 million for the strategy; and decide whether to agree to the Cross Party Group on Survivors of Childhood Sexual Abuse request to have a professional lead the implementation of the strategy, working alongside officials in the Executive to take this forward"⁴¹¹.

10.20. Annex D of the Minute reminded the Minister that the Scottish Executive's Vulnerable Adults Unit brought together officials from across the Executive to map what they were doing and planning to do to improve quality of life and services for adult survivors. It provided a summary of those activities.

10.21. On 2 June 2005, a meeting was held between the Minister for Health and Community Care and representatives of the Cross Party Group⁴¹². During this meeting, common themes that had emerged from Cross Party Group's work,

⁴¹⁰ Scottish Government. Reducing the Risk – Improving the response to sex offending [Internet]. 2006 [cited 2020 February 14]. Available from: <https://www.webarchive.org.uk/wayback/archive/20180516003908/http://www.gov.scot/Publications/2001/06/9284/File-1>

⁴¹¹ A20785232 – Email between officials, attaching briefing to Minister for Health and Community Care. FW: Adult Survivors of Childhood Sexual Abuse. 13 May 2005.

⁴¹² A20794756 – Briefing from official to Ministers. Survivors of Childhood Sexual Abuse. 27 July 2005.

the Short Life Working Group report, and more recent research, were discussed. At the meeting, it was noted that the themes highlighted a need for:

- Better data collection;
- Public awareness raising, creation of self-help tools and training for professionals across all disciplines and at all levels;
- A network of survivors, practitioners and researchers to collaborate on the systematic development of good practice across Scotland;
- Local demonstration projects to develop and disseminate good practice nationally;
- Improved commissioning and resourcing of services at local level;
- More specialist and intensive support for those who require it, recognising the fluctuating and long-term needs of many survivors;
- Clear inclusion of adult survivor issues in mainstream policies;
- Identification of adult survivors in the prison population;
- Creation of change programmes targeted at prevention of further sexual offending to take forward the Cosgrove recommendation;
- Underpinning and ongoing evaluation.

10.22. Following the discussion on these themes, it was agreed that the following actions would be undertaken:

- Creation of a Reference Group which would include adult survivors and Cross Party Group representation, to help the Scottish Executive implement action;
- Appointing a lead professional to assist implementation of this strategy;
- Establishing a Survivors' fund of £2 million;

- Publishing a paper which highlights mainstream Scottish Executive initiatives that already benefit survivors;
- Scoping what Community Health Partnerships and Managed Clinical Network structures could offer given that survivors are not yet aware of the potential benefits these could bring;
- Creating a network of professionals and adult survivors (which could be virtual);
- Commissioning NHS Education for Scotland (NES) to undertake self-help training and public awareness-raising;
- Calling for bids for demonstration projects – to be met from the Survivors’ fund.

10.23. On 8 June 2005, Scottish Executive officials attended a Cross Party Group meeting where the “recommendations [as discussed in the meeting of 2 June 2005] were agreed with minor amendments, particularly concerning the relationship between prisoners and perpetrators and also to strengthen the fact that there should be ongoing evaluation”⁴¹³.

10.24. On 27 July 2005, an official provided the Ministers for Health and Community Care, Justice, Education and Young People, and Communities, with a briefing for a BBC radio interview that Lewis Macdonald (Deputy Health Minister) had been asked to do. Additionally, she attached a list of suggested members of a Reference Group on Adult Survivors of Childhood Sexual Abuse⁴¹⁴.

10.25. The briefing for Lewis Macdonald on the Survivors Strategy, which was for a BBC radio interview, included a Q&A Briefing covering topics such as: what was being done to improve services, why it had taken so long for any action to be taken, funding, whether survivors were consulted with, and what support was the Scottish Executive giving survivors. The briefing noted that measures within the Survivor Strategy had met Ministerial agreement, but had not yet

⁴¹³ A20794756 – Briefing from official to Ministers. Survivors of Childhood Sexual Abuse. 27 July 2005.

⁴¹⁴ B88463 – Email from official to Ministers, with suggested members of a Reference Group on Adult Survivors of Childhood Sexual Abuse. FW: Adult Survivors. 27 July 2005.

been announced; including not yet announcing the funding of £2 million to set up the Survivors' Fund. The briefing noted that no announcements would be made during the interview⁴¹⁵.

10.26. The briefing also reported on key progress since June 2005, namely:

- Officials met Ms MacDonald, co-chair of the Cross Party Group, during which ideas were discussed about the remit and membership of the reference group. Ms MacDonald introduced the idea of a positive motion to mark the announcement which Marilyn Livingstone [MSP and member of the Cross Party Group] had put forward. The Scottish Executive had supported the motion.
- National Reference Group membership had been agreed, in conjunction with the Cross Party Group and the Scottish Executive's Looked After Children and Youth Work Division. Officials were to seek Ministers' views on the group's remit after discussion at a first meeting, planned for 6 September⁴¹⁶.

10.27. The first meeting of the National Reference Group on Childhood Sexual Abuse (referred to as the National Reference Group thereafter) was held on 6 September 2005. The meeting was attended by both survivor representatives and Scottish Executive officials. The Meeting was chaired by an official, who outlined the previous work that had been undertaken that had led to the creation of a national strategy and that the role of the group was to help implement it. The official told the group that the recommendations which had come out of the Short Life Working Group had been agreed by Ministers and by the Cross Party Group. These would form the basis of the work of the group.

10.28. There was discussion about the inclusion of non-sexual abuse. Some members felt that the focus should be on childhood sexual abuse, as it had been a long and difficult task to get it onto the agenda. Others felt that all

⁴¹⁵ A20794756 – Briefing from official to Ministers. Survivors of Childhood Sexual Abuse. 27 July 2005.

⁴¹⁶ A20794756 – Briefing from official to Ministers. Survivors of Childhood Sexual Abuse. 27 July 2005.

forms of abuse should be given equal standing in the remit. It was agreed that there were similarities in services provided for all forms of abuse, abuse manifests itself in all manner of behaviours and that there should be more focus on the effects of abuse as a whole and expertise shared from all perspectives⁴¹⁷.

10.29. The launch of the National Strategy was the subject of a debate in Parliament on 22 September 2005⁴¹⁸. The briefing for that debate advised 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”⁴¹⁹.

10.30. The following was contained in the question and answer sheet which accompanied the briefing:

“What is being done to improve services? The parliamentary Cross Party Group was set up as a forum for debate on the issue of childhood sexual abuse, its long term effects and links with mental health problems, alcohol and drug abuse, physical abuse, domestic violence and homelessness. We have also recently been considering the findings and recommendations which arose from a Short Life Working Group report and decided that a national strategy is needed to kick start the development of better local services. A range of other proposals have been agreed upon, including the establishing of a survivors' network which we are confident will give survivors a say in how services can be improved.

⁴¹⁷A17678444 – UGJ 004/028 Part 1. Reference Group on Adult Survivors of Childhood Sexual Abuse. Meeting Minutes. p. 185–192. 6 September 2005.

⁴¹⁸ Scottish Parliament. Meeting of the Parliament. 22 September 2005 [cited 2020 February 14]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4602&mode=pdf>

⁴¹⁹ A20794809 – Briefing from official to Deputy Minister for Health and Community Care. Members Business Motion: S2M-3074 Marilyn Livingstone: Adult Survivors of Childhood Sexual Abuse Debate, Thursday, 22 September 2005. 15 September 2005.

What do you hope to achieve? The aim of this work would be to effect a step change in service responses to adult survivors of childhood sexual abuse in Scotland. This would lead to improved access to local services, more people recovering from their early trauma and being able to lead normal lives, and more efficient use of public sector resources. It would also shift public awareness and societal responses to childhood sexual abuse. This would mean that girls and boys would more readily disclose abuse at an earlier stage, thus preventing longer term damage.

Why has it taken so long for any action to be taken? Scottish Ministers strongly recognise the need for more and better joined up services to improve support for survivors of childhood sexual abuse and have taken very positive action in putting together this strategy. This has taken time which has been completely necessary in order to reach sound, reasoned decisions agreed by officials and stakeholders representing all interests. It is the policy development that is important, and the funding is only one aspect of the whole strategic approach to address all aspects of childhood sexual abuse and so achieve lasting progress.

When are we likely to see results? This is a long term project which will take time to fully deliver but these initial steps are positive proof that we are determined that survivors receive the most appropriate and sensitive care and support relevant to their needs. We hope to see a sustained effort to improve levels of understanding and awareness of this issue amongst all statutory agencies.

£2m is not likely to go very far is it? The funding is only one aspect of the whole strategic approach to address all aspects of childhood abuse and so achieve lasting progress. £2m is a starting point and a means to boost the areas the reference group consider to be most in need. More than anything there needs to be an awareness raising campaign which raises the profile of existing services and in turn makes best use of these. The strategy will be geared towards identifying tasks that are for local authorities and health boards to take forward, possibly using existing resources. The Executive currently fund 2 organisations who work in this

field. These are The Moira Anderson Foundation - a National Charity set up in Scotland to assist children and families affected by child sexual abuse, and support those individuals whose cases progress through the legal system and Men Against Sexual Abuse (MASA).

Will any of the funding be given to perpetrators? Yes. Some funding will be spent on education programmes targeted at changing the behaviour of perpetrators and potential perpetrators as well as to look into other strands and behaviours that can be linked to abuse. This will go beyond education to include projects that give perpetrators as well as survivors better access to more sensitive and responsive counselling and support services.

Why? We have a commitment which came from the Cosgrove Report to give consideration to identifying and securing funding for risk assessment and personal change programmes for: individuals who have admitted sexually offending behaviour but without providing sufficient information to secure a conviction individuals who admit concerns that they may be at risk of sexual offending and convicted sex offenders who remain at risk but are not subject to statutory supervision and who require ongoing support/intervention to reduce the risk they present to the public.

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 535.

What support are you currently giving survivors? We are anxious to do the right thing by the survivors of past abuse. The Executive directly supports a range of survivor and victim support services in Scotland, and there are many good and valued services available, and more are developing all the time e.g. within Children's services, for those with mental health problems, and from implementing our Domestic Abuse and Victims' Support strategies across Scotland. At a strategic level, we continue to work with stakeholders in the NHS, local authorities and the voluntary sector to be more responsive to identified needs. The key emphasis for our Community Health Partnerships is on improving the access to services, particularly to disadvantaged groups.

Does the Minister recognise the range of needs survivors are likely to have? The needs can be many and varied and no two cases will be the same. The long-term effects of childhood sexual abuse are now better understood, and need sensitive long-term care responses. 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 need to listen and learn from survivors on what works best for them, and to better integrate services in partnership.

Does funding for men come from any other Scottish Executive sources? The Scottish Executive's Choose Life suicide prevention strategy is working to reduce suicide rates across Scotland. The Thrive Initiative receives funding from the Glasgow Choose Life Local Action Plan. £40k for 2004/05 and £40k in 2005/06 has been allocated for this work. Thrive works primarily with males who have been the victims of childhood sexual abuse, by encouraging self-referrals. The service aims to engage this high-risk group which is unlikely to seek help through conventional NHS services. Despite operating in Glasgow Thrive welcomes referrals from all over Scotland.

How are you helping to raise awareness of the issues? We are working to increase public awareness on the booklet entitled 'Working with Survivors of Childhood Sexual Abuse'⁴²⁰. The booklet aims to provide advice and information for a range of frontline practitioners; so that they can be clear about what childhood sexual abuse is what its effects can be and how to raise the issue and support people. Part of the remit of the Reference Group is to address the need for better training and good practice guidelines. We see this booklet as an important part of this. It is also part of a programme of activities designed to break the silence around sexual abuse and encourage appropriate disclosures in that we hope it will help practitioners become more confident in supporting people who disclose sexual abuse. This is likely to be published in the next few weeks.

Why are you extending the remit of the Reference Group to include other types of abuse? What support have you provided to survivors of in care abuse? The Minister for Education and Young People, Peter Peacock, set out a package of measures during the parliamentary debate of 1 December 2004. This comprised:

Access to information:

- all available relevant files held by the Scottish Executive, suitably redacted were made available for public inspection from January 2005. Web page on internet explains the process and a helpline was set up to provide information on how to access what we hold.
- Scottish Information Commissioner invited to examine what we have been doing to trace and open up our files. This report has now been published and concluded that the Executive had done everything in their power to make files accessible to the public.

Establishment of a Short life working group

⁴²⁰ A17678444 – UGJ 004/028 Part 1. Nelson, S, Hampson, S. Working with Survivors of Childhood Sexual Abuse. p.241. September 2005.

- this work is now being taken forward in conjunction with the work on providing support to survivors of childhood sexual abuse.

Independent expert

- Announced Tom Shaw is to be appointed to analyse 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 practice⁴²¹.

Launch of the National Strategy

- 10.31. The SurvivorScotland launch document, which was published in September 2005, “sets out a strategic way forward, agreed by Scottish Ministers, which will be led and coordinated by a national Survivors Reference Group”. It outlined that “the Survivors Reference Group has agreed that, while the main focus will be on survivors of sexual abuse, wider issues of abuse will also be considered. It is in the early stages of developing a working plan spanning an 18 month to 2 year period to deliver on these key action points”.
- 10.32. The document stated that “[i]nput from survivors in identifying what works best will be critical”.
- 10.33. When describing the strategy the document highlighted that “the following action steps have been agreed as necessary by Scottish Ministers following the work of the Short Life Working Group, and in discussion with representatives of the Cross Party Group... These action steps include: Better data collection; Public awareness raising, creation of self-help tools and training for professionals across all disciplines and at all levels; A network of survivors, practitioners and researchers to collaborate on the systematic development of good practice across Scotland; Local development projects to develop and disseminate good practice nationally; Improved commissioning and resourcing of services at local level with more specialist and intensive

⁴²¹ A20794809 – Briefing from official to Deputy Minister for Health and Community Care. Members Business Motion: S2M-3074 Adult Survivors of Childhood Sexual Abuse Debate, Thursday, 22 September 2005. 15 September 2005.

support for those who require it, recognising the fluctuating and long-term needs of many survivors; Clear inclusion of adult survivor issues in mainstream policies; Identification of adult survivors in the prison population; Creation of change programmes targeted at prevention of further sexual offending to take forward the Cosgrove Report Recommendation 26, and Research – Underpinning and ongoing evaluation”⁴²².

10.34. On 28 October 2005, the National Reference Group met. It was noted that “the CSA debate brought about by Marilyn Livingstone’s motion had taken place on 22 September and had been successful in congratulating the Scottish Executive on progress and in highlighting the Strategy... Mr Macdonald’s words were welcomed in that they demonstrated the Executive’s understanding of, and commitment to, survivors’ issues.... Christopher [Daly, In Care Abuse Survivors (INCAS)] indicated that he had picked up “some confusion around the mention of the previous debate which had centred around Institutional abuse rather than CSA. There followed a short discussion and Helen [Holland, In Care Abuse Survivors (INCAS)] said that she considered that Institutional Abuse generally tied in with other aspects of abuse and would hope that INCAS was welcome to the Group. [An official] said she was sure she spoke on behalf of the entire Group in confirming this to be the case and everyone voiced their affirmation”⁴²³.

10.35. On 19 May 2006, the National Reference Group met. A number of matters were discussed about the National Strategy, including: the creation of a website, data collection and the development fund. An official commented on “the progress the group has made and asked members to consider the frequency and length of meetings, whether we should move meetings between Edinburgh and Glasgow... The volume of work involved in the reference group was discussed and whether we needed to use additional resources to assist the lead professionals. It was agreed however that it was too early to discuss the resource and staffing situation... It was agreed that

⁴²² A25980583 – Scottish Executive. SurvivorScotland: A Survivor-centred Strategic Approach for Survivors of Childhood Sexual Abuse. Edinburgh. September 2005.

⁴²³ A17678444 – UGJ 004/028 Part 1. National Reference Group on Adult Survivors. Minutes of Meeting. p. 177–182. 28 October 2005.

we will hold an away day to allow us to plan the future direction of the group and look more closely at individual roles. We can also develop ideas for the national conference scheduled for later in the year and the day will present the opportunity to consider progress and the future direction of the strategy... There was general recognition of all the hard work that everyone had so far done for the Reference Group... It was agreed that meetings will move from a 6 weekly to a 2 monthly basis and that they will be held in Glasgow, on occasion”⁴²⁴.

- 10.36. On 28 June 2006 the Scottish Executive published a document entitled: ‘A Survivor-centred Strategic Approach: National Strategy and Progress Report’⁴²⁵. This document provided a summary of progress against each of the action steps that had previously been agreed, along with detail of important developments since the National Strategy launched in September 2005.
- 10.37. On 1 September 2006, the National Reference Group met⁴²⁶. The group discussed progress on a number of key areas linked to the National strategy; for example, “data collection, the creation of the website, the development fund and a number of meetings with the Scottish Prison Service regarding both survivors and perpetrators of abuse”⁴²⁷. The group also received a presentation on the National Training Strategy and a report was provided entitled ‘Beyond Trauma – National Awareness Training Project’⁴²⁸. Among the areas that were highlighted was “the lack of training given to undergraduates in occupational health and welfare services on this issue, although this was now being addressed. It was also noted that there were very few men attending training sessions”.

⁴²⁴ F251961 – National Reference Group. Minute of Meeting of National Reference Group on Adult Survivors. 19 May 2006.

⁴²⁵ F391777 – Scottish Executive: Survivors of Childhood Sexual Abuse. A Survivor-Centred Strategic Approach: National Strategy and progress report. July 2006.

⁴²⁶ F590963 – National Reference Group. Note of meeting of the National Reference Group on Adult Survivors of Childhood Sexual Abuse held on Friday 1 September 2006. 1 September 2006.

⁴²⁷ F389801 – Adult Survivors Strategy Progress Report. 15 August 2006.

⁴²⁸ F590963 – National Reference Group. Note of meeting of the National Reference Group on Adult Survivors of Childhood Sexual Abuse held on Friday 1 September 2006, containing Annex A Beyond Trauma – National Awareness Training Project Report – August 2006. 1 September 2006

- 10.38. A progress report was produced by the National Reference Group on 9 January 2007. This document included discussion of the Group's away day⁴²⁹, during which survivor involvement was a key topic. It was noted "there was general agreement that they needed to be more closely involved as they had direct experience, skills and knowledge. They were experts by experience"⁴³⁰.
- 10.39. On 19 January 2007, the National Reference Group met. The meeting included discussion of a Development Fund, with an official noting "that it was necessary for a wide range of organisations to be able to apply due to the need, for example, to accommodate the Cosgrove recommendation". This recommendation related to consideration being given to identifying and securing funding for risk assessment and personal change programmes for certain individuals who had admitted sexually offending behaviour or that they were at risk of sexual offending. It was also noted by the official that "there now seemed to be an appropriate voice from Survivors within the group"⁴³¹.
- 10.40. The Adult Survivors Development Fund Eligibility Guidance was produced by the Scottish Executive on 6 February 2007⁴³².
- 10.41. On 28 February 2007, SurvivorScotland's National Conference took place: "Scotland is the first country within the UK to have a national strategy for adult survivors of childhood sexual abuse and this was first national conference on the subject". SurvivorScotland's report on the conference noted:

"The conference placed a strong emphasis on partnership working and on the importance of identifying and addressing the wide range of support needs that survivors have. The turnout was remarkable. The conference was intended for 150 participants but, due to demand, was extended to 330. Delegates came from a diverse range of backgrounds, and presenters and facilitators, many with vast experience in the field,

⁴²⁹ F553000 – Away Day Findings Tied in With The National Strategy. December 2006.

⁴³⁰ F590973 –Adult Survivors Strategy – Progress Report. 09 January 2007.

⁴³¹ F612874 – Meeting minutes from reference group. Note of Meeting of National Reference Group on Survivors of Childhood Sexual Abuse held on Friday 19 January 2007. 19 January 2007.

⁴³² F584686 – Guidance document. Sexual Abuse Service Development Fund (SASDF): Working with Survivors of Childhood Sexual Abuse 2007-2009 – Eligibility Guidance. 6 February 2007.

put in considerable effort to make the event a success. They were joined by many survivors who all talked openly and honestly about their own experiences and about their enthusiasm for the strategy as a gateway to the recovery process. Lewis Macdonald, Deputy Minister for Health and Community Care and Marilyn Livingstone, MSP, Chair of the Parliamentary Cross Party Group on Survivors of Childhood Sexual Abuse also gave their support. Survivors have since expressed how positive the media coverage has been in terms of their recoveries. This shows that we are reaching out to people who otherwise would not have chosen to be part of official support systems. The SurvivorScotland website which was demonstrated at the conference is in the final stages of development and will further help to take this flagship policy forward. It will become the conduit for exchanging and developing good practice”

433.

10.42. On 27 April 2007, the National Reference Group met. An update on the Development Fund was provided⁴³⁴. It was highlighted that “[t]he closing date for applications to the Fund was 30th March. The Independent Panel met on 16th April to assess they match against the criteria required. They will reconvene on 30th April to update us on the numbers to be taken to the next sift. The fund received 98 applications⁴³⁵ Total monetary bids for over 2 years - £12,153,564”.

10.43. A further discussion about a survivor sub-group took place, “but it was felt that this was not the right time for such a group. There are enough representatives on the group to go back to survivor organisations and update them on the strategy and receive feedback to take back to the reference group”. It was proposed that there should be an in care abuse subgroup. It was explained that:

⁴³³ F1000515 – SurvivorScotland. survivor-centred strategic approach for survivors of childhood sexual abuse. 2007. 28 February 2007.

⁴³⁴ F754104 – Report. National Strategy for Survivors of CSA Reference Group Update and Report – April 2007. April 2007.

⁴³⁵ F751288 – Spreadsheet. summary of the Adult Survivors Development Fund applications. 19 April 2007.

“the sub group will advise the main reference group on in care abuse and the relevant organisations and support services available. It would allow more detailed discussions than is available to the reference group around the issues surrounding in care abuse to take place. The initial petition presented to Parliament was in regards to historic abuse and it was important that the sub group focus on this. Concern was voiced that the strategy group may begin to break up and that some groups may feel that they are shut out of any sub group. It is always therefore important to remember and stress that the strategy is about all survivors”⁴³⁶.

- 10.44. According to briefing by officials provided in 2007, the National Reference Group recognised that the needs of survivors of abuse in care required a more detailed approach than could be provided within the group. It therefore established a sub-group in June 2007, which included four survivors, Who Cares? Scotland and the Scottish Institute for Residential Child Care (SIRCC). This group’s remit was to produce proposals for a national framework for support services by February 2008 and tied in with Tom Shaw’s recommendation for a centre for those abused in care⁴³⁷.
- 10.45. On 6 September 2007, a briefing to the Minister for Public Health from an official was sent to outline “the background to the Sexual Abuse Service Development Fund, to explain the way in which applications were processed by an Independent Scrutiny Panel, to provide their analysis and additional advice from officials”⁴³⁸. The Minister was invited to consider and approve the funding proposals that were detailed within the brief and provided detail of each of the 98 organisations that had been both successful and unsuccessful with regard to their funding applications.
- 10.46. On 5 October 2007, the National Reference Group met. The Sexual Abuse Service Development Fund was discussed. It was explained “that the review

⁴³⁶ F790963 – Meeting minutes. Adult Survivors of Childhood Sexual Abuse – Steering Group Meeting. 27 April 2007.

⁴³⁷ B1801941 – Email with Minute to Cabinet Secretary for Justice and Minister for Children and Early Years to discuss government activity around historical abuse. 28 November 2007.

⁴³⁸ F994341 – Briefing to the Minister for Public Health. ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE: ABUSE SERVICE DEVELOPMENT FUND (SASDF). 6 September 2007.

panel had considered each application against the set criteria and made their recommendations to Ministers. Letters advising applicants of the result of their application had been issued earlier in the week. It was acknowledged that there will be disappointment amongst those organisations that have been unsuccessful, but it was stressed that all the applications had been of a high standard. Organisations have been offered the opportunity to submit a brief note on the work they do for inclusion in the website. Overall there was both a good geographical spread of successful bids, and a good mix of services offering support for both male and female survivors. There were also successful bids that touched on the strategy's need to look at Recommendation 26 of the Cosgrove Report”.

- 10.47. There was general discussion about progress: “Progress has been made, and the strategy is becoming better known, but still more work to be done here. There was talk around the Mental Health Delivery Plan which did not mention sexual abuse and the attempts to have this rectified... More needs to be done to scope issues for research relevant to survivors. More focus on outcomes, and making a difference now for survivors... Ensure regular and complete monitoring of the projects successful in the development fund”⁴³⁹.
- 10.48. On 11 December 2007, an official provided a briefing for the Minister for Children and Early Years about the Scottish Law Commission's (SLC) Report. It included information on the SurvivorScotland Strategy⁴⁴⁰.
- 10.49. On 29 February 2008 the National Reference Group met⁴⁴¹. The Chair of the In Care Abuse Sub Group gave a background to his work and then spoke about the work of the subgroup on developing a service model for in care survivors across Scotland: “He described this process and how the group had used a tailored Questionnaire survey which was disseminated to a wide range of stakeholders to confirm the evidence of need... Funding for the next three

⁴³⁹ F1306059 – Meeting minutes. ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE – STEERING GROUP MEETING. 5 October 2007.

⁴⁴⁰ F1187710 – Email between officials. briefing for Ministers on historical abuse survivor matters. 18 December 2007.

⁴⁴¹ F1588668 – Email attaching meeting minutes. FW: Adult Survivors Reference Group – Agenda and papers for meeting 25 June 2008. 25 June 2008.

years has been secured from the Government for the development of this service". Proposals and issues discussed included:

- a separate "discrete" service for In Care survivors;
- a direct "one to one" service, including a telephone helpline;
- the need for an integrated service for In Care survivors, their partners and their families which is evaluated independently;
- the model should include "care pathways";
- inconsistency across local authorities, in respect of records and lack of response from them;
- links with existing Development Fund groups/organisations;
- targeting to raise awareness of the service;
- the paucity of records and access to those records; and
- ensuring the gap in the health dimension is met⁴⁴².

10.50. The Chair of the National Reference Group thanked the subgroup for its hard work in preparing the proposals: "She asked the members to endorse the proposal to produce a specification to initiate the procurement process, which was unanimously agreed. The Sub Group were also asked to report back to each Reference Group meeting". Progress updates were also provided with regard to "the communications strategy, data collection and discussion around 'truth and reconciliation', where [the Chair of the National Reference Group] ran through a paper she had prepared and proposed that, subject to Ministerial approval, a consultation paper would be issued"⁴⁴³.

10.51. On 25 June 2008 the National Reference Group met. Discussion took place about time-bar and truth and reconciliation. The Chair summarised the

⁴⁴² F1305941 – Document. Proposal for service for survivors of In Care and Institutional Abuse. 29 February 2008.

⁴⁴³ F1588668 – Email attaching meeting minutes. FW: Adult Survivors Reference Group – Agenda and papers for meeting 25 June 2008. 25 June 2008.

content of the Members' Business debate at the beginning of the year where the three relevant Ministers agreed that scoping a possible truth and reconciliation forum should go ahead and that the National Reference Group should be fully involved in this⁴⁴⁴.

- 10.52. On 25 November 2008, the One Year On: National Conference took place – highlighting the progress of the SurvivorScotland National Strategy and the launch of In Care Survivors Service Scotland (ICSSS). The conference was organised by the Scottish Government where one of the key note speakers provided an update on the progress of the SurvivorScotland Strategy⁴⁴⁵.
- 10.53. On 5 February 2009, the National Reference Group met. There was discussion on acknowledgement and accountability, and the Sexual Abuse Service Development Fund. It was noted that the initial stage of the acknowledgement and accountability public consultation process resulted in over 50 responses plus feedback from roadshows. As required, at the end of the first year of funding, officials asked the 25 recipient organisations to give presentations showing the progress of projects and identifying outcomes⁴⁴⁶.
- 10.54. The National Reference Group met on 25 August 2009. Amongst other matters, the group discussed the next steps of its communications and training strategies⁴⁴⁷.
- 10.55. The National Reference Group met on 25 November 2009. The Chair explained that there was a new team devoted to SurvivorScotland work. An update on the Sexual Abuse Service Development Fund was provided. It was noted that three areas required action: male survivors; rural issues; and prevention and prison services. Further funding had been identified for these areas. It was advised that Ministerial approval had been given for a pilot forum. There was a presentation on the arrangements for the forum and the

⁴⁴⁴ F2139394 – Email attaching meeting minutes. FW: SurvivorScotland. 26 September 2008.

⁴⁴⁵ B2674703 – Email attaching an officials' presentations on Survivor Scotland and the Tom Shaw Review. 2 December 2008.

⁴⁴⁶ F2174000 – Email with meeting agenda. Adult Survivor Reference Group meeting 21 May 2009. 14 May 2009.

⁴⁴⁷ F2403274 – Meeting minutes. SURVIVORSCOTLAND: NATIONAL REFERENCE GROUP. 26 August 2009.

Advisory Group. There was discussion on survivor involvement in the establishment of the forum as survivors were being interviewed about their expectations by the Scottish Institute for Residential Child Care. The Scottish Government's SurvivorScotland team announced the forum's new name, "Time to be Heard"⁴⁴⁸.

10.56. On 19 May 2010, the National Reference Group met and discussed the revision of its remit and membership. The minutes noted: "Members... represent the interests of all survivors not their own issues or those of their organisations. It was felt that the Group is too large to carry out business effectively. While there is no suggestion that anyone is asked to leave there are some views that those who attend and those who have not been attending recently, be asked to consider their purpose in remaining part of the group... There is lack of representation from some areas that could influence decision making e.g. NHS management"⁴⁴⁹.

10.57. Group members were asked to provide comment on the remit and membership of the group. Feedback received from a number of group members^{450,451,452,453}, including Christopher Daly, highlighted that:

"The rewording of the remit should include all forms of abuse with terms such as; *physical harm, sexual harm, emotional harm or physical abuse, sexual abuse, emotional abuse*. Further include the term *institutional child abuse* within the remit ... Regarding membership, Helen, [an official] and I had a tough job convincing people that institutional child abuse should be part of the remit of the group. We didn't just turn up we feel we earned a place (as did others) and our membership of the group and had been promised this by Scottish Ministers. Therefore my view is

⁴⁴⁸ F2724484 – Meeting minutes. SURVIVORSCOTLAND: NATIONAL REFERENCE GROUP. 25 November 2009.

⁴⁴⁹ F3204768 – Meeting minutes. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF SEXUAL ABUSE. 19 May 2010.

⁴⁵⁰ F3017145 – Document. Review of Remit and Membership of Reference Group - Feedback from Helen Holland and official. No date.

⁴⁵¹ F3025553 – Feedback document. Review of Remit. No date.

⁴⁵² F3023128 – Feedback document. Proposals for the National Reference Group (Terms of Reference) and the National Strategy (Survivor Scotland) – Rationale – Martin Henry. No date.

⁴⁵³ F3023113 – Feedback document. Review of Remit and Strategy of Reference Group. No date.

that in any review of membership we should allow those current members who are still active participants to stay on-board” (emphasis in original)⁴⁵⁴.

- 10.58. On 15 September 2010, the National Reference Group met. National Strategy funding was discussed. A paper was provided to outline the funding applications⁴⁵⁵. It was highlighted that “the number of applications for learning disability and physical health had been low but members of the team were following this up. Decisions on the funding applications received for the other priority areas had been delayed as a number of organisations had been asked to submit additional information. Once a decision had been made the SurvivorScotland Team would need approval from the Health Finance Department and Ministers. Organisations should receive a decision by the end of October”⁴⁵⁶. Discussions also took place regarding the review of the National Strategy and a revised strategy⁴⁵⁷.
- 10.59. The National Reference Group met on 1 December 2010 where the revised National Strategy was discussed. It was noted that as agreed on 15 September, members could add actions to the template next to the appropriate aim and send the template to the SurvivorScotland team for consideration⁴⁵⁸.
- 10.60. On 23 March 2011, the National Reference Group met. The National Strategy Action Plan⁴⁵⁹ was discussed which provided a template for the reviews of the National Strategy, including aims, actions and timescales⁴⁶⁰.

⁴⁵⁴ F3023103 – Feedback document. Remit and Membership of Reference Group - Christopher Daly. No date.

⁴⁵⁵ F3204808 – Funding paper. SurvivorScotland: National Reference Group – Strategy Funding. 15 September 2010.

⁴⁵⁶ B4410540 – Email with minutes in attachments. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 15 September 2010.

⁴⁵⁷ F3243828 – Draft strategy. National Strategy for Survivors of Childhood Abuse, SurvivorScotland. 15 September 2010.

⁴⁵⁸ F3413568 – Template document. SURVIVORSCOTLAND – NATIONAL STRATEGY – ACTION PLAN. 1 December 2010.

⁴⁵⁹ F3637862 – Template document. SURVIVORSCOTLAND – NATIONAL STRATEGY – ACTION PLAN. 23 March 2011.

⁴⁶⁰ F3756084 – Draft minutes. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 23 March 2011.

- 10.61. On 23 May 2011, Christopher Daly resigned from the National Reference Group⁴⁶¹ and the Scottish Government replied⁴⁶².
- 10.62. The National Reference Group met on 22 June 2011. It was noted that the Head of the SurvivorScotland team was now the Chair. The Chair informed the Group that Christopher Daly had resigned. The Chair explained that the National Strategy Action Plan had been circulated and she had invited members to form a small working group. The Chair noted that she met SACRO on 21 June to discuss the Restorative Justice final report⁴⁶³, and a decision was to be made on what would happen next⁴⁶⁴. The National Strategy's funding was considered⁴⁶⁵.
- 10.63. On 14 September 2011, the National Reference Group met and discussed the SurvivorScotland subgroup on counselling and psychotherapy services for male survivors and the recommendations of a scoping exercise undertaken by Health in Mind⁴⁶⁶. The group acknowledged that many findings of the report could be applied to both male and female survivors and specialist services⁴⁶⁷. A National Strategy funding paper was also presented⁴⁶⁸.
- 10.64. The National Reference Group met on 7 December 2011. The Scottish Human Rights Commission (SHRC) attended to talk about the proposed InterAction process. It was noted that SHRC was meeting Ministers on 20 December 2011 to discuss proposals for InterAction; and that the InterAction would begin in 2012, bringing together survivors, representatives of child care institutions, government officials, civil society representatives and experts to

⁴⁶¹ F3778961 – Email from Chris Daly to Jean MacLellan. Fw: CHRIS DALY RESIGNATION OF VOLUNTARY MEMBER POSITION OF THE NATIONAL REFERENCE GROUP ON CSA. 22 May 2011.

⁴⁶² F3778914 – Letter to Christopher Daly from an official. Reference group – letter to Chris Daly re resignation. 23 May 2011.

⁴⁶³ Sacro. Sacro Restorative Justice Service for Adult Survivors Abused in Care as Children [Internet]. 2011 [cited 2020 February 20]. Available from:

https://fbga.redguitars.co.uk/sacroTime2BHeardFinalReport22_11_11.pdf

⁴⁶⁴ F3932336 – Meeting minutes. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 22 June 2011.

⁴⁶⁵ F3756322 – Paper. SurvivorScotland: National Reference Group – Strategy Funding. 22 June 2011.

⁴⁶⁶ F3953291 – Meeting Paper. SurvivorScotland Sub group Mapping of Counselling and Psychotherapy services for male survivors. 11 August 2011.

⁴⁶⁷ F4094175 – Minutes of the National Reference Group Meeting held on 14 September 2011.

⁴⁶⁸ F3932501 – Paper. SurvivorScotland: National Reference Group. 14 September 2011.

develop an action plan for the implementation of the Human Rights Framework⁴⁶⁹. A review of the training strategy was discussed⁴⁷⁰. The National Strategy funding paper highlighted funds available for 2011/12 and what had been agreed as priority expenditure⁴⁷¹.

10.65. That would be the last time the National Reference Group met. As there was a dedicated SurvivorScotland team within the Scottish Government who had responsibility to implement the Strategy, the decision to bring the National Reference Group to a close had been agreed⁴⁷² and members were thanked for their contributions⁴⁷³. A letter was sent by SurvivorScotland to each member in January 2012, thanking them and explaining that they would continue to be consulted and kept updated⁴⁷⁴.

10.66. A briefing was provided to the Minister for Public Health on 4 May 2012⁴⁷⁵. It related to the Ministers' upcoming attendance at the Cross Party Group on Adult Survivors of Childhood Sexual Abuse on 15 May 2012. The briefing included lines on the SurvivorScotland National Strategy:

- “The Scottish Government is committed to providing support for Adult Survivors of Childhood Sexual Abuse, demonstrated through the National Strategy.
- Has established a dedicated team, SurvivorScotland, to take forward the National Strategy.
- Established a dedicated SurvivorScotland website to help improve the lives of survivors of childhood sexual abuse through providing information on support and access to services.

⁴⁶⁹ A1902186 – Meeting minutes. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 07 December 2011.

⁴⁷⁰ F4132556 – Emails with attachments. SurvivorScotland Reference Group – Paper 5 Training.

⁴⁷¹ F4082365 – Funding Paper. SurvivorScotland: National Reference Group. 07 December 2011.

⁴⁷² A2770805 – Briefing for Minister. Annex C of Briefing to Minister for Public Health from Julie Muir – 4 May 2012.

⁴⁷³ A1902186 – Meeting minutes. NATIONAL REFERENCE GROUP – ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 07 December 2011.

⁴⁷⁴ A2057771 – Letter. Reference Group Thank you letter. 27 January 2012.

⁴⁷⁵ A2770805 – Briefing to Minister for Public Health from an official. BRIEFING FOR THE CROSS PARTY GROUP ON ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE. 04 May 2012.

- Developing a National Training Strategy to raise awareness of Childhood Sexual Abuse and provide support to staff in voluntary and statutory organisations on how to deal with disclosures of abuse.
- While it is not possible to commit to permanent funding the Scottish Government provided:
 - £1.7 million through the National Strategy Fund between 2007 and 2009
 - £900,000 National Strategy Funding for 2009/10
 - £900,000 National Strategy Funding for 2010/11
 - £850,000 National Strategy Funding for 2011/12
- Funding services remain one of the SurvivorScotland Strategy’s key priorities and the Scottish Government has committed £1.6 million for the Strategy funding over the next two years”.

10.67. The briefing included questions and suggested answers:

“Q1 Funding for survivors of domestic abuse is offered for three years and at a realistic level. Whereas funding for survivors of childhood sexual abuse is at a level of £25,000 per priority area and for two years. In view of the long term significant inequalities that survivors face, is there any plan towards long term sustainable and realistic funding for survivors of childhood sexual abuse? Priorities for funding are considered as part of the Scottish Government’s Spending review process. We have provided funding of £4.25 million since 2007. We have committed a further £850,000 for 2012/13 and £800,000 for 2013/14.

We recognise that it is difficult to plan services on annual funding bids. That is why we are now providing funding over a 2 year period. It is important to give equitable access to a range of organisations and this is why we limit the amount available for each service.

(Note to Minister – As the SurvivorScotland budget is smaller than that for Violence Against Women we need to restrict the amount that can be applied for or a few large organisations would bid for all the funding. Violence Against Women funding is £3.4 million per annum and organisations are able to apply for up to £100,000.)

Q2 Survivors of childhood sexual abuse face difficulties in life due to the lack of opportunity to gain healthy modelled life skills (or a toolkit) taken for granted by non survivors. They face frustration that others do not recognise this omission (or missing tools from the kit) and the need for long term appropriate support. How would the Minister for Public Health make health/ care practitioners aware of this and ensure consistent, relevant and long term support to enable adults to gain these skills or tools allowing individuals the ability live well, independently and healthily in line with the Scottish Government guideline for a better nation? It is not possible to tailor every service to meet the particular needs of different client groups. There are a number of support services available including Life Skills Centres, money advice through the Citizens Advice Bureau and educational support.

The Scottish Government has developed a dedicated SurvivorScotland website which provides information and support for survivors and includes details of organisations which can offer additional support. We also have a booklet for survivors, families and friends.

We have provided training for NHS staff to help them ask questions about childhood abuse and offer appropriate support. We are also funding a partnership between Roshni, Health In Mind and the Scottish Association for Mental Health to develop awareness raising for staff in a wide range of organisations so that they can appreciate the particular needs of survivors.

Q3 How does the Scottish Government intend to meet the considerable health needs of CSA survivors in Scotland? In terms

of identification; research, training and service provision? The Scottish Government is committed to meeting the needs of survivors of childhood abuse. This is why we launched the National Strategy for Survivors of Childhood Sexual Abuse in 2005. As part of the Strategy we have funded awareness raising and training for staff in statutory and voluntary organisations to help them support adults survivors to disclose their abuse and to support them in accessing appropriate services.

To date the Scottish Government have provided £4.25 million. We have also allocated further funding of £1,650,000 between 2012 and 2014.

A national programme of work on improving the healthcare identification and management of gender-based violence (including childhood sexual abuse) has also been taking place across NHSScotland since late 2008.

To date approximately 2800 staff from mental health, substance misuse and maternity services have been trained in routinely asking about and dealing with childhood sexual abuse issues.

Q4 The correlation between adult offending and early childhood adversity and trauma is complex. We understand it is not simply a case of ‘cause and effect’ and we are particularly aware that the majority of people sexually abused in childhood do not go on in adulthood to sexually abuse children or young people. However, many sex offenders (and, indeed, other types of offenders) have suffered unresolved trauma, including sexual trauma, while growing up.

What are the funding opportunities, within preventative spend, for collaborative initiatives across Government to test effective approaches to addressing the ‘traumagenic’ needs of offender-survivors (including those in custody) towards positively influencing their offending behaviour/recidivism and preventing future offending? The SurvivorScotland strategy includes responsibility for taking forward recommendation 26 of the Cosgrove Report, to identify and secure funding for risk assessment and personal change

programmes for individuals who have admitted sexually offending behaviour and individuals who admit concerns that they may be at risk of sexual offending. This is based on the premise that some perpetrators, or those who think they may become perpetrators, may also have suffered from sexual abuse. Through this we have funded Stop It Now, Barnardos, Includem and Open Secret.

Q5 What mechanism are you putting in place to allow people that have experienced childhood sexual trauma to work with or alongside policy makers within community partnerships and what timescale do you see this happening? The Scottish Government has involved survivors in developing the SurvivorScotland Strategy through the National Reference Group since 2005. I understand that the members of the Group felt that the future implementation of the policy should be taken forward by the SurvivorScotland team. However, we continue to involve survivors in the group taking forward the work on male survivors and will involve survivors in future reviews of the Strategy. We are also actively involving survivors in the development of the consultation on the National Confidential Reference through a Reference Group and a Survivor Stakeholder Group.

Q6 There is substantial evidence suggesting that much of the prison population have experienced CSA, and that CSA is a significant contributor to problems such as substance misuse, educational failure and petty crime. If prisoners were properly screened and offered appropriate support, there is good reason to believe that rates of reoffending could be significantly reduced, potentially saving the public purse. Would the Minister consider working with the Cabinet Secretary for Justice to make significant progress in this area? We recognise that some prisoners have experienced childhood sexual abuse. That is why one of the priorities of the SurvivorScotland fund is around services for prisoners and prevention. Through this we have funded Stop It Now Scotland, Barnardos, Includem and Open Secret.

The transfer of health services from SPS to NHS boards is still at an early stage but we hope that this will ensure a consistent approach to healthcare standards across Scotland's prisons".

10.68. The dedicated SurvivorScotland team within Scottish Government took forward implementing the Strategy⁴⁷⁶. The Scottish Government later reviewed the SurvivorScotland National Strategy and considered what had worked well and what needed to be achieved. This led to the Survivor Scotland Strategic Outcomes and Priorities report in 2015.

10.69. This report outlined that:

"The SurvivorScotland strategy is now ten years old. Whilst its initial focus was on child sexual abuse the strategy's policy work and the work of those delivering services to survivors has rightly covered all forms of abuse.

We have learned a lot about what matters to survivors and what services they need. Work to date has highlighted the complexity of issues which surround those who have been abused and the need for coordinated, integrated resources, care, treatment and support.

We know more about what matters to survivors and that services need to be responsive to their individual needs and personal outcomes. A continued focus for the work of the SurvivorScotland policy team will be to improve and develop our workforce and the services they deliver that treat, care for and support survivors across all domains of health and wellbeing including physical, psychological and social in a person centred approach"⁴⁷⁷.

⁴⁷⁶ A5013112 – SurvivorScotland - Strategy Action Plan – 24 January 2013.

⁴⁷⁷ Scottish Government. SurvivorScotland strategic outcomes and priorities 2015-2017. 2015 [cited 2020 Feb 18]. Available from: <https://www.gov.scot/publications/survivorscotland-strategic-outcomes-priorities-2015-2017/>

CHAPTER 11

IN CARE SURVIVORS SERVICE SCOTLAND

11.1. This chapter responds to point 5 of the section 21 notice and provides an explanation of In Care Survivors Service Scotland, including the approach to engagement with survivor groups and campaigners. This chapter addresses the establishment of In Care Survivor Service Scotland and its relationship to the National Reference Group, how the tender process was run and how subsequently Open Secret was awarded the contract. It explains the nature of the service and how it was funded (including the Scottish Government's response to Petition PE1397), and how it was later replaced by Future Pathways.

Background

11.2. At a meeting in January 2007 of SurvivorScotland's National Reference Group, the Group decided to establish a subgroup to review the needs of in care survivors, evaluate what service provision was in place and identify areas for improvement⁴⁷⁸. The subgroup was set up in June 2007. The subgroup was supported by the Scottish Government's Care and Justice Division (which was part of the Scottish Government's Health Directorate) and comprised survivors of abuse in care and representatives of organisations involved in survivor support, such as Who Cares? Scotland and the Scottish Institute for Residential Child Care (SIRCC).

11.3. On 6 September 2007, a briefing was sent by an official in the Adult Care and Support Change Team (part of the Care and Justice Division) to the Minister for Public Health seeking approval for the funding proposals for a Sexual Abuse Service Development Fund. This briefing also included information on

⁴⁷⁸ F612874 – Note of meeting of national reference group on survivors of childhood sexual abuse held on Friday 19 January 2007. Adult Survivors - minutes of reference group meeting. 19 January 2007.

future priorities such as a national training programme for frontline staff, creating care pathways and mainstreaming of services for survivors⁴⁷⁹.

- 11.4. In an email on 14 November 2007 by an official to members of the “In Care and Institutional Abuse Survivors Sub Group”, the terms of reference of the subgroup were outlined. The terms of reference stated the subgroup’s aim and purpose, and defined ‘in-care’ and ‘abuse’:

“Our aim is to highlight the long term effects, as well as current and future needs of in care abuse survivors who have been subject to any form of abuse whilst in care. To achieve this aim, our purpose is to ensure that there are appropriate and effective long term support, information and advocacy services in place for these survivors.

By ‘In-Care’, we mean *any* residential care setting, be it local authority children’s homes, approved schools, hospital care, kinship care, those ran by charitable organisations, religious orders and foster care placements. By abuse, we mean neglect, physical, emotional, psychological and sexual⁴⁸⁰.

- 11.5. A letter from the Chair of the subgroup (which appears to have been intended for groups offering support services), also attached to the email of 14 November 2007 noted above, stated that a part of the subgroup’s purpose included ascertaining “what services (if any) are currently in place within the statutory and voluntary sectors for survivors of abuse whilst In Care... to identify the level of met and unmet need for support and advocacy services that this vulnerable group of people require”.
- 11.6. In a briefing to Ministers from an official in advance of a meeting, on 18 December 2007 between Ministers with an interest in the SurvivorScotland strategy, there was information regarding how Ministers should respond to two reports in a way that “could be underpinned by the principles of the Survivors

⁴⁷⁹ B1542977 – Email from official to Minister for Public Health. National Strategy for Adult Survivors of Childhood Abuse -Sexual Abuse Service Development Fund (SASDF). 6 September 2007.

⁴⁸⁰ B1701619 - Email from official to members of the In Care and Institutional Abuse Survivors sub group. REMINDER - IN CARE ABUSE SERVICES QUESTIONNAIRE - PLEASE COMPLETE AS APPROPRIATE. 14 November 2007.

strategy". The two reports were the Tom Shaw Historical Abuse Systemic review and the Scottish Law Commission's review of "time bar". The briefing also contained information about work in response to the findings of the Kerelaw List D School Inquiry and a summary of the SurvivorScotland strategy.

- 11.7. The briefing considered the recommendations of the Tom Shaw Historical Abuse Systemic Review and areas for improvement. It considered improvements to the quality of care and education in residential care and, as part of the SurvivorScotland strategy, improvements to services for adult survivors:

"The Survivor Scotland Reference Group has established a sub-group to recommend proposals for the specific needs of historic in-care/institutional abuse survivors. This sub-group includes survivors. It plans to submit its recommendations to the Expert reference group on 29 February. These are likely to include a proposal to tender for a national service which will help the individual link into local services. It will be crucial that this service links closely with existing aftercare services for looked after and accommodated children and also local services provided by health providers and other independent agencies. Officials are visiting a similar service for England and Wales on 17 December. A questionnaire has also been issued to 300 providers to identify existing service provision and gaps"⁴⁸¹.

- 11.8. In December 2007, SurvivorScotland published the "In Care and Institutional Abuse Sub Group: Survey of Services for Survivors of In Care and Institutional Abuse in Scotland". The purpose of the survey was to ascertain availability of services to survivors of in care and institutional abuse in Scotland. The questionnaire had been distributed to over 300 statutory and voluntary agencies across Scotland⁴⁸².

⁴⁸¹ F1198108 – Briefing for Ministers - Briefing for cross-Ministerial meeting on adult survivors of childhood sexual abuse. 18 December 2007.

⁴⁸² B2352037 – Email from official to OpenSecret. FW: email to open Secret enclosing copy of in care survey. 8 September 2008.

11.9. The sub-group concluded its work and presented its findings to the National Reference Group on 29 February 2008, including proposals for a national service to provide advice, information and support to survivors of abuse in care. Similar recommendations had been made in Tom Shaw's Historical Abuse Systemic Review (published November 2007).

11.10. A statement made by Mr Ingram, Minister for Children and Early Years, to the Scottish Parliament on 7 February 2008 included a commitment to fund a support service for survivors and their families for three years. He said:

"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 framework. It wants a national hub that provides advice and information and is able to link up with local services that in-care survivors need, which should include advocacy, mediation and counselling services. I am persuaded in principle that this 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 procurement for this national service"⁴⁸³.

11.11. On 15 May 2008 a submission from officials to the Minister for Children and Early Years sought approval for the grant award process for a national support service for the survivors of in-care and institutional abuse. It recommended that the Minister approve the process for awarding the grant for the central support service⁴⁸⁴.

⁴⁸³ B1897345 – Ministerial statement. Support for survivors of historic and in care and institutional abuse. Not dated. Also available from:

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

⁴⁸⁴ B2144167 – Email from official to Ministers. Final submission on the national service for survivors. 15 May 2008.

Launch of In Care Survivors Service Scotland

11.12. In Care Survivors Service Scotland (ICSSS) was launched on 25 November 2008 following an open, competitive, process which involved survivors in decision-making. 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 had substantial experience of working with survivors. The service was called “In Care Survivors Service Scotland: A partnership led by Open Secret”⁴⁸⁵.

11.13. ICSSS would provide for the delivery of a range of services, from mental health care and counselling for survivors and their families, to sign-posting services (such as social care or legal services) and organisations who may hold (or who may be able to assist finding) records of a survivor’s time in care. Detail on the services follows below, in the Ministerial briefing dated 25 September 2008:

- “To provide a national confidential telephone support line providing information support and advocacy to in care survivors and their families.
- To provide support and advocacy to in care survivors and their families.
- To provide confidential counselling to in care survivors and their families.
- To assist and facilitate contact to other appropriate health, voluntary, community and social care agencies.
- To provide an independent advocacy/signposting service on access to files and records of survivors who have been in care.

⁴⁸⁵ B2380161 – Background briefing from official to Minister for children and early years. Progress across Scottish Government on support for in-care abuse. Not dated.

- To provide an independent advocacy/signposting service to in care survivors on accessing the Criminal Injuries Compensation Scheme, and other relevant legal services.
- To produce a website and series of leaflets on all aspects of in care and institutional abuse for survivors, their partners and families.
- To implement a robust evaluation process which would record quantitative and qualitative data.”⁴⁸⁶.

11.14. Ahead of the Tom Shaw Historical Abuse Systemic Review: One Year On event, on 25 November 2008, the Minister for Children and Early Years, Mr Ingram, received briefing from officials, including a speaking note which announced the launch of ICSSS. It said:

“The Petition to Parliament presented by Chris Daly who is here today, called for a number of changes. One of these was to provide better support to survivors. This was endorsed by Tom Shaw and he helped identify the type of support which would be most effective.

I am therefore delighted to announce today that the Scottish Government has commissioned a National Support Service for adult survivors of in-care abuse which goes live today.

As the result of a competitive process, we appointed Open Secret to run this service.

The design and principles of the service were developed by a group, which I established. Included in the membership of the group were survivors and experienced professionals. They set out the key components of the service and I was pleased to accept their recommendations.

The service will be delivered across Scotland. Open Secret will develop the service framework but it will work in close partnership with other

⁴⁸⁶ B2380161 - Background briefing from official to Minister for children and early years. Progress across Scottish Government on support for in-care abuse. Not dated.

relevant organisations across Scotland to ensure that survivors can access a service close to their home.”⁴⁸⁷.

11.15. 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.”⁴⁸⁸.

11.16. Mr Shaw is also reported to have said: “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 Scotland.”⁴⁸⁹.

11.17. A Ministerial briefing for the Public Petitions Committee on 21 December 2010 provided an update on ICSSS⁴⁹⁰:

“Following an open, competitive process, Open Secret was appointed to lead the in Care Survivor Service...The Scottish Government committed £750,000 over three years to the project. The final grant payment is due in April 2011. Officials in Care and Justice Division meet regularly with ICSSS to ensure the terms and conditions of the grant are met.

The remit of the In Care Survivor Service Scotland is:

- to provide a national confidential telephone support line (0800 121 6027) for in care survivors and their families;

⁴⁸⁷ B2510525 – Briefing from official for Minister for children and early years. Draft Speaking Note for Tom Shaw Historic Abuse Review Seminar. 25 November 2008.

⁴⁸⁸ F1837487 - News release. Scotland leads the way in support for survivors of historic in care abuse. 25 November 2008.

⁴⁸⁹ F1837487 - News release. Scotland leads the way in support for survivors of historic in care abuse. 25 November 2008.

⁴⁹⁰ B4439715 – Ministerial briefing for the Public Petitions Committee. Historic Abuse. 21 December 2010.

- to provide support, advocacy and confidential counselling to in care survivors and their families;
- to facilitate contact with relevant health, voluntary, community and social care agencies;
- to provide an independent advocacy/signposting service to in care survivors on access to records;
- to provide an independent advocacy/signposting service to in care survivors on accessing the Criminal Injuries Compensation Scheme, and other relevant legal services; and
- to produce a website (www.incaresurvivors.org.uk) and a series of leaflets on all aspects of in care and institutional abuse for survivors and their families”.

11.18. The briefing went on to note:

“There are a total of 15 members of staff working for the service covering the whole of Scotland. There are presently 25 volunteers.

To date there have been 390 survivors who have used the service. 244 survivors have received counselling with other users accessing services such as befriending service, informal support and access to records. The initial evaluation report received from ICSSS shows a significant improvement to the lives of survivors. ICSSS have also had success in accessing records for survivors and will be meeting with SIRCC to look at the possibility of creating a national database of residential establishments.

The final grant payment will be made to ICSSS in April 2011. Open Secret and KASP are keen for the service to continue. No other service is available specifically for survivors of historic abuse in Scotland. ICSSS continue to promote the service and the manager has been applying for grants on a national and local level (including Big Lottery) to ensure the

future of the service. A decision will be made by ICSSS in Spring 2011 as to whether the service should continue.

On completion of the funding period, ICSSS will submit a report to Scottish Ministers summarising the outcomes and performance of the project⁴⁹¹.

11.19. In a meeting of the SurvivorScotland Reference Group on 23 March 2011, the funding of ICSSS was discussed:

“Lorna advised that ICSSS had submitted an application for lottery funding. They felt that applications for funding would be stronger if they could show that they also had government funding. They had sent a letter to Jean, inviting her to a meeting to discuss funding. Jean advised that she had not yet received the letter but the team would follow it up.

Action: SurvivorScotland to respond to letter from ICSSS

Helen pointed out that the need to identify funding had been built into the original contract and asked why ICSSS had left it until now. Lorna said that the funding had not been required previously. They had applied for funding but only received small amounts which were time limited. They were still applying for funding but could only access funding when and where it was available and if they met the funder’s criteria. Helen suggested applying to ‘Awards for All’ and Lorna advised that they had applied twice. During the meeting a message was received to say that the lottery application had been unsuccessful.

Rosina said that it was clear that ICSSS had been successful and asked about the focus on employability and moving on. Lorna said this would not affect counselling⁴⁹².

⁴⁹¹ B4439715 – Ministerial briefing for the Public Petitions Committee. Historic Abuse. 21 December 2010.

⁴⁹² F3828267 – Email for official to Survivor Scotland Reference Group — Paper 2 minutes of meeting on 23 March 2011. 10 June 2011.

11.20. An update provided for the meeting of the SurvivorScotland National Reference Group on 23 March 2011 confirmed that the final grant payment was due to be paid to ICSSS in April 2011:

“The service is due to end in November 2011. ICSSS are continuing to apply for funding through the Big Lottery and other funding streams but unfortunately no funding has yet been secured. ICSSS will decide at the end of March 2011 if the service will continue”⁴⁹³.

11.21. The Scottish Government agreed to a further six months funding of £112,500⁴⁹⁴. A report by ICSSS dated 22 June 2011 for the SurvivorScotland Reference Group provided an update:

“Government Funding for this project ends in October 2011. ICSSS has worked hard to source alternative funding and as the Reference Group is aware the Big Lottery Application was unsuccessful as the project ultimately did not match the Big Lottery Funding Criteria closely enough.

We have continued to try to source funding and it has not been possible to source funding from November 2011 until this year. This is because potential funders release funds in a timely manner and would not be able to offer funds through the course of the project for a period in the future, i.e. November 2011.

It was acknowledged from the start of the project that there is a need for a specific service, and that Government funding would last for 3 years in the hope that local authorities and other funding sources would support the life of the project, going forward. The service is clearly affected by the unexpected downturn in the economic climate”⁴⁹⁵.

11.22. On 4 August 2011, advice from officials was provided to the Minister for Children and Young People. This provided an update on ICSSS, outlined the impact of the closure of the service and provided options for future funding.

⁴⁹³ F3604248 – Survivor Scotland Reference Group. Paper 3 updates. 23 March 2011.

⁴⁹⁴ A6011838 – Emails between officials. FW: Annual funding. 23 May 2013.

⁴⁹⁵ F3814092 - Survivor Scotland Reference Group. ICSSS update. 22 June 2011.

Officials recommended interim funding of the service until March 2012 and then further funding for a period of three years⁴⁹⁶.

- 11.23. On 16 August 2011, Petition PE1397 was lodged before the Scottish Parliament by Ms Mary Roy calling on the Parliament to “urge the Scottish Government to (a) recognise the ongoing needs of survivors of abuse in care (b) recognise the need for a specialised service as “in care” abuse issues are different and (c) therefore continue funding In Care Survivors Service Scotland for a further period”⁴⁹⁷.
- 11.24. On 7 September 2011, the Scottish Government agreed to continue to fund ICSSS in its current structure and model until March 2012, and then following that for a further 3 years:

“Evaluation of Project

Independent evaluation of ICSSS was carried out and the full report will be available shortly via Scottish Government and ICSSS Website.

Information was gathered with a mixed method format, including CORE Results and Advocacy Questionnaires. Further 19 service users were interviewed by a Research Assistant, staff and managers contributed to separate focus groups.

Overall, the results are very positive and we are also pleased to see that there are learning points from the 3 years’ experience which we will be able to use in future”⁴⁹⁸.

- 11.25. An update for the SurvivorScotland National Reference Group by ICSSS, dated 14 September 2011, confirmed that the Scottish Government would continue to fund the service:

⁴⁹⁶ B4894824 – Submission from official to Minister for children and young people. Update on ICSSS. 4 August 2011.

⁴⁹⁷ The Scottish Parliament. PE1397 Information. Not dated. [cited 2020 February 19] Available from: <http://www.parliament.scot/parliamentarybusiness/40056.aspx>

⁴⁹⁸ F3953774 – Survivor Scotland Reference Group. Paper 3C ICSSS Update. 14 September 2011.

“As many of you will know the funding for In Care Survivors Service Scotland was due to end in October 2011.

In light of the evidence for the need for the Service, we are delighted to have had confirmation from Scottish Government that they will continue to fund the Service, in recognition of the need for a unique and specialist service for survivors of abuse in care settings.

The Service will continue in its current structure and model until March 2012, following which we will receive funding for a further 3 years. We are working closely with Scottish Government regarding the funding available for the 3 year period. Internally we are fully considering the learning from the Evaluation report to consider the best way forward, structurally and operationally. We will continue close discussion around the structure and model of service which is going to be realistically deliverable in the current economic climate.

I will provide further updates as we know more. In the meantime let's enjoy this good news. The staff team would like to thank Scottish Government for validating the Service in the way that it has"⁴⁹⁹.

11.26. The Scottish Government responded to PE1397 on 3 October 2011:

“Officials have asked Open Secret to submit a renewed business case for further funding until March 2012.

Following the Scottish Government Spending Review, officials are in negotiations with the ICSSS to consider the next three year spending period. Officials will consider the Evaluation Report and the business case to review the future funding provision for the ICSSS.

Officials will continue to work with the service to explore alternative funding streams for when funding comes to an end in 2014"⁵⁰⁰.

⁴⁹⁹ F3974681 – Email from official to Survivor Scotland Reference Group. Paper 3 ICSSS Update. 6 September 2011.

⁵⁰⁰The Scottish Parliament. PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1397 QUESTIONS ARISING FROM COMMITTEE MEETINGS. 2011 [cited 2020 February 19] Available:

- 11.27. Following a further letter submitted to the Scottish Parliament by the petitioner that raised concerns about funding, the Scottish Government provided a response in January 2012, which stated: “A continuation of funding has provisionally been agreed covering the Spending Review period until March 2015 subject to the passing of the Budget Bill in Parliament”⁵⁰¹.
- 11.28. The Scottish Parliament’s Health and Sport Committee heard evidence from survivors on 26 March 2013. They were asked about their thoughts on the National Confidential Forum and ICSSS. In relation to ICSSS, a summary of their evidence was created by officials and shared with Open Secret for comment. Issues such as advocacy services, the range of available services and issues of trust were raised⁵⁰².
- 11.29. An email between officials in the Care and Justice Division dated 23 May 2013 confirmed that the funding for ICSSS between 2008 and 2015 was as follows⁵⁰³:

Date	Funding (£)
2008-2009	275,000
2009-2010	250,000
2010-2011	225,000
Total	750,000

Date	Funding (£)
2012-2013	225,000
2013-2014	212,500
2014-2015	200,000
Total	637,500

- 11.30. In the same email, it noted that the Scottish Government agreed to a further six months funding in 2011 of £112,500⁵⁰⁴.

http://www.parliament.scot/S4_PublicPetitionsCommittee/General%20Documents/PE1397_A_Scottish_Government_03.10.11.pdf

⁵⁰¹ The Scottish Parliament. PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1397 QUESTIONS ARISING FROM COMMITTEE MEETINGS. 2011 [cited 2020 February 19] Available: <http://www.parliament.scot/parliamentarybusiness/40056.aspx>

⁵⁰² A5726821 – Emails between officials. Health and Sport Committee. RE: HEALTH AND SPORT COMMITTEE - EVIDENCE FROM SURVIVORS. Attached Document. 17 April 2013

⁵⁰³ A6011838 – Emails between officials. FW: Annual funding. 25 May 2013.

⁵⁰⁴ A6011838 – Emails between officials. FW: Annual funding. 25 May 2013.

- 11.31. A grant letter dated April 2014 from the Scottish Government to Open Secret, confirmed that funding was issued in connection with continuing and developing ICSSS from 1 April 2014 to 31 March 2015. This was for the sum of £200,000⁵⁰⁵.
- 11.32. In a note dated 8 August 2014 to the Minister for Children and Young People, officials informed the Minister that a review into the capability of Open Secret had been instigated. This review was considered necessary following concerns raised by staff working within Open Secret about a range of specific staffing and management issues. Open Secret's core funder, Falkirk Council, had similar concerns and had been working with officials from the Scottish Government on its proposal to instigate an independent review of Open Secret to determine Open Secret's ability to deliver. Officials advised the Minister that while the grant was to end in March 2015, work was ongoing on how ICSSS could be developed to meet the evolving needs of survivors, identified through the InterAction process⁵⁰⁶.
- 11.33. In an email dated 18 August 2014, officials wrote to Ministers informing them that the Chair of Open Secret had resigned on 14 August 2014 and that Health in Mind had agreed to take on new referrals made to ICSSS as an interim measure. It also outlined the cost associated with Health in Mind taking on ICSSS's new referrals⁵⁰⁷.
- 11.34. A briefing dated 14 November 2014 from officials to Ministers, outlined the support being offered to survivors from the Scottish Government:

"The government has implemented the recommendations of Tom Shaw's systemic review. As part of this activity, we have:

- established a support service for adults who suffered childhood abuse in care and their families. The government committed £750,000 over three years to the In Care Survivors Service

⁵⁰⁵ A8236098 – Emails between officials. RE: 2014/15 grants. 28 March 2014.

⁵⁰⁶ A9036501 – Emails between officials. FW: REVIEW OF OPEN SECRET (IN CARE SURVIVOR SERVICE SCOTLAND). 8 August 2014.

⁵⁰⁷ A9365545 – Historic Abuse – Concerns about Open Secret (In Care Survivor Service Scotland). 18 August 2014.

Scotland. The final grant payment was made in April 2011. We provided ICSSS with additional funding for an external evaluation of the service to be carried out of the service. This was published in October 2011. We also met with users of the service to hear how the service has helped improve their lives. We agreed to extend funding the ICSSS until March 2015. Officials will continue to work with the service to explore alternative funding streams for when funding comes to an end”⁵⁰⁸.

- 11.35. In May 2015, the Scottish Government announced a new person-centred, outcomes based, support fund: the In Care Survivor Support Fund. It became operational in September 2016 and replaced In Care Survivors Service Scotland. The In Care Survivor Support Fund was replaced by Future Pathways⁵⁰⁹ in February 2017.

⁵⁰⁸ A5453308 – Core Briefing to Ministers regarding Historic In Care Abuse - 14 November 2014

⁵⁰⁹ Future Pathways. 2019. [cited 2020 February 20]. Available from: <https://future-pathways.co.uk/>

CHAPTER 12

SHRC HUMAN RIGHTS FRAMEWORK AND INTERACTION PROCESS

- 12.1. This chapter of the report builds on what is asked for by point 5 of the section 21 notice and provides an explanation of the Scottish Human Rights Commission (“SHRC”) Human Rights Framework and the SHRC led InterAction Process, including the involvement of survivor groups and campaigners. As Helen Holland said in her evidence to the inquiry, the InterAction Process was set up to take the Scottish Human Rights Framework forward and “primarily was to work on the rights of the child which would be put in place, who should be listening, and what responsibilities government should have”, and alongside survivors there “were representatives of the Scottish Government, the Scottish Human Rights Commission, Social Work Scotland and CELCIS”.
- 12.2. This chapter of the report, as well as explaining the SHRC Framework and InterAction Process, goes on to cover the resultant Action Plan on acknowledgement and accountability, reparation, inquiry and access to justice – these issues are also touched on in other chapters of this report to a lesser or greater extent, over the period 2002 to 2014. Chapters 2 and 3 of this report contain information on the InterAction Process and Action Plan in so far as they related specifically to the announcement of a public inquiry in December 2014.

Background

- 12.3. The SHRC⁵¹⁰ was established in 2006 by the Scottish Commission for Human Rights Act 2006⁵¹¹. Under the Scottish Commission for Human Rights Act

⁵¹⁰ Scottish Human Rights Commission. About [Internet]. 2020 [cited 2020 February 19]. Available from: <http://www.scottishhumanrights.com/about/>

⁵¹¹ *Scottish Commission for Human Rights Act 2006*. Available from: http://www.legislation.gov.uk/asp/2006/16/pdfs/asp_20060016_en.pdf

2006, the Commission's general duty is "to promote human rights and, in particular, to encourage best practice in relation to human rights"⁵¹².

- 12.4. On 7 February 2008, Mr Ingram, Minister for Children and Early Years, announced that the Scottish Government was actively scoping the adaption of the principles of a truth and reconciliation model, which would later be named an Acknowledgement and Accountability Forum⁵¹³. In spring 2009, SHRC was appointed by the Scottish Government to produce an independent Human Rights Framework for the design and implementation of a proposed Acknowledgement and Accountability Forum⁵¹⁴. The development of that forum, which would become the pilot Time to be Heard Forum, is covered in chapter 13 of this report.
- 12.5. The SHRC hosted a roundtable meeting on 25 January 2010 to discuss with stakeholders a draft Human Rights Framework on acknowledgement and accountability⁵¹⁵. Participants included survivors. SHRC highlighted that the framework was based on two background reports (which were available at the roundtable discussion)^{516 517}.

Publication of the Framework and the Scottish Government's Response

- 12.6. In February 2010 the SHRC published "A Human Rights Framework for the design and implementation of the proposed 'Acknowledgement and Accountability Forum' and other remedies for historical child abuse in

⁵¹² *Scottish Commission for Human Rights Act 2006*. Available from: http://www.legislation.gov.uk/asp/2006/16/pdfs/asp_20060016_en.pdf

⁵¹³ Scottish Parliament. Plenary, 07 Feb 2008 [Internet]. 2008 [cited 2020 February 19]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&i=39672>

⁵¹⁴ A5750135 – Email from official to Minister for Public Health enclosing briefing. Briefing for Minister – InterAction. 28 February 2013.

⁵¹⁵ F3022335 – Email chain between SHRC and officials. FW: Papers and information for roundtable with the Scottish Human Rights Commission on acknowledgement and accountability for historic child abuse in Scotland. 19 January 2010 - 19 October 2010.

⁵¹⁶ C1563128 – Report from the Care Leaver's Association and Scottish Institute for Residential Child Care. Time for 'Justice' - Research to inform the development of a human rights framework for the design and implementation of an 'Acknowledgement and Accountability Forum' on historic abuse of children in Scotland. 2009. p. 58. [cited 2020 February 19].

⁵¹⁷ B3814440 – Review document in email from official. A review of international human rights law relative to the proposed acknowledgement & accountability forum for adult survivors of childhood abuse. 25 January 2010.

Scotland”⁵¹⁸. This was “based on an analysis of international human rights law, research on the views of survivors and others, and experience in other countries”⁵¹⁹.

12.7. On 8 June 2010, the Scottish Government provided an interim response to the SHRC’s Human Rights Framework⁵²⁰.

12.8. On 10 February 2011, an official sought approval from the Minister for Public Health, Minister for Children and Early Years, and the Minister for Community Safety, to respond to the recommendations in the SHRC Framework⁵²¹. The proposed response from the Scottish Government (Annex D) was as follows:

- “acknowledged the need to engage more fully with a wider range of survivors (Recommendation 1).
- explained what steps central and local government have taken to conduct inquiries, the approach to prosecution in such cases and the Restorative Justice Toolkit that was being tested (Recommendation 2).
- set out the value of a ‘confidential’ forum and suggested that further work was required (including more consultation) to see whether the inclusion of investigatory powers in a full forum was either desirable or practicable (Recommendation 3).
- considered the issue of ‘time bar’ and its impact on survivors (Recommendation 4).

⁵¹⁸Scottish Human Rights Commission. A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability” Forum” and other remedies for historic child abuse in Scotland [Internet]. 2010. p. 58 [cited 2020 February 19]. Available from: http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedi es.doc

⁵¹⁹ Centre for excellence for looked after children in Scotland. SHRC Interaction on historic abuse of children in care – Action plan on justice for victims of historic abuse of children in care [Internet]. 2013 [cited 2020 February 19]. p. 11. Available from: <https://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

⁵²⁰ F3077383 – Letter from official to the SHRC Director. Acknowledgement and Accountability. 08 June 2010.

⁵²¹ F3581153 – Submission from official to Ministers. Time to be Heard – Scottish Human Rights Commission Human Rights Framework – Response to recommendations about a ‘full forum’. 10 February 2011.

- suggested a scoping exercise to assess the practicalities of a ‘reparations programme’ (including contributions from relevant institutions) (Recommendation 5).
- proposed deferring a response to the development of ‘apology’ legislation (Recommendation 6).
- confirmed that all SG policy development is diversity proofed to avoid discrimination (Recommendation 7).
- confirmed the importance of ‘a comprehensive communications and outreach strategy’ to raise awareness of historic child abuse, the remedies available and the steps to do so (Recommendation 8).
- set out the steps taken to provide necessary support for participants going through TTBH to assist their effective participation (Recommendation 9)”.

12.9. The Ministers for Children and Early Years and for Community Safety approved the response⁵²².

12.10. On 22 February 2011, the Scottish Government responded in full to the SHRC Framework⁵²³. Before addressing each of the recommendations in turn, the Scottish Government’s letter stated:

“The rights and needs of adult survivors who were abused in care as children are the concern of many different parts of government at all levels. Scottish Government has key responsibilities here. This response is therefore a collaborative one, bringing together Scottish Government’s responsibilities for the health and wellbeing of adult survivors of childhood abuse, children in care today and the recognition and realisation of survivors’ rights to justice. It reflects the views of the three relevant Ministers who represent these responsibilities: the Minister for

⁵²² F3587502 – Email from Private Offices to officials. RE: TIME TO BE HEARD - SCOTTISH HUMAN RIGHTS COMMISSION HUMAN RIGHTS FRAMEWORK - RESPONSE TO RECOMMENDATIONS ABOUT A ‘FULL FORUM’. 10 February 2011 - 11 February 2011

⁵²³ F3745815 – Letter to the SHRC Director from official. Scottish Government response to the human rights framework prepared by Scottish Human Rights Commission. 22 February 2011.

Public Health, the Minister for Children and Early Years and the Minister for Community Safety.

This section of the response outlines the work that is currently being undertaken in this area by Scottish Government and also notes some issues that are not discussed elsewhere in the response.

Scottish Government has recognised the pain and suffering caused by the abuse of children in care as a national responsibility since the previous First Minister made a public apology to the Scottish people in 2004. The *Historical Abuse Systemic Review* carried out by Tom Shaw and published in 2007 helped to lead the way in making recommendations about how to prevent abuse and assist survivors. For the last six years the SurvivorScotland Strategy has been taking forward work with adult survivors, support agencies and other stakeholders aiming to ensure that survivors of any form of abuse as children are able to access what they need, including recognition and realisation of their rights.

Alongside these developments, there has been a renewed focus on residential childcare today and its role in helping to support and nurture Scotland's children and young people. Scottish Government believes that people and their potential lie at the heart of a more successful Scotland and that children in care deserve every opportunity to play a full role. We want every care home to be the first and best choice for children who need residential care. There is increasing recognition that residential childcare can offer a positive opportunity for some children and can help them to grow into maturity and a positive adulthood.

The TTBH Report published today is another key development in testing out a model of giving adult survivors the opportunity to describe their experiences. Scottish Government welcomes this report. Ministers are committed to taking forward the roll out of TTBH, drawing on the experience of the Pilot Forum. As part of the Human Rights Framework you made five recommendations in relation to the Pilot Forum. Scottish

Government responded to those five recommendations last year. Steps were taken to meet those recommendations and these are set out in the TTBH Report. We look forward to hearing your response to the TTBH Report.

The report commissioned by you from the Scottish Institute for Residential Child Care (at page 35) notes that the particular features of Scotland must be central in meeting the needs of survivors. The Scottish residential childcare sector has always had particular characteristics that distinguish it from other countries and this was noted in the *Historical Abuse Systemic Review* (at page 120). Appendix A provides details of these features. This clearly has implications for further developments to assist adult survivors.

Identity is a key issue for many survivors of abuse in care and also for former residents generally. Some people who were in care as children do not identify themselves as 'survivors' in spite of the fact that they describe harsh treatment that others would consider abusive. The TTBH Report confirms this and considers the fact that the pilot was open to any former resident to describe their experiences, regardless of whether they saw themselves as having experienced abuse. We therefore note Recommendation 9 in the TTBH Report that an 'open approach' be adopted in a nation-wide programme of confidential hearings".

- 12.11. A meeting took place with the Minister for Public Health, Minister for Children and Early Years, Minister for Community Safety, Time to be Heard and SHRC on 17 March 2011. Briefing was provided by an official for this meeting on 11 March. The purpose of the meeting was to discuss Tom Shaw's report and the SHRC recommendations in the Human Rights Framework⁵²⁴.
- 12.12. Following the meeting with SHRC and Ministers, officials exchanged emails regarding the Scottish Government's response to the SHRC Framework recommendations⁵²⁵. This included an attachment about the Scottish Public

⁵²⁴ A1512029 – Email from official to Ministers. TIME TO BE HEARD REPORT – MEETING WITH TIME TO BE HEARD AND THE SCOTTISH HUMAN RIGHTS COMMISSION. 11 March 2011.

⁵²⁵ F3681370 - Email between officials. TTBH/SHRC meeting. 17 March 2011-23 March 2011.

Services Ombudsman Annual Reports which contained references to apology legislation⁵²⁶.

The InterAction Process

- 12.13. SHRC met officials on 9 August 2011. The following day, SHRC sent officials a draft paper on “InterAction” for discussion⁵²⁷. The accompanying email stated “it would be good to hear your views, discuss any adjustments or additions you would find useful and how this might be developed into a proposal which could be taken to Scottish Ministers”. A week later, officials discussed the draft paper and their response to SHRC⁵²⁸.
- 12.14. On 24 November 2011, an official sent a briefing to the Ministers for Public Health, Community Safety and Legal Affairs, and for Children and Young People, in preparation for Ministers’ upcoming appearance at the Public Petitions Committee⁵²⁹. The briefing highlighted that since its response to the SHRC Framework, the Scottish Government had agreed to “participate in the Human Rights proposed ‘Interaction’ process”.
- 12.15. The briefing also provided a response to the potential question “What progress is being made with implementing the SHRC Framework?”:

“The Scottish Government responded to the recommendations in the Scottish Human Rights Commission on 22 February 2011. The response indicated that accountability for human rights violations was already being pursued through criminal prosecutions and also independent inquiries (such as the Inquiry into Kerelaw School).

Scottish Ministers want to build on what has already been achieved in:

⁵²⁶ B4739443 – Email between officials. Apology Legislation. 22 February 2011.

⁵²⁷ F4098985 – Email from SHRC to officials. Follow up to chat re “Human Rights InterActions”. 10 August 2011.

⁵²⁸ F4098982 – Email between officials. Comments on paper. 07 September 2011.

⁵²⁹ F4109349 – Submission to Ministers. Briefing for the public petitions committee meeting – Petition PE1351. 24 November 2011.

- Ensuring full and effective participation of survivors and others whose rights are affected
- Developing a comprehensive communications and outreach strategy to raise awareness
- Providing support to enable survivors to participate effectively in a National Confidential Forum

Scottish Ministers have also:

- committed to a scoping exercise to consider issues surrounding a possible reparations scheme
- agreed to respond on the issue of apologies legislation at a later date
- consult on the time-bar issue”.

12.16. The SurvivorScotland National Reference Group met on 7 December 2011. It was explained that SHRC expected the government to take steps towards remedies, and noted that SHRC was meeting Ministers on 20 December to discuss proposals for the InterAction. The InterAction process was to begin the following year, bringing together survivors, representatives of child care institutions, government officials, civil society representatives and experts to develop an action plan for the implementation of the Human Rights Framework^{530,531,532,533,534,535}.

⁵³⁰ F4094315 – Document from the National Reference Group. SurvivorScotland: National Reference Group – Updated. 07 December 2011.

⁵³¹ F4078715 – Meeting agenda for SurvivorScotland Reference Group. SurvivorScotland reference group meeting. 07 December 2011.

⁵³² F4094175 – Draft minutes for the National Reference Group. National Reference Group – Adult Survivors of Childhood Abuse. 14 September 2011.

⁵³³ F4106261 – Project update for the National Reference Group. Project Statistics. 07 December 2011.

⁵³⁴ F4082365 – Strategy funding for the National Reference Group. Survivor Scotland: National Reference Group – Strategy Funding. 07 December 2011.

⁵³⁵ F4095442 - Training strategy for the National Reference Group. SurvivorScotland – National Reference Group – Training Strategy. 07 December 2011.

- 12.17. On 20 December 2011, the Scottish Government agreed to actively participate in the SHRC InterAction process⁵³⁶, a facilitated negotiation within a human rights framework, to develop an action plan to implement the recommendations in the SHRC Framework⁵³⁷.
- 12.18. On 22 December 2011, Professor Alan Miller, Chair of SHRC, wrote to the Ministers for Public Health and for Legal Affairs and Community Safety, regarding the meeting the three of them had on 20 December. In his letter, Professor Miller stated:

“Having received a clear commitment from you both to engage with and take seriously the outcomes of an interaction the Commission will begin the process of preparing an interaction in the new year. We will do so in discussion with survivors, Government, relevant institutions and others who have an interest in justice for survivors of historic child abuse.

At the request of Government representatives the Commission has also considered the option of hosting a national confidential committee. This was fully discussed by the Commission at its November meeting and decided that it would be inappropriate due primarily to concerns related to the Commission’s independence and our consistent view that a confidential committee can only be one element of a broader package of acknowledgement and accountability.

The Commission did, however, wish to respond constructively and search for a way forward in the interests of access to justice for survivors of historic child abuse. It therefore indicated to officials that it would consider the use of its legal powers to undertake an inquiry into historic child abuse. Such an inquiry could hear in confidence from survivors, identify lessons from such experience and produce recommendations to

⁵³⁶ Scottish Human Rights Commission. History of InterAction [Internet]. 2020 [cited 2020 February 19]. Available from:

<https://www.shrcinteraction.org/WhatisanInterAction/History/tabid/1190/Default.aspx>

⁵³⁷ Centre for excellence for looked after children in Scotland. SHRC Interaction on historic abuse of children in care – Action plan on justice for victims of historic abuse of children in care [Internet]. 2013 [cited 2020 February 19]. p. 11. Available from: <https://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

seek to ensure non-repetition. It further explained to officials that the Commission's final view on this option would be informed by (a) a legal opinion on any necessary amendments to the Commission's powers under the Scottish Commission for Human Rights Act 2006, (b) a professional risk assessment including a consideration of whether the additional funding available would be sufficient to complete the terms of reference of an inquiry, as well as other matters of both principle and practicability, and (c) the views of survivors and others as to the value of such an inquiry.

Following today's meeting at which the above was discussed we will commence (a) and (b) in the new year, and continue discussions with you as to the possibility of this option. We will share the findings of these processes as they emerge and are grateful to you for your offer of helpful input into this necessary process of due diligence"⁵³⁸.

12.19. On 9 January 2012 an official wrote to the Public Petitions Committee regarding PE1351^{539,540} and InterAction⁵⁴¹:

"Mr Matheson, the Minister for Public Health, has asked me to update the Public Petitions Committee on the outcome of a meeting on 20 December with the Scottish Human Rights Commission (SHRC). Mr Matheson, the lead Minister and Ms Cunningham, the Minister for Community Safety and Legal Affairs, met Professor Alan Miller, Duncan Wilson and Shelagh McCall from the SHRC to consider next steps in securing remedies for adult survivors abused in care as children.

At the meeting Ministers agreed that the Scottish Government should take part with an open mind in the Interaction process proposed by the SHRC and would engage in exploring all the different remedies

⁵³⁸ A3072425 – Letter from Professor Alan Miller of the SHRC to Ministers. Re. Human Rights InterAction on Historic Child Abuse. 22 December 2011.

⁵³⁹ Scottish Parliament. Public Petition No. PE1351[Internet]. No date [cited 2020 February 19]. Available from: <https://archive.parliament.scot/business/petitions/docs/PE1351.htm>

⁵⁴⁰ Scottish Parliament. Petition PE1351. 2010 [cited 2020 February 19]. Available from: <https://archive.parliament.scot/business/petitions/docs/PE1351.htm>

⁵⁴¹ A2055522 – Email between official and Minister for Public Health Private Office. Meeting with SHRC to discuss their Interaction process. 09 December 2012.

presented in the SHRC Human Rights Framework. They would be willing to take part in the Interaction, and Mr Matheson would seek to attend the first and final meetings. It was agreed that further discussion of remedies (with the exception of the National Confidential Forum) should not be undertaken at this time as that might pre-empt the purpose and impede the process of the Interaction. It was noted that some of the remedies presented in the Framework are already available to survivors, such as the dedicated support and advocacy service, In Care Survivors Service Scotland, and that Restorative Justice interventions were also now a real possibility following the successful pilot conducted by Sacro.

It was also agreed that the roll out of the National Confidential Forum should not form part of the InterAction, given that a successful model has been piloted (through the Time to be Heard Pilot Forum), stakeholders reacted positively to the pilot and commitments have already been made by the Scottish Government. The Scottish Government should therefore work to establish the National Confidential Forum as soon as possible⁵⁴².

- 12.20. In 2012, the Centre for Excellence for Children's Care and Protection (CELCIS)⁵⁴³ was commissioned to prepare arrangements for InterAction⁵⁴⁴.
- 12.21. As noted above, the Scottish Government agreed to participate, and the InterAction Process was officially launched on 13 August 2012. Meetings and events commenced in 2013⁵⁴⁵.
- 12.22. In a research article about the InterAction process, it was noted that: "The initial time scale [for InterAction] was that this should be completed in four months. It quickly became clear that in order to be effective, the process

⁵⁴² A2055522 – Email between official and Minister for Public Health Private Office. Meeting with SHRC to discuss their Interaction process. 09 December 2012.

⁵⁴³ Centre for excellence for Children's Care and Protection. About us [Internet]. 2019 [cited 2020 February 19]. Available from: <https://www.celcis.org/about-us/>

⁵⁴⁴ Scottish Human Rights Commission. History of InterAction [Internet]. 2020 [cited 2020 February 19]. Available from: <https://www.shrcinteraction.org/WhatisanInterAction/History/tabid/1190/Default.aspx>

⁵⁴⁵ A5750135 – Email from official to Minister for Public Health. Briefing for Minister – InterAction. 21 February 2013.

required more time”. Additionally, the research article noted that a Review Group, chaired by Professor Andrew Kendrick, was formed to oversee the process, and “A small Project Team was appointed; participants were selected on the basis of relevant expertise, such as mediation or working with providers and former providers of residential childcare services^{546,547,548}. A combination of individual meetings, telephone calls and group meetings with stakeholders was convened: victim/survivors including child migrants and those from minority ethnic groups; residential care practitioners and managers; the Conference of Religious and the Conference of Bishops; and statutory and voluntary agencies”⁵⁴⁹.

- 12.23. On 21 February 2013, officials from the SurvivorScotland team sent the Minister for Public Health a briefing in advance of the InterAction event on 28 February⁵⁵⁰. The briefing included background information on the Human Rights Framework – Interaction (Annex C), noting: “The Scottish Government did not accept all of the recommendations set out in the Framework, in particular those relating to inquiry” and that “The Scottish Government has actively participated in the preparations leading up the InterAction events and is engaging with an “open mind” in the process”.
- 12.24. On 28 February, 20 June, and 27 June 2013 there were full InterAction events. Additionally, on 22 May, 28 May, 5 June, and 13 June 2013 there were four themed mini-interactions⁵⁵¹. The themes of the min-interactions were: (i) acknowledgement and apology (22 May), (ii) repatriation (28 May), (iii) inquiry

⁵⁴⁶ The InterAction Review Group’s purpose was to provide recommendations and advice for the project and was comprised of representatives from CELCIS, INCAS, FBGA, SHRC, Scottish Government, Educating Through Care Scotland (ETCS) and the Association of Directors of Social Work (ADSW)

⁵⁴⁷ A3215066 – List of members. SHRC InterAction Review Group. 29 May 2012.

⁵⁴⁸ A4477027 – Role of the review group. Preparation for SHRC InterAction on Historic Child Abuse – Revised Project Plan. 03 November 2012.

⁵⁴⁹ Hawthorn M. Working together and moving on: A human rights approach to addressing Historical Abuse. Scott.J. Resid. Child Care [Internet]. 2015 Dec [cited 2020 February 19].; Vol 14. p. 1-7 Available from:

https://www.celcis.org/files/1814/4922/7368/2015_Vol_14_3_Hawthorn_Working_together_and_moving_on.pdf

⁵⁵⁰ A5750135 – Email from official to Minister for Public Health. Briefing for Minister – InterAction. 21 February 2013.

⁵⁵¹ A9717683 - Email correspondence between official and Andrew Kendrick. Re: SHRC INTERACTION. 13 November 2014.

(5 June) and (iv) access to justice (13 June)⁵⁵². The InterAction Review Group met on 3 June 2013⁵⁵³ and on 28 August 2013⁵⁵⁴.

- 12.25. Following the interactions in 2013, in August 2013 a draft InterAction Action Plan on Justice for Victims of Historical Child Abuse was published by CELCIS and SHRC. A consultation on this Plan was carried out at InterAction meetings in early 2014.
- 12.26. On 30 January 2014, a meeting took place between officials and SHRC about the outcomes from the Interaction process. The minutes of the meeting were circulated on 10 April 2014⁵⁵⁵. The covering email to SHRC noted that “the Consultation period for the draft InterAction Action Plan has been extended to 25 April. I think it will be useful for us to see the results of the consultation so that the responses can be fed back to our Ministers and can help inform their reply”.
- 12.27. A submission to the Minister for Community Safety and Legal Affairs on 4 February 2014 provided an update following the meeting between officials and SHRC to discuss the Scottish Government’s response to the ‘Draft Action Plan on Justice for Victims of Historical Child Abuse of Children in Care’⁵⁵⁶.
- 12.28. In relation to time-bar, the submission noted:

“Time-bar is seen by some survivors as a barrier to access to justice and there have been calls to make an exception for child abuse victims or for an explicit reference to child abuse to be included in the discretionary criteria used by judges. The Action Plan calls for a commitment to review the way in which time-bar currently operates.

⁵⁵² A6179758 – Document from an SHRC access to justice event. SHRC InterAction on historic child abuse mini-InterAction session on access to justice. 13 June 2013.

⁵⁵³ A6167880 – Email from Andrew Kendrick to Review Group. InterAction Review Group meeting June 13 Minutes. 13 June 2013.

⁵⁵⁴ A6701231 – Email from Andrew Kendrick to Review Group. InterAction Review Group meeting. 29 August 2013.

⁵⁵⁵ A8202304 – Email from official to officials and SHRC. Minutes of Meeting about the Outcomes of the InterAction process. 10 April 2014.

⁵⁵⁶ A7703442 – Email from official to Minister for Community Safety and Legal Affairs. Scottish Human Rights Commission InterAction – Historic Child Abuse. 04 February 2014.

Officials provided an update to the meeting on the relevant proposals to be contained in the forthcoming damages for personal injury legislation. We advised that there is to be no carve out for survivors of historic abuse and that we are amending the list of criteria to be applied in the exercise of discretion (but did not advise that there is to be no explicit reference to child abuse cases). The SHRC is clearly anticipating that the list will be amended to include child abuse cases therefore, as we expected, they will be disappointed with the proposals which will be available for the 'recall' event".

12.29. In relation to apology, the submission noted:

"An update on Margaret Mitchell's apology law proposals was provided. It was clear that Ms Mitchell had shared your letter to her of 26 November in which you raised a number of concerns and queries about the proposals. Ms Mitchell has yet to reply.

SHRC were of the very strong view that at the 'recall' event there will be an expectation that the SG would have a clear position on apology law. Their view is that the SG ought to be taking the initiative and not relying on an under resourced MSP to take the matter forward. They consider that the SG ought to be doing more to drive the issue forward and at a minimum ought to be assisting Ms Mitchell.

Subject to your views, we suggest that it would be helpful if some progress could be made on the issue in advance of the "recall" and if possible be in the position of having a definitive view on whether or not the Government would be able to support Ms Mitchell's proposals. We suggest a further letter to Ms Mitchell and a draft is attached as Annex B"⁵⁵⁷.

12.30. A Members' business debate took place at the Scottish Parliament on 30 April 2014 "on motion S4M-09525, in the name of Graeme Pearson, on justice for survivors of historic institutional child abuse". The Minister for Community

⁵⁵⁷ A7703442 – Email from official to Minister for Community Safety and Legal Affairs. Scottish Human Rights Commission InterAction - Historic Child Abuse. 04 February 2014.

Safety and Legal Affairs said in relation to InterAction: “We have worked with the SHRC and other stakeholders in the interaction and we think that it has been a very valuable process. It would be premature for me to make any response about the commitments that are proposed in that plan until after we have seen the results of the consultation on the plan. The Government hopes to be able to make a full response next month. Unfortunately, the debate is this month. I know that everybody who has spoken in the debate will be waiting eagerly to see what that response is. That will include a decision on a reparation scheme, which was mentioned by a few members, including Graeme Pearson, Sandra White and Neil Bibby. I need to put on record that the Government is still committed to scoping out a possible reparation scheme. However, as I said, we need to wait until we see the outcome of the consultation on the action plan”⁵⁵⁸.

- 12.31. On 14 May 2014, a submission to the Minister for Public Health provided an update and sought views on a meeting with the Minister for Community Safety and Legal Affairs, and the Minister for Children and Young People, to discuss the proposed response to the Action Plan⁵⁵⁹. The Ministers for Children and Young People, Community Safety and Legal Affairs, and Public Health, met on 3 June 2014 regarding the Action Plan⁵⁶⁰.
- 12.32. On 17 June 2014, the Action Plan was published⁵⁶¹ and a SHRC event took place with InterAction participants⁵⁶². The Action Plan covered: (1) acknowledgement and accountability; (2) reparation; (3) inquiry; and (4) access to justice. In particular, it sought commitments for additional action to be taken in the following areas:

⁵⁵⁸ A8362701 – Transcript of parliamentary debate. Historic Institutional Child Abuse. 30 April 2014.

⁵⁵⁹ A8433320 – Email from official to Minister for Public Health, “SCOTTISH HUMAN RIGHTS COMMISSION INTERACTION ON HISTORIC ABUSE OF CHILDREN IN CARE: RESPONSE TO INTERACTION ACTION PLAN. 14 May 2014.

⁵⁶⁰ A8916933 – Email from official to Ministers. SHRC InterAction Process and Action Plan: Note of Meeting between three Ministers 3 June 2014. 3 June 2014.

⁵⁶¹ Scottish Human Rights Commission – InterAction. Summary of responses to the Action Plan published [Internet]. 2014 [cited 2020 February 19]. Available from: <https://www.shrcinteraction.org/News/tabid/1063/articleType/ArticleView/articleId/3812/Summary-of-responses-to-the-Action-Plan-published.aspx>

⁵⁶² A8629253 – Emails between SHRC and officials. Media interest in InterAction process. 12 June 2014.

- Apology law
- Establishing a national record
- Appropriate forms of commemoration
- Review of previous inquiries and consideration of a national inquiry
- Supporting survivors to understand the action plan
- Address time-bar
- National guidelines on investigation and prosecution of historical abuse
- Access to records
- Consider development of a National Survivor Support Fund

12.33. On 20 June 2014, an official emailed the Cabinet Secretary for Justice with a draft of the Government’s response to the SHRC Action Plan. The suggested lines to take were: “The Scottish Government continues to discuss wider issues and remedies for survivors of child abuse as part of the “InterAction” process with the Scottish Human Rights Commission. We will review the report and this further consultation report in detail and intend to respond to the report in the Autumn as agreed with the Scottish Human Rights Commission. The response will set out the Government’s position on matters contained in the InterAction report, including time-bar and a national reparation fund”. This was approved by the Minister for Community Safety and Legal Affairs⁵⁶³.

12.34. On 13 August 2014, the Ministers for Public Health, Community Justice and Legal Affairs, and Children and Young People, met twelve survivors and Professor Alan Miller from SHRC, to hear views on the InterAction Plan⁵⁶⁴. A

⁵⁶³ A11614408 – Email from official to Cabinet Secretary for Justice. RE: Lines to take - survivors of historic sexual abuse time bar. 20 June 2014

⁵⁶⁴ A11930343 – Email from official to Minister for Public Health, Minister for Community Safety and Legal Affairs and Minister for Children and Young People. Ministers meeting with survivors – 13 August 2014. 7 August 2014.

note of the meeting stated that Ministers would consider the points raised at the meeting and provide a full response before the InterAction in October⁵⁶⁵.

12.35. The SHRC InterAction Recall Day was held on 27 October 2014, and was attended by the Cabinet Secretary for Education and Lifelong Learning, the Minister for Children and Young People, the Minister for Community Safety and Legal Affairs, and the Minister for Public Health⁵⁶⁶. The report of the event noted its purpose was “to share the commitments of the implementation of the InterAction Action Plan and to take this forward via further group discussion”⁵⁶⁷.

12.36. The Cabinet Secretary for Education and Lifelong Learning gave his statement, which responded to the Action Plan for the Scottish Government:

“I am here to respond to the Interaction Action Plan on behalf of the Scottish Government and address the commitments it called for. I hope that this response will build upon the previous apology and reiterate our commitment to supporting survivors.

One of the topics we spoke about at our meeting with survivors in August was the creation of a national survivor support fund. I am happy to confirm that the Scottish Government will work to develop a survivor support fund. This will provide support to help survivors deal with the legacy of their abuse and build more positive lives.

We will consider a number of existing models, including the Caranua model which some survivors recently told us they were interested in and will work with survivors and organisations to consider how a model like this could enhance and work in partnership with support services already available in Scotland....

⁵⁶⁵ A9200222 – Email from official to officials. SURVIVORS MEETING WITH MINISTERS. 27 August 2014.

⁵⁶⁶ A9717963 – List of organisations involved in InterAction from the start. SHRC InterAction Participant List. 24 October 2014.

⁵⁶⁷ Scottish Human Rights Commission. SHRC InterAction on Historic Abuse of Children in Care. Report of InterAction Even held on 27 October 2014 in the Mitchell Library, Glasgow. 27 October 2014. Available from:

https://www.shrcinteraction.org/Portals/23/InterAction_Event_October_2014_Report.pdf

Another recommendation that was widely supported was that there be some form of official commemoration be made to survivors of historic abuse. I am happy to accept this also and fund an appropriate commemoration, guided by the views of survivors....

The Action Plan sets out many positive measures and we will continue to work with you to ensure survivors know about the improved support and how to access it. This will be done through the proposed survivor support fund. The National Confidential Forum will also play a role in assisting people who choose to come to share their experience of institutional care to locate further support if they wish it. I would also like to ask for your help in reviewing the SurvivorScotland Strategy which was launched almost ten years ago. We want to consider what has worked well, what still needs to be achieved and create a new plan of action that recognises the developments made, including the outcome of this InterAction process, and sets a clear agenda for the future.

Effective apologies and Apology Law is another important recommendation you have asked us to consider. As many of you may be aware there is currently a proposal by Margaret Mitchell, MSP, to introduce a members Bill on apology law. Ms Mitchell is to be commended for taking this work forward and I am happy to support the principle of the Bill. We are in touch with Ms Mitchell and I understand that she is at the stage of formalising the instructions for the Bill which will be drafted by the Non-executive Bill Unit of the Scottish Parliament. We will continue to work with her as the proposals are developed and as the proposals become clearer we will consider too what resources we can commit to that work.

You asked us to consider how the civil justice system could be made more accessible and responsive to survivors of historic abuse of children in care, including consideration of the way in which “time bar” operates. I know that for many people here today the issue of ‘time bar’ is an important one. We consider that it is in the interest of all members of society to have an effective framework that allows civil law cases to be

resolved quickly and fairly... We are also committed to examining the issues around legal aid and why so many of you have reported difficulties in obtaining it.... All of these steps are welcome but the need for consistency in the way historic abuse is investigated and prosecuted across Scotland is something many of you have highlighted. We are working with the Crown Office and Procurator Fiscal Service to make sure they engage with survivors so that they know when and how to access back-up support such as advocacy and counselling... In evidence to the parliament Police Scotland also confirmed it has started developing a National Child Abuse Investigation Unit that would provide expertise in current and historic cases.

I am aware that some survivors would like us to commission a public inquiry similar to those announced by the UK Government. I would like to make it clear that I have not ruled this out. There have already been a number of investigations and reviews into the care sector in Scotland over the years. They led to significant improvements, making the sector a very different place than it was even ten years ago. I will listen carefully to both sides of this argument and what I have heard today - always with the aim of helping survivors...

You also asked us to take account of the outcomes of the ongoing review of record keeping and access to historic records. As a direct result of the Shaw review, which recognised a moral imperative for the proper management and retention of files, we introduced legislation in 2011 through the Public Records (Scotland) Act. The Act is aimed at improving record keeping across the public sector in Scotland and the Keeper of the Records of Scotland is working closely with public authorities to help them meet their statutory obligations”⁵⁶⁸.

12.37. Chapter 1 of this report (the response of the Scottish Government to the evidence of Helen Holland, David Whelan and Christopher Daly) makes reference to the steps taken by the Scottish Government since 2014 that have

⁵⁶⁸ A9725720 – Email between officials. Mr Russell's speech. 07 November 2014.

built on the Interaction Process, and in that section, it is also notes that the Scottish Government continues to be a member of the InterAction Review Group today⁵⁶⁹.

⁵⁶⁹ The InterAction Review Group was established to oversee the implementation of the Scottish Human Rights Commission's *InterAction on Historical Abuse of Children in Care*. Following the final meeting of the InterAction Process in October 2014 and commitments to implement the InterAction Action Plan, the Review Group agreed to continue with a revised remit and membership. It was agreed that the Group would continue to uphold the principles of collaboration and inclusiveness. Membership includes survivors of abuse, representatives of provider organisations, the Scottish Government, CELCIS and the Scottish Human Rights Commission.

CHAPTER 13

ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM / TIME TO BE HEARD

- 13.1. This chapter responds to point 5 of the section 21 notice and provides an explanation of how the Acknowledgement and Accountability Forum was developed and became the Time to Be Heard pilot, including the approach to engagement with survivor groups and campaigners. The pilot later led (also building on the Tom Shaw review) to the establishment of the National Confidential Forum (“NCF”), which is covered in chapter 14 of this report.
- 13.2. Chapter 2 of this report (reasons for not establishing a public inquiry, 2002 to 2014) refers to a truth and reconciliation forum in the context of the Scottish Executive’s response to Petition PE535 (which called for a public inquiry), being the early working title of the Acknowledgment and Accountability Forum.
- 13.3. This chapter also addresses the rationale for choosing Quarriers for the pilot and how the name “Time To Be Heard” was reached, which were (amongst other issues) concerns raised by Helen Holland, Christopher Daly and David Whelan in their evidence to the Inquiry. Petition PE1351 is also covered by this chapter.

Background

- 13.4. The possibility of a “truth and reconciliation” forum was discussed between the Cabinet Secretary for Justice, Minister for Justice, Minister for Public Health and Minister for Children and Early Years on 18 December 2007:

“Many survivors make it clear that what they seek is not monetary compensations but acknowledgement through acceptance that they are telling the truth. On this basis, the Minister for Public Health [Shona Robison] has recently asked her officials to begin to explore the use of a truth and reconciliation model. The way in which this could operate is not yet clear, but could have the benefit of bringing parties together without the stress and costs of court action (for those who are not debarred). It is likely that, given the time that has elapsed since the incidents, that

individual perpetrators will no longer be around to be answerable. But the organisations who employed them will be and may be persuaded to engage in this type of exchange to move on from the adverse publicity that has surrounded them. Great care would need to be taken to ensure that victims understood that the process was instead of court proceedings... helpful to agree to piloting of this approach and reviewing the findings at a later date”⁵⁷⁰.

13.5. The Chair’s brief for the meeting included a summary of points including on the purpose of the meeting, which was to: “explore measures which could also help appease some of the criticism around the lack of any recommendation in Tom Shaw’s report that there should be a public inquiry... give individuals who are unable to seek redress through the courts an alternative means of acknowledgement... [m]any survivors will be disappointed by the fact that due to the lack of any change in the system they will be unable to seek redress... one example of a way to give redress is the notion of using the principles of the Truth and Reconciliation model”⁵⁷¹.

13.6. Following the meeting, a scoping paper by officials on this topic stated: “[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 bar which effectively debars alleged victims of abuse from claiming compensation for personal injury through the courts”⁵⁷².

13.7. It was acknowledged at Cabinet on 5 February 2008:

“The historic abuse systemic review on residential childcare by Tom Shaw and the Scottish Law Commission’s review of prescription and

⁵⁷⁰ F1198108 – Adult Care and Support Change Team, Briefing for Cross-Ministerial Meeting on Adult Survivors of Childhood Sexual Abuse. Tuesday 18 December 2007

⁵⁷¹ F1200297 – Chair’s brief for Cross-Ministerial Meeting on Adult Survivors of Childhood Sexual Abuse. Tuesday 18 December 2007

⁵⁷² B1879926 – Children, Young People and Social Care Directorate, Applying the Truth and Reconciliation and Redress Models to Scotland. 14 January 2008

limitation (covering time bar which prevents survivors of abuse bringing a claim of damages after a specific period of time has elapsed) were published towards the end of 2007. Justice, Health and Education Ministers (and subsequently the Minister for Culture, Arts and Sport) agreed that the recommendations in these reports, together with wider developments on the Survivor Scotland strategy and planned by the National Archives of Scotland, required to be announced in Parliament. On 7 February, Mr Ingram will make this statement. He will announce Government's support for survivors including: a process to be put underway for identifying a Scottish forum using appropriate truth and reconciliation principles; a specific service for in-care abuse survivors to be funded in part by Government, subject to final approval of the proposals; that the terms of reference for the Kerelaw Joint Inquiry will be published on 7 February; recommendations from government partners will be invited by June for the improvement of residential care. The statement will also confirm Government has accepted SLCs recommendations not to make any significant change to the law on time bar"⁵⁷³.

- 13.8. As referred to above, in his statement on 7 February 2008, Mr Ingram informed the Scottish 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"⁵⁷⁴.
- 13.9. Following the above statement the Adult Survivors Reference Group met on 29 February 2008. Stakeholders on the group included survivors representing themselves or an organisation, including Christopher Daly and Helen Holland.

⁵⁷³ A26644144 - SCN(08)17 – Cabinet paper. SCANCE. 5 February 2008.

⁵⁷⁴ Scottish Parliament. Plenary 07 Feb 2008. 2018 [cited 2020 February 20]. Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&i=39672>

The minutes of the meeting noted that: “The group agreed in principle that consultation on a Truth and Reconciliation approach should go ahead”⁵⁷⁵.

- 13.10. The group met again on 25 June 2008 and the minutes recorded that in the meeting: “most of the time would be taken up with free discussion around the Truth and Reconciliation Paper”. The minutes noted that the Chair (an official) said: “[t]hat It was a very courageous and important opportunity which had led on from the background of the Cross Party Group, the National Strategy and the work of Tom Shaw and others on In Care Abuse. Government would not be micro-managing, but with the help of the group and the public at large, would set parameters whereby everyone would be clear about what the desired outcomes would be”⁵⁷⁶. Additionally the title was discussed at this meeting and consideration was given to “reconsider[ing] the ‘Truth and Reconciliation’ title and that perhaps ‘Acknowledgement and Accountability’ could be an alternative”⁵⁷⁷.

Acknowledgement and Accountability

- 13.11. A briefing by officials dated 25 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... In progressing this work we will take due account of other countries’ experience”⁵⁷⁸.

⁵⁷⁵ F1588668 – Email from official to Health In Mind. Adult Survivors Reference Group – Agenda and papers for meeting 25 June 2008. Note of Meeting of 29 February 2008, page 3. 16 June 2008.

⁵⁷⁶ F2139394 – Email from Adult Care and Support Division to stakeholders. SurvivorScotland - Adult Survivors Reference Group – Note of Meeting. Thistle House. paragraph 2. 25 June 2008.

⁵⁷⁷ F2139394 – Email from Adult Care and Support Division to stakeholders. SurvivorScotland - Adult Survivors Reference Group – Note of Meeting. Thistle House. paragraph 2.2 25 June 2008.

⁵⁷⁸ B2380161 - Briefing from official for Minister for Children and Early Years. SUPPORT FOR SURVIVORS OF IN-CARE AND INSTITUTIONAL ABUSE, page 5. No date.

- 13.12. The Adult Survivors Reference Group met on 26 September 2008 and an official: “thanked the group for their comments on the Acknowledgement and Accountability paper. The document is about to go to Ministers and is due to go out for consultation in two or three weeks”. Christopher Daly tabled a paper at the meeting raising concerns about the process of Acknowledgement and Accountability. As noted in the minute the concerns included a comparison with the Irish model, time-bar and human rights issues. The minutes noted that in response: “The Chair advised that all models will be considered and the consultation exercise will be extensive, including roadshows, in order to capture a genuine and representative view. Although the time bar law stands at present... discussion can continue on this. Redress campaign issues and the Acknowledgement and Accountability consultation process can run in parallel”⁵⁷⁹.
- 13.13. A consultation paper entitled “Proposal to Develop an Acknowledgement and Accountability Forum for Adult Survivors of Childhood Abuse” was issued to consultees on 10 October 2008. The covering letter stated that it had been developed with the National Reference Group, and took account of their input, and that it provided a summary of key elements of some similar approaches from across the globe. It went 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 continued: “[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”⁵⁸⁰.
- 13.14. The discussion paper that informed the consultation stated: “During a business debate in Parliament on 7 February 2008, Scottish Ministers

⁵⁷⁹ B2712982 – Email with attachments between officials. Attachment SurvivorScotland, Adult Survivors Reference Group – draft note of meeting 26 09 08, para. 3 22 January 2009.

⁵⁸⁰ F1748684 – Letter from Adult Care and Support Division to consultees. Acknowledgment and Accountability cover letter. 10 October 2008.

announced their commitment to the scoping of a Scottish Truth and Reconciliation forum (currently re-named as an Acknowledgement and Accountability Forum), initially to address issues *for* adults who had suffered childhood abuse whilst in care”⁵⁸¹.

13.15. The paper added:

“It is needed to acknowledge the pain experienced by survivors and to give some of them the opportunity to recount those experiences in order to secure public recognition and to assist, where possible, with their own individual recovery. Such an approach could also be useful in ensuring that some survivors receive practical help to assist them to recover as far they are able, given the unique nature of each person’s experience and response...

whatever the elements of an Acknowledgement and Accountability approach in Scotland, any such support would not be offered instead of an individual’s right to seek financial compensation through, for example, the criminal injuries compensation scheme or the courts system. It might serve as an alternative to those who have said that taking action to bring a civil case, even with support, is not a viable option for them because of the stress involved in such an undertaking. Any forum is not intended as a way of bypassing legal justice either for those who have been abused or the alleged perpetrator...

survivors of abuse will have had, and continue to have, their own routes to personal reparation. Acknowledgement and Accountability would be another choice which will be open to individuals to make”⁵⁸².

13.16. A section of the paper, entitled “Survivor involvement”, stated: “It is clear that any model will have to be not only survivor-led, but have at its heart a robust support system. This paper is only the start of the process, which will involve

⁵⁸¹ F1748620 – Discussion Paper. Developing an Acknowledgement and Accountability Forum For Adult Survivors of Childhood Abuse. 10 October 2008.

⁵⁸² F1748620 – Discussion Paper. Developing an Acknowledgement and Accountability Forum For Adult Survivors of Childhood Abuse. 10 October 2008.

close liaison and alternative forms of discussion... the aim is to have facilitated survivor consultation as part of the process for designing any model in Scotland”⁵⁸³.

- 13.17. The paper noted next steps: “the Scottish Government will take the lead role in facilitating and supporting the necessary development work, if it is agreed to progress an initial test or pilot of the Acknowledgement and Accountability forum... the Forum itself should be independent of Government, and the validation process... managed by people independent of Government”⁵⁸⁴.
- 13.18. Christopher Daly emailed an official regarding the discussion paper, with his comments, on 25 August 2008⁵⁸⁵.
- 13.19. The idea for the forum was also discussed at Tom Shaw’s One Year On seminar, at which attendees gave their views in sessions about it⁵⁸⁶.
- 13.20. On 16 January 2009, the main consultation on the “Acknowledgement and Accountability Forum” ended. David Whelan issued a response to the consultation on behalf of Former Boys and Girls Abused in Quarriers⁵⁸⁷. In total there were 51 responses received with 1,126 points noted. Responses were received from local authorities and organisations including Kingdom Abuse Survivors Project, Rape Crisis Scotland, Open Secret, Break The Silence, the People’s Advocacy Service, the Scottish Institute of Human Relations, SIRCC, Scotland’s Commissioner for Children and Young People

⁵⁸³ F1748620 – Discussion Paper. Developing an Acknowledgement and Accountability Forum For Adult Survivors of Childhood Abuse. 10 October 2008.

⁵⁸⁴ F1748620 – Discussion Paper. Developing an Acknowledgement and Accountability Forum For Adult Survivors of Childhood Abuse. 10 October 2008.

⁵⁸⁵ F1677424 - Email from Christopher Daly to official. Reply to Proposal to Develop an Acknowledgement and Accountability Forum for Adult Survivors of Childhood Abuse. 25 August 2008.

⁵⁸⁶ Scottish Government. Tom Shaw Historic Abuse Systematic Review: One Year On SurvivorScotland: Progress and Potential – Scottish Government Seminar. 2009 [cited 2020 February 20]. Available from:

<https://webarchive.nrscotland.gov.uk/20170716025511/http://www.gov.scot/Publications/2009/03/18141125/0>

⁵⁸⁷ F1976215 - Email from David Whelan to Survivor Scotland Feedback. Attachment Former Boys and Girls Abused in Quarriers submission to the Consultation process for "Acknowledgement and Accountability". 14 January 2009.

(SCCYP), Survivor Support, Women’s Rape and Sexual Abuse Centre (Perth & Kinross)⁵⁸⁸.

- 13.21. Following the end of the consultation it was understood that it was difficult for survivors to be heard and the consultation wanted to hear from as many survivors as possible on the issues within the consultation paper. Therefore, between February and April 2009 four survivor agencies from across Scotland were approached to assist in additional in-depth engagement with a number of survivors⁵⁸⁹.
- 13.22. In March 2009, the Scottish Human Rights Commission (“SHRC”) was commissioned by the Scottish Government to produce an independent human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability” forum⁵⁹⁰.
- 13.23. In June 2009 and September 2009 the Scottish Government published summaries of the consultation responses on the “Acknowledgement and Accountability Forum”. Short summaries of both consultations were made available^{591,592}.

⁵⁸⁸ F1975810 – Spreadsheet, A&A/2009 Response Spreadsheet. 18 March 2009

⁵⁸⁹ Scottish Government. In Care Survivors: Development of Acknowledgement and Accountability Forum for Adult Survivors of Childhood Sexual Abuse – Summary of Additional Survivor Responses to the Consultation: February-April 2009. p.1. 2009 [cited 2020 February 20]. Available from: <https://www.gov.scot/publications/care-survivors-development-acknowledgement-accountability-forum-adult-survivors-childhood-sexual-abuse-summary-additional-survivor-responses-consultation-february-april-2009/>

⁵⁹⁰ Scottish Human Rights Commission. A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland. 2010. p. 5. [cited 2020 February 20]. p 54. Available from: http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedi es.doc

⁵⁹¹ National Records of Scotland. Consultation on the proposal to develop an Acknowledgement and Accountability approach for Adult Survivors of Childhood Sexual Abuse. – 2009 [cited 2020 February 20]. Available from: <https://webarchive.nrscotland.gov.uk/20190118214016/https://www2.gov.scot/Publications/2009/06/02154100/0>

⁵⁹² Scottish Government. In Care Survivors: Development of Acknowledgement and Accountability Forum for Adult Survivors of Childhood Sexual Abuse – Summary of Additional Survivor Responses to the Consultation: February-April 2009. 2009 [cited 2020 February 20]. Available from: <https://www.gov.scot/publications/care-survivors-development-acknowledgement-accountability-forum-adult-survivors-childhood-sexual-abuse-summary-additional-survivor-responses-consultation-february-april-2009/>

Time to Be Heard

13.24. According to the first summary 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”.

13.25. The summary went 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 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”.

13.26. The second summary 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”.

13.27. Potential names for the forum, suggested at the consultation, included: “Acknowledgement, Accountability and Agreement”, “Historical, Acknowledgement and Accountability, Forum for children abused in Scotland’s past care system”, “Breaking the Silence [subtitled Acknowledgement and Accountability Forum for Adult Survivors of Childhood Abuse]”, “No More Secrets”, “No More Hurt”, “Speaking Out”, “Acknowledgement and Rectification Forum for Survivors of Historic Abuses”, “Accepting the Facts and Taking Responsibility for Change”, “Accepting the Facts and Changing the Future”, “Acknowledgement and Advancement”,

“Acknowledgement, Accountability and Future Forum”, “Historical Abuse Acknowledgement and Future Forum”, “Truth and Understanding”, “Truth and Mediation”, “Truth and Move On” and “Truth and Heal”^{593,594}.

- 13.28. A meeting between Christopher Daly, Helen Holland and officials took place on 4 August 2009 “to discuss issues of concern”. The note in respect of that meeting recorded that an official: “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”⁵⁹⁵. The note also recorded Christopher Daly had concerns about time-bar. It was also noted 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 pilot. Which would be fully explored”.
- 13.29. In the email accompanying the note of the above meeting, an official noted that: “The issue about Chris’s response to the consultation is now clear - he didn’t submit a response to the consultation itself. What he submitted was his thoughts on the questions to be contained in the consultation paper and this was sent in before the paper went out”⁵⁹⁶. It was noted in the email by the official that a chance had been given to allow a response⁵⁹⁷.
- 13.30. The minutes of a meeting of the SurvivorScotland National Reference Group held on 26 August 2009 recorded: “[c]onfidentiality/anonymity on alleged

⁵⁹³ National Records of Scotland. Consultation on the proposal to develop an Acknowledgement and Accountability approach for Adult Survivors of Childhood Sexual Abuse. – 2009 [cited 2020 February 20]. Available from:

<https://webarchive.nrscotland.gov.uk/20190118214016/https://www2.gov.scot/Publications/2009/06/02154100/0>

⁵⁹⁴ Scottish Government. In Care Survivors: Development of Acknowledgement and Accountability Forum for Adult Survivors of Childhood Sexual Abuse – Summary of Additional Survivor Responses to the Consultation: February-April 2009. 2009 [cited 2020 February 20]. Available from:

<https://www.gov.scot/publications/care-survivors-development-acknowledgement-accountability-forum-adult-survivors-childhood-sexual-abuse-summary-additional-survivor-responses-consultation-february-april-2009/>

⁵⁹⁵ F2398087 - Email from between officials. Note on meeting with Chris Daly and Helen Holland. 05 August 2009.

⁵⁹⁶ F2398087 - Email from between officials. Note on meeting with Chris Daly and Helen Holland. 05 August 2009.

⁵⁹⁷ F2398087 - Email from between officials. Note on meeting with Chris Daly and Helen Holland. 05 August 2009.

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 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”⁵⁹⁸.

- 13.31. A document entitled “SurvivorScotland National Reference Group: Update on Acknowledgement and Accountability Forum” stated that: “[d]uring 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 experiences⁵⁹⁹. 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 recorded that pilot outcomes: “will include a record of the proceedings (with confidentiality a key issue)”. The next step was for a meeting of Ministers to consider the options for a pilot following the consultation and feedback from the National Reference Group on the proposals⁶⁰⁰.

⁵⁹⁸ F2595076 – Email with attachments from meeting. Survivor Scotland: National Reference Group – Minutes of meeting - 26 August 2009 – Paper 2. 26 August 2009.

⁵⁹⁹ Government of Ireland. The Report of the Commission to Inquire into Child Abuse (The Ryan Report). 2019 [cited 2020 February 20]. Available from: <https://www.gov.ie/en/publication/3c76d0-the-report-of-the-commission-to-inquire-into-child-abuse-the-ryan-re/>

⁶⁰⁰ F2590023 – Progress report. Survivor Scotland: National Reference Group – Update on Acknowledgment and Accountability Forum. 25 August 2009.

- 13.32. The meeting between the Minister for Public Health and Sport (the Lead Minister), the Minister for Community Safety, the Minister for Children and Early Years took place on 30 September 2009. Decisions as to the format of the proposed pilot forum, its name and its restriction to Quarriers' were made at that meeting.
- 13.33. Health, Education and Justice officials met on 3 August 2009 to take forward a briefing for Ministers⁶⁰¹. Briefing for the meeting was provided to Ministers. That briefing set out; (i) the background to the proposed Acknowledgement and Accountability Forum, (ii) 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), (iii) the options as regards the form of a pilot, and (iv) the reasons why Quarriers' were being proposed as the focus of the pilot.
- 13.34. During the meeting on 3 August 2009, it was noted that there were a number of advantages in selecting Quarriers to host the pilot forum. The particular "advantages" in selecting Quarriers were "their good records system; that whilst they were based in the west of Scotland, they received care placement throughout Scotland and, importantly, the support of their Chief Executive"⁶⁰².
- 13.35. The briefing set out the advantages and disadvantages of the various options and forms of pilot: "no action", "confidential committee model", "investigation committee model" and "confidential and investigation committees"⁶⁰³.
- 13.36. Additionally, the briefing noted issues with regard to time-bar which had been raised by Christopher Daly: "[The] SHRC has advised that the time bar issue is very likely to form part of the human rights frame work... Under Article 3...

⁶⁰¹ F2398341 - Email from Adult Care and Support Division to officials with attachment. HEALTH, EDUCATION AND JUSTICE OFFICIALS' MEETING ON THE PROPOSAL TO UNDERTAKE AN ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 18 August 2009.

⁶⁰² F2398341 - Email from Adult Care and Support Division to officials with attachment. HEALTH, EDUCATION AND JUSTICE OFFICIALS' MEETING ON THE PROPOSAL TO UNDERTAKE AN ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 18 August 2009.

⁶⁰³ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 24 September 2009.

this obligation is particularly strong when the State has specific responsibility for the children concerned”⁶⁰⁴.

- 13.37. The National Reference Group on Childhood Sexual Abuse met on 26 August 2009. Officials prepared a paper which provided a high level summary of the options which would be presented to Ministers⁶⁰⁵. The minutes noted that “a lengthy discussion on A&A followed and a large number of points were raised”. Discussion focussed on access to justice and time-bar, the role of the SHRC, evaluation of the proposed pilot forum and issues around the practicalities of travelling to give statements, confidentiality and anonymity⁶⁰⁶.
- 13.38. Following this meeting, a detailed briefing paper was submitted by an official to Ministers on 24 September, in advance of the meeting between Ministers on 30 September 2009. Within the section entitled “Conclusion” it provided 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”⁶⁰⁷.
- 13.39. The briefing recommended the following, which was accepted by Ministers on 30 September 2009:

“that a pilot should be run, possibly from February/March 2010, informed by the SHRC human rights framework

⁶⁰⁴ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 24 September 2009.

⁶⁰⁵ F2590023 – Progress report. Survivor Scotland: National Reference Group – Update on Acknowledgment and Accountability Forum. 25 August 2009.

⁶⁰⁶ F2562968 – Meeting minutes. SURVIVOR SCOTLAND: NATIONAL REFERENCE GROUP. Note of meeting of 26th August 2009. November 2009.

⁶⁰⁷ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 24 September 2009.

the model for the pilot - with the Confidential Committee option being the preferred one as outlined in Annex A⁶⁰⁸

the appointment of a Chair, pilot Forum members and an Advisory Group

the importance of progressing other forms of redress and assistance for in care survivors, including civil and criminal proceedings, the Criminal Injuries Compensation Scheme, educational opportunities, access to records, the In Care Survivors Service and public recognition of survivors' experiences"⁶⁰⁹.

13.40. In attendance at the meeting on 30 September 2009 was the Minister for Public Health and Sport, Minister for Children and Early Years and Minister for Community Safety⁶¹⁰. Officials were also present. The note of the meeting on 30 September 2009 recorded what was agreed:

"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:

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

⁶⁰⁸ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF) – Annex A. 24 September 2009.

⁶⁰⁹ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF). 24 September 2009.

⁶¹⁰ F2776325 – "The LA is not being invited to the meeting because she is not seen as one of the lead Ministers. However, she is being copied in for her interest,". Email with attachments from Adult Care and Support Division to officials. Submission re A and a pilot forum 25 September 2009. 28 January 2010.

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 approaches⁶¹¹.

- 13.41. The National Survivors' Reference Group met on 25 November 2009. At this meeting, the outcome of the Ministerial meeting was discussed. This included the move to the confidential committee model, the need to work "in harmony" with the SHRC (discussed elsewhere in this report), and procedural matters around support, links to criminal justice, and the need to evaluate the pilot. At this meeting, it was indicated that more than one care provider could be included in the pilot. Concern was raised by Christopher Daly, who noted that the forum had lost the 'accountability' element⁶¹².
- 13.42. On 1 December 2009, the Acknowledgement and Accountability Forum Advisory Group held its first meeting. The establishment of this group was discussed and agreed on 30 September 2009 at the above Ministerial meeting⁶¹³, and is covered by Annex E of the briefing dated 24 September

⁶¹¹ F2480447 – Note of cross ministerial meeting between ministers Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate. Note of Ministerial Meeting. 30 September 2009.

⁶¹² F2724484 – SurvivorScotland Reference Group Meeting Minutes, Adelphi Centre, Glasgow, 25 November 2009: Attended by officials, Christopher Daly and Helen Holland at para. 4.1

⁶¹³ F2480447 – Note of cross ministerial meeting between ministers Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate. Note of Ministerial Meeting, the National Reference Group was referred in the aforementioned minutes as The Pilot Advisory Group. 30 September 2009.

2009. The group was established, with the inclusion of survivors and representatives of survivor groups, in order to guide the development of, and to guide practice around, the Pilot Forum⁶¹⁴. Part of the agenda at this first meeting was to discuss the options for the name of the forum. At this time, four names were under consideration: 'Freed Voices', 'Freeing Voices', 'Hear and Now', and 'Time to be Heard'⁶¹⁵. The minutes of a second meeting of the group on 29 January 2010 stated at paragraph 6.1: "A number of suggestions had been received [regarding the name of the pilot forum]. The Group agreed that the name should be 'Time to be Heard'"⁶¹⁶. The pilot forum, Time to be Heard, would sometimes be abbreviated to "TTBH".

- 13.43. A decision had "been taken to remove officials from any involvement in the hearings to be conducted by the Pilot Forum"⁶¹⁷. It was noted by an official: "hope we can find a means for the Pilot Forum to undertake its work effectively and within a structure that underlines its independence"⁶¹⁸. At the second meeting of the Advisory Group on 29 January 2010, it was noted that "there would be no Scottish Government officials involved [in the hearings]"⁶¹⁹. However, an experienced official remained as a member of the Advisory Group:

"To provide advice to the Group about Scottish Government policy

To feed into the Group any issues that come to officials' attention concerning the pilot where the Advisory Group's advice would be appropriate

⁶¹⁴ F2448540 – Email from Adult Care and Support Division to Minister for Public Health and Sport, Minister for Children and Early Years, Minister for Community Safety and Lord Advocate with attachment. CROSS-MINISTERIAL MEETING ON THE PROPOSAL TO UNDERTAKE AND ACKNOWLEDGMENT AND ACCOUNTABILITY FORUM (AAF) – Annex E. 24 September 2009.

⁶¹⁵ C1548083. Meeting minutes. Pilot Acknowledgement and Accountability Forum – Advisory Group. 01 December 2009.

⁶¹⁶ F2815227 – Draft minutes. Acknowledgement and Accountability Forum - Advisory Group Meeting. 29 January 2010.

⁶¹⁷ F2776325 – Email with attachments from Adult Care and Support Division to officials. Submission re A and a pilot forum 25 September 2009. 28 January 2010.

⁶¹⁸ B3814924 – Email from Adult Care and Support Division to officials. Re: Urgent Business re the Pilot Forum. 28 January 2010.

⁶¹⁹ F2815227 – Draft minutes. Acknowledgement and Accountability Forum - Advisory Group Meeting. 29 January 2010.

To take back to Scottish Government any issues raised by the Group which are not already covered by current policies and practices

To act as the link between the Group and other Scottish Government Directorates

To ensure that the SHRC human rights framework is embedded in the work of the Group

To assist the Chair in dealing with relevant issues and meeting deadlines

To work with the Chair and SG Communications on any media or publicity-related issues⁶²⁰.

- 13.44. The remit of the Advisory Group also stipulated that the group met six times during the pilot project: 1 December 2009⁶²¹, 29 January 2010⁶²², 3 March 2010⁶²³, 20 April 2010⁶²⁴, 29 July 2010⁶²⁵, and finally on 16 December 2010⁶²⁶. Each meeting discussed a number of different issues around the pilot forum and its delivery. These included: confidentiality, support for survivors and staff, terminology, and demographics of applicants.
- 13.45. The Scottish Human Rights Framework was published in February 2010⁶²⁷. At the Advisory Group meeting on 3 March 2010: “Tom [Shaw, the Chair] summarised the Commission’s [SHRC] 5 key recommendations. There was a discussion about recommendation 1 and how communication can be improved... recommendation 2 had been overtaken by events... recommendation 3 was focussed on the future and related to wider

⁶²⁰ F2550566 – Document. Pilot Forum Advisory Group – AA1/3 – Remit of Advisory Group. No date.

⁶²¹ C1548083 – Meeting minutes. PILOT ACKNOWLEDGEMENT AND ACCOUNTABILITY FORUM – ADVISORY GROUP. 01 December 2009.

⁶²² F2815227 – Draft minutes. Acknowledgement and Accountability Forum - Advisory Group Meeting. 29 January 2010.

⁶²³ F2858309 – Meeting minutes. Time to be Heard - Advisory Group Meeting. March 2010.

⁶²⁴ F2985921 – Meeting minutes. Time to be Heard - Advisory Group Meeting. 20 April 2010.

⁶²⁵ F3411655 – Meeting minutes. Time to be Heard Fifth Advisory Group Meeting. 29 July 2010.

⁶²⁶ F3858849 – Meeting minutes. Time to be Heard Sixth Advisory Group Meeting. 16 December 2010.

⁶²⁷ Scottish Human Rights Commission. A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland. 2010 [cited 2020 February 20]. p 54. Available from:

http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedi es.doc

recommendations on the ‘full Forum’. The issue of time bar was noted as an obstacle... Tom said that Time to be Heard could not address this problem but could identify issues in the present system and include them in the report to Ministers... recommendation 4 was already included... [it was noted that] significant steps had already been taken to address recommendation 5”⁶²⁸.

13.46. The Time to be Heard Pilot ran from 17 May 2010 to 2 September 2010 with a two week break from 2 to 16 July 2010⁶²⁹. 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.

13.47. The minutes of the fifth meeting noted that Tom Shaw had met survivors from Quarriers and other institutions; the minutes noted: “Tom said they had provided useful input in preparation for TTBH and he hoped that those who attended had also found it helpful”⁶³⁰.

13.48. The same minutes also noted:

“Tom explained that TTBH had given priority to older survivors by timetabling their hearings first. In cases where travel would have been difficult for the participants arrangements had been made to visit people at home or at a place that suited them. It was not possible to include older and ill survivors from other institutions in the Pilot Forum. However, he recognised the concerns that such survivors might have about being unable to participate. He understood that Scottish Government had offered to assist in making contact with agencies that might be able to help with the recording of testimonies from older and ill survivors. The

⁶²⁸ F2858309 – Meeting minutes. Time to be Heard - Advisory Group Meeting. March 2010.

⁶²⁹ F2985921 – Meeting minutes. Time to be Heard - Advisory Group Meeting. 20 April 2010.

⁶³⁰ F3411655 – Meeting minutes. Time to be Heard Fifth Advisory Group Meeting, para 3.2. 29 July 2010.

Scottish Institute for Residential Child Care (SIRCC) had been suggested as one possible source of help...

Tom provided some information on the 110 applications arising from 163 inquiries made to the Information Line. Two of the applicants proved not to be eligible but the remaining 108 were accepted. The 108 eligible applications were split evenly between men and women and were mainly from people resident in Scotland, with about a fifth from elsewhere in the UK and approximately 10% from outwith the UK. The largest single category (almost 50%) was survivors and other former residents aged between 60 and 90, followed by those between 50 and 60. Nearly half of the participants had been in Quarriers for at least 10 years. Most applicants indicated that they had had no access to support before their involvement with TTBH. A very small number of applicants subsequently changed their minds about participating or were unable to attend their scheduled hearing – overall, the participation rate was very high⁶³¹.

- 13.49. On 30 August 2010, Petition PE1351 was lodged by survivors Christopher Daly and Helen Holland, calling for a “‘Time for All To be Heard’ forum incorporating a compensation scheme”⁶³². The petition stated (amongst other things) that the previous petition (PE535) called for a forum, but that had not been established, because the forum ‘Time to be Heard’ was discriminatory and limited to those who were in the care of Quarriers⁶³³. The petition noted that the petitioners had taken their concerns to James Kelly MSP⁶³⁴, who wrote to the Minister, Mr Ingram, on 23 April 2010 voicing their concerns⁶³⁵.

⁶³¹ F3411655 – Meeting minutes. Time to be Heard Fifth Advisory Group Meeting, para 3.4 and 4.1. 29 July 2010.

⁶³² Scottish Parliament. Petition 1351. 2010 [cited 2020 February 20]. Available from: <https://archive.parliament.scot/business/petitions/docs/PE1351.htm>

⁶³³ Scottish Parliament. PUBLIC PETITION NO. pe1351. No date [cited 2020 February 20]. Available from: http://www.parliament.scot/Petitions_Archive/PE1351.pdf

⁶³⁴ A26977814 – Letter from James Kelly MSP to Adam Ingram, Minister for Children and Early Years. Re: Mr. Chris Daly. 23 April 2010.

⁶³⁵ Scottish Parliament. PUBLIC PETITION NO. pe1351. No date [cited 2020 February 20]. Available from: http://www.parliament.scot/Petitions_Archive/PE1351.pdf

The petition stated that the Minister had not responded (as at the date the petition was lodged); the Minister responded on 7 June 2010⁶³⁶.

- 13.50. Following the conclusion of the Time to be Heard pilot a letter was sent by an official on 1 October 2010 to care providers:

“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

⁶³⁶ A26977815 – Letter from Adam Ingram, Minister for Children and Early Year, to James Kelly MSP. 07 June 2010.

positive and negative. The record should also help us learn from any past failures and improve practice in the future”^{637,638}.

- 13.51. On 5 October 2010, the Public Petitions Committee took oral evidence from the petitioners of Petition PE1351 and agreed to write to the Scottish Government seeking a response to points raised in the petition and during the discussion⁶³⁹. During the oral submission, the issues of time-bar, and the need for support services for survivors, were also discussed⁶⁴⁰.
- 13.52. The Scottish Government responded to the Public Petitions Committee on 21 October 2010. The letter stated that proposals for the pilot forum were discussed by the Reference Group on 25 August and 25 November 2009 (discussed above) and at all meetings since, and that the SurvivorScotland website included a statement explaining the purpose of the pilot and reasons for selecting Quarriers. It further stated that information events for organisations and survivors were held in February 2010; and that the Advisory Group had agreed to prioritise older and ill survivors from Quarriers, stating: “It would not have been feasible to widen this to include only older and ill survivors from other organisations as this, in itself would have been discriminatory. A letter of explanation, offering alternative suggestions, was sent to the petitioner on 26 April”. It explained that the timescale for the Human Rights Framework was delayed but that the specific recommendations for the pilot were taken into account. It noted that the Chair of the pilot forum was to produce a report by the beginning of 2011, and Scottish Government’s response to the report would be issued by end of March 2011⁶⁴¹.

⁶³⁷ F3327747 - Letter from Adult Care and Support Division to care providers. 01 October 2010.

Letters were later sent to additional institutions: F3395583 - Letter from Adult Care and Support Division to care providers following conclusion of Time to be Heard Pilot. 5 November 2010.

⁶³⁸ F3395583 – Letter from Adult Care and Support Division to care providers. 05 November 2010.

⁶³⁹ Scottish Parliament. PUBLIC PETITIONS COMMITTEE – Official Report, Col. 2902-2916. 2010. p. 54. [cited 2020 February 20]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=5762&mode=pdf>

⁶⁴⁰ Scottish Parliament. PUBLIC PETITIONS COMMITTEE – Official Report, Col. 2902. 2010. p. 54. [cited 2020 February 20]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=5762&mode=pdf>

⁶⁴¹ Letter from the Adult Care & Support Division to the Assistant Clerk to The Public Petitions Committee. 21 October 2010. Available from:

https://www.parliament.scot/S3_PublicPetitionsCommittee/Submissions_10/10-PE1351A.pdf

- 13.53. On 1 November 2010, the Public Petitions Committee received a letter from the petitioners, challenging points raised by the Scottish Government's written response to the Committee. The letter stated that the Reference Group "were not part of the decision process to make it 100 Quarriers residents or to drop the accountability element" and that the forum commissioners "do not have the power to act on criminal evidence given". The letter also raised survivors' concerns regarding: a lack of progress on time-bar, the management and delivery of ICSS, and the pilot forum having proceeded without the SHRC Framework in place⁶⁴².
- 13.54. On 23 November 2010, the Committee agreed to invite the Minister for Public Health and Sport, Minister for Children and Early Years and the Minister for Community Safety to give oral evidence regarding PE1351. The Ministers attended the Petitions Committee on 21 December 2010 to provide oral evidence, and to address the concerns raised in the petition and the additional letter referred to above⁶⁴³. Ministers said that the form was "a pilot to look at and learn lessons about how we should go forward" and that future developments would be predicated upon the Time to Be Heard report and Mr Shaw's recommendations. The Petitions Committee stated its intention to invite Mr Shaw, in his capacity as Chair of Time to be Heard, to give evidence. The Committee decided to continue with Petition PE1351 in order to gather further information and evidence⁶⁴⁴.
- 13.55. Mr Shaw's report entitled 'Time to be Heard: A Pilot Forum' was published in February 2011. The report outlined the purpose and remit of the Forum, and the key challenges faced in establishing it. Specifically, the report addressed the: "lack of an accountability strand in the work of the Forum. TTBH had no powers to investigate allegations and no role in recommending participants for compensation. For some survivors that was seen as a major weakness and

⁶⁴² Submission from the Public Petitions Committee. No date. Available from:

http://external.parliament.scot/S3_PublicPetitionsCommittee/Submissions_10/10-PE1351B.pdf -

⁶⁴³ Scottish Parliament – Public Petitions Committee. Public Petitions Committee Official Report. 21 December 2010 [cited 2020 February 20]. Available from:

<https://archive.parliament.scot/s3/committees/petitions/or-10/pu10-2002.htm#Col3204>

⁶⁴⁴ Scottish Parliament – Public Petitions Committee. Public Petitions Committee Official Report. 21 December 2010 [cited 2020 February 20]. Available from:

<https://archive.parliament.scot/s3/committees/petitions/or-10/pu10-2002.htm#Col3204>

a reneging by the Government on what had been anticipated during its consultation on an ‘Acknowledgement and Accountability’ forum”⁶⁴⁵. The report went on to make a number of recommendations. That included the “Establishment of a national confidential forum for all adults who, as children, were cared for⁶⁴⁶” and “[a]ppropriate legislation be introduced to give the necessary protection for the effective operation of a national confidential forum”⁶⁴⁷.

- 13.56. Mr Shaw and Ms Carpenter (Time to be Heard Commissioner) were invited to attend the Public Petitions committee, and appeared on 1 March 2011. During the session Mr Shaw and Ms Carpenter expanded upon the challenges faced in establishing the forum and on the recommendations made in the report. Additionally, they addressed a number of the submissions made to the Committee by the petitioner, survivors and survivor groups⁶⁴⁸. During the session Mr Shaw stated “the pilot did not attempt in any sense to say, ‘this is typical or representative of the whole population of former residents’. That’s why I keep emphasising that this was a test of a model and just one way of doing it”⁶⁴⁹. At the conclusion of the session, the Committee agreed to write to the Session 4 Petitions Committee, inviting them to further consider the petition. The members agreed to add the petition to their legacy paper, for future consideration⁶⁵⁰ (Petition PE1351 was closed on 9 June 2015, following the announcement of the Scottish Child Abuse Inquiry⁶⁵¹).

⁶⁴⁵ A26979942 – Report by Tom Shaw – Commissioned by the Scottish Government. Time to be Heard: A Pilot Forum - Page 5. February 2011.

⁶⁴⁶ A26979942 – Report by Tom Shaw – Commissioned by the Scottish Government. Time to be Heard: A Pilot Forum - Page 110, s. 4.3, para. 1. February 2011.

⁶⁴⁷ A26979942 – Report by Tom Shaw – Commissioned by the Scottish Government. Time to be Heard: A Pilot Forum - Page 110, s. 4.3, para. 2. February 2011.

⁶⁴⁸ Scottish Parliament – Public Petitions Committee. Public Petitions Committee Official Report – Col 3454 to Col 3465. 01 March 2011 [cited on 2020 February 20]. Available from:

<https://archive.parliament.scot/s3/committees/petitions/or-11/pu11-0502.htm#Col3453>

⁶⁴⁹ Scottish Parliament – Public Petitions Committee. Public Petitions Committee Official Report – Col 3454 to Col 3463, line 9. 1 March 2011 [cited on 2020 February 20]. Available from:

<https://archive.parliament.scot/s3/committees/petitions/or-11/pu11-0502.htm#Col3453>

⁶⁵⁰ Scottish Parliament – Public Petitions Committee. Public Petitions Committee Official Report – Col 3454 to Col 3464, line 10. 1 March 2011 [cited on 2020 February 20]. Available from:

<https://archive.parliament.scot/s3/committees/petitions/or-11/pu11-0502.htm#Col3453>

⁶⁵¹ Scottish Parliament. PUBLIC PETITIONS COMMITTEE – Official Report, Col. 9. 2015. p. 19. [cited 2020 February 20]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=5762&mode=pdf>

- 13.57. On 22 March 2011, the Scottish Government published its response to the report on Time to be Heard: A Pilot Forum⁶⁵². The response endorsed all nine recommendations that the report considered to be within the Scottish Government's remit. This included the establishment and development of an independent, national confidential forum. The response noted that: "We support the recommendation to establish a national confidential forum. More work needs to be done before decisions can be taken about who should be eligible to participate in such a forum. We would wish to start with general residential care but there is clearly more work required to identify the wide range of child care arrangements which existed in the past, to establish how we can contact people who were previously part of these arrangements and to include them in consultation on what happens next. We intend to commission research to help identify these organisations and the number of children who were part of these arrangements. Then we will be able to consider in a more informed way the parameters for a national confidential forum and proposals for legislation can reflect those findings"⁶⁵³.
- 13.58. The response also indicated a commitment to engage with survivors and survivor groups from the earliest opportunity and stated: "We have already begun to engage with survivors and other stakeholders through previous consultations, through events following the publication of the Time to be Heard Report and through the SurvivorScotland website. We have received considerable interest in future involvement following these events and intend to build on this and reach out to a wider range of survivors than those with whom we previously had contact"⁶⁵⁴.

⁶⁵² Scottish Government. Response to the Report on Time to be Heard. A Pilot Forum. 2011 [cited 2020 February 20]. Available from: <https://www.webarchive.org.uk/wayback/archive/20180518223734/http://www.gov.scot/Publications/2011/03/21112301/2>

⁶⁵³ Scottish Government. Response to the Report on Time to be Heard. A Pilot Forum – Recommendation 1. 2011 [cited 2020 February 20]. Available from: <https://www.webarchive.org.uk/wayback/archive/20180518223734/http://www.gov.scot/Publications/2011/03/21112301/2>

⁶⁵⁴ Scottish Government. Response to the Report on Time to be Heard: A Pilot Forum. 2011. p. 9. [cited 2020 February 20]. Available from: https://www.webarchive.org.uk/wayback/archive/20180518223734mp_/http://www.gov.scot/Resource/Doc/346664/0115334.pdf

- 13.59. Christopher Daly tendered his resignation from the National Reference Group on Child Sexual Abuse: “As petition PE1351 is a current petition which is legacy work from the previous Scottish Parliament, the Petitions Committee is the most appropriate forum for me to raise these issues”⁶⁵⁵. On 23 May 2011, officials sent a letter confirming his resignation⁶⁵⁶.
- 13.60. Chapter 14 of this report on the National Confidential Forum explains how the Scottish Government took forward establishing an independent, national, confidential forum.

⁶⁵⁵ F3778961 - Email from Christopher Daly to officials. CHRIS DALY RESIGNATION OF VOLUNTARY COMMITTEE POSITION. 22 May 2011.

⁶⁵⁶ F3778914 – Letter to Christopher Daly from an official. Reference group – letter to Chris Daly re resignation. 23 May 2011.

CHAPTER 14

NATIONAL CONFIDENTIAL FORUM

- 14.1. This chapter of the report builds on what is asked for by point 5 of the section 21 notice and explains the development of the National Confidential Forum (“NCF”), including the involvement of survivor groups and campaigners. The evidence given by Helen Holland, David Whelan and Christopher Daly referred to the development of the NCF and raised a number of issues. Reference was made to the lack of accountability offered by the NCF compared to a public inquiry. Reference was also made to earlier work on the Time to be Heard Pilot, which is covered by chapter 13 of this report (Acknowledgement and Accountability / Time to Be Heard). Relatedly, this chapter also touches on Petition PE1351. The NCF was established in 2015 and continues to operate today.

Background

- 14.2. In March 2011, the Scottish Government published a response⁶⁵⁷ to the Time to be Heard: A Pilot Forum⁶⁵⁸. On 21 June 2011, a submission⁶⁵⁹ from an official was sent to the Minister for Public Health, Minister for Children and Young People and the Minister for Community Safety and Legal Affairs. The submission provided background information on proposals for a NCF for Adult Survivors of abuse in care and other former residents. The submission noted: “Scottish Government issued its response (Annex C) on 18 March [to the Time to be Heard: Pilot Forum]. The main focus of that is the agreement to introduce legislation for an independent National Confidential Forum. In doing so it will be important to avoid establishing a new public body, given the Government’s commitment to deliver a reduction of 25% in the number of

⁶⁵⁷ Scottish Government. Response to the Report on Time to be Heard: A Pilot Forum. Edinburgh. 2011 [cited 2020 Feb 19]. Available from: <https://www.webarchive.org.uk/wayback/archive/20180518223734/http://www.gov.scot/Publications/2011/03/21112301/2>

⁶⁵⁸ A26979942 – Tom Shaw (commissioned by Scottish Government). Time to be Heard: A Pilot Forum. Edinburgh. 2011.

⁶⁵⁹ B4895412 – Submission from official to Ministers. National Confidential Forum – Adults in Residential Care as Children. 21 June 2011.

public bodies in Scotland and its recent manifesto commitment to ‘continue the successful programme of simplification, looking for further opportunities to streamline the public bodies landscape’.

14.3. The submission further noted in relation to Petition PE1351:

“5. Ministers should also be aware of Petition PE1351, calling for Time for all to be Heard, including compensation. The Petitioners are seeking implementation of the full recommendations of the Scottish Human Rights Commission in ‘*A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historical child abuse in Scotland*’ commissioned by the Scottish Government.

6. Petition PE1351 has been carried forward as part of the Petition Committee’s legacy report and we have been advised by the petitioners that they intend to resurrect their action after the summer recess. Annex D shows what is proposed by SHRC [Scottish Human Rights Commission], what was implemented in Ireland and what Time to Be Heard included”.

14.4. On 24 August 2011, officials from the SurvivorScotland team met INCAS. A note from the meeting stated that “work has begun on issues concerning the roll out of a national confidential forum” and that “[w]e will need to consider the critical stages before it starts and consider whether we should have a National Confidential Forum if people have been traumatised. The process of Time to be Heard was rushed. There needs to be a longer time frame to give survivors information about the Forum and to give them time to prepare for the experience i.e. taking support with them. There will be a public consultation to see if people want a forum”⁶⁶⁰.

14.5. On 25 August 2011, a meeting took place between officials and the Scottish Parliament to discuss finding a suitable public body to house the NCF. The meeting note stated that:

⁶⁶⁰ F3963341 – Meeting note. Meeting with INCAS. 25 August 2011.

“the SHRC seemed to be a possibility and one which might be more acceptable to stakeholders and could result in savings. [Official] noted that the SHRC produced a Human Rights Framework for adult survivors who were abused in care as children and is currently taking forward a process to bring together stakeholders to consider ‘next steps’ in relation to the Framework. The Framework seeks much wider remedies for survivors and Ministers have to date agreed only to take forward a national confidential forum and to scope the issues around a possible reparations scheme. There might therefore be issues about the scope of the NCF being at odds with the SHRC’s stated views”⁶⁶¹.

- 14.6. A core brief (containing key points) on the NCF was developed by officials dated October 2011⁶⁶². The brief stated:

“The Scottish Government supports the need for a National Confidential Forum and the SurvivorScotland team has been working with stakeholders to implement the recommendations and roll out a National Confidential Forum. To date, the work has included:

- Engagement with survivors to discuss the National Confidential Forum, including meetings with the Scottish Human Rights Commission (SHRC) and survivor organisations.
- Commissioned the New Centre for Excellence for Looked After Children (formally SIRCC) to help with a scoping exercise on the National Confidential Forum numbers and estimates for a possible reparation scheme.
- Commissioned an independent literature review, with help from internal research experts. This review will be completed in early December 2011 and a report of the findings will be available on the SurvivorScotland website.

⁶⁶¹ A2055102 – Meeting note. Meeting with Parliamentary Staff to discuss Commissioner Options for the National Confidential Forum, Scottish Parliament. 25 August 2011.

⁶⁶² F4011578 – Core Brief by officials. National Confidential Model – Core Brief. October 2011.

- The final report on the Restorative Justice Pilot will be available soon and available on the SurvivorScotland website”.

14.7. The brief also highlighted that: “the Forum is not designed to hold institutions accountable for any harm caused to survivors. An accountability process would have different elements from the Confidential Committee model, would require full investigation of any allegations and therefore would take longer and be much closer to a legal process”. On how the survivors’ rights would be protected, the brief stated: “The Scottish Human Rights Commission (SHRC) was commissioned by Scottish Government to design a human rights framework to ensure that the human rights of survivors, alleged abusers and institutions are all taken account [sic]. This includes the rights of survivors to privacy and confidentiality and the rights of alleged abusers to a fair hearing”.

14.8. A document entitled ‘Progress since Time to be Heard, Update November 2011’ from the SurvivorScotland Team noted:

“An important recommendation is the engagement with survivors as part of the National Confidential Forum work. Initial meetings have been held with INCAS, FBGA, and it’s proposed to speak to individual survivors contacted through Time to be Heard and at events when plans are more advanced”⁶⁶³.

14.9. A submission was sent on 11 November 2011 by an official to the Ministers for Public Health, Children and Young People and Community Safety and Legal Affairs, with options for the remit and location of the Forum⁶⁶⁴. The submission sought Ministers’ approval for the preferred choice of SHRC to host the forum and recommended that Ministers agree to a meeting with SHRC. Regarding funding of the Forum, the submission stated that:

“The Scottish Spending Review 2011 makes provision for the development of a National Confidential Forum with £1.2 million in the

⁶⁶³ F4106197 – SurvivorScotland Team. National Confidential Forum – PROGRESS SINCE TIME TO BE HEARD UPDATE NOVEMBER 2011. November 2011.

⁶⁶⁴ A2054965 – Submission from official to Ministers. National Confidential Forum – Adult Survivors of Childhood Abuse. 11 November 2011.

2012-13 Draft Budget for the first year of implementation and £1 million per annum available to support running costs in 2013-14 and 2014-15. The budget provision is based only on a Confidential Committee model”⁶⁶⁵.

- 14.10. The submission also recommended to Ministers that they “seek approval to a consultation on legislation” in reference to NCF⁶⁶⁶. The Minister for Public Health⁶⁶⁷, Minister for Children and Young People⁶⁶⁸ and the Minister for Community Safety and Legal Affairs⁶⁶⁹ approved the recommendation, and agreed that SHRC was the preferred option for hosting the Forum.
- 14.11. SHRC, Ministers for Public Health and Community Safety and Legal Affairs, and officials, met on 20 December 2011. On whether SHRC were content to house the NCF, the note of the meeting stated that⁶⁷⁰:

“AM [Alan Miller]⁶⁷¹ advised that the NCF was not sufficient to meet the requirements of the HR Framework and that accountability was also required. The SHRC was not prepared to allow the door to be closed on other inquiries... MM [Michael Matheson, Minister for Public Health] committed Scottish Government to entering the Interaction with ‘an open mind’, not closing off any options and dealing with issues as they arose. He stressed that SG must take forward the NCF as it has been successfully trialled, commitments had already been made and survivors expected this to be done. It was noted that older and ill survivors needed to be included as soon as possible. He advised that a new public body

⁶⁶⁵ A2054965 – Submission from official to Ministers. National Confidential Forum – Adult Survivors of Childhood Abuse. 11 November 2011.

⁶⁶⁶ A2054965 – Submission from official to Ministers. National Confidential Forum – Adult Survivors of Childhood Abuse. 11 November 2011.

⁶⁶⁷ A2054924 – Email from Minister for Public Health Private Office to official. RE: NATIONAL CONFIDENTIAL FORUM – ADULT SURVIVORS OF CHILDHOOD ABUSE. 23 November 2011.

⁶⁶⁸ A2054990 – Email from Minister for Children and Young People Private Office to official. RE: NATIONAL CONFIDENTIAL FORUM – ADULT SURVIVORS OF CHILDHOOD ABUSE. 18 November 2011

⁶⁶⁹ A2054983 – Email from the Minister for Community Safety and Legal Affairs Private Office to official. RE: NATIONAL CONFIDENTIAL FORUM – ADULT SURVIVORS OF CHILDHOOD ABUSE. 21 November 2011.

⁶⁷⁰ A2054837 – Meeting note. Note on meeting with SHRC and Ministers 20 December 2011. 20 December 2011.

⁶⁷¹ Alan Miller was the Chair of the SHRC

for the NCF specifically could not be created as this breached an important Manifesto commitment⁶⁷² and that housing the NCF with the SHRC seemed like the best option and one which would have the confidence of survivors... [a legal official] addressed the issue of the need for legislation concerning the NCF and considered that either amendments to existing statutes or a stand-alone piece of legislation would be required, depending on where the NCF was located.”.

- 14.12. An official emailed the Minister for Public Health on 2 February 2012 updating the Minister on where the NCF could be located⁶⁷³. The email stated: “we are still actively exploring where the National Confidential Forum (NCF) could be located... we re-considered the Mental Welfare Commission (MWC) and initial contact has been positive. We are following this up with a face to face meeting with them early next week and will update the Minister immediately afterwards. There are down sides here, too, in terms of how survivors may perceive a mental health entity but it would be up to us to promote the location positively”.
- 14.13. On 20 February 2012, a submission from an official to the Minister for Public Health, Minister for Children and Young People and Minister for Community Safety and Legal Affairs recommended they note the proposed Terms of Reference for the NCF⁶⁷⁴. The proposed Terms of Reference were framed under a number of questions, as follows:

“1. What is the purpose of the NCF?”

The National Confidential Forum (NCF) will be designed to give adults who spent time in care as children the opportunity to recount their experiences in care.

⁶⁷² Scottish National Party. Scottish National Party Manifesto 2011. 2011 [cited 2020 February 19]. Available from: http://vote.snp.org/campaigns/SNP_Manifesto_2011_lowRes.pdf - The SNP manifesto of 2011 committed to a “programme of simplification, looking for further opportunities to streamline our public bodies” (page 8).

⁶⁷³ A2117491 – Email from official to Minister for Public Health. Update on the National Confidential Forum. 2 February 2012.

⁶⁷⁴ A2054325 – Submission from official to Ministers. National Confidential Forum – Adult Survivors of Childhood Abuse. 20 February 2012.

2. Who can take part?

The definition of what should constitute 'in care' for the purposes of the NCF will be consulted on and appropriate eligibility criteria may be included in any legislation required to establish the NCF.

3. Will the NCF have powers to obtain evidence?

The NCF will have no powers to obtain evidence, either from individuals or through documents. Participation in the NCF will include only those who have spent time in care and will be entirely voluntary. Participants may wish to provide documents or other material to the NCF but there will be no requirement to do so (except where documents may be required to establish eligibility).

4. Will the NCF be held in public?

The hearings with adults who were in care as children will always take place in private. Careful consideration will be given throughout the process to the risk of re-traumatisation for participants and arrangements will be made for those taking part to have access to support before, during and after their involvement in the NCF.

5. Will the information obtained from the hearings be shared with anyone outside the NCF?

The intention will be that no personal information will be shared with others outside the NCF except where the Chair considers that disclosure is necessary (see paragraph 7 below).

6. Will the NCF investigate whether information given by participants is accurate?

The NCF will make no decisions about the validity of any information it receives (other than to verify the eligibility of any applicant).

7. Will the NCF ever disclose information to the police?

The NCF has responsibility to encourage the participant to report to the police serious criminal abuse that took place during their time in care and to help participants to do so. If the participant is not willing to do so the NCF must consider whether disclosure of information to the police should be made if required by law (particularly where individuals' rights under the European Convention on Human Rights might otherwise be undermined).

8. Will NCF publications identify participants?

No report by the NCF will identify individual participants in the NCF or be capable of revealing the identities of those who took part in the NCF (other than members of the NCF itself). The identity of participants' families, other former residents, their family members, individual staff and their family members referred to by participants will not be revealed in NCF publications.

9. Will NCF publications identify service providers/purchasers individually?

Care will also be taken in identifying specific institutions or individual providers of childcare services. The NCF will not conduct inquiries into the conduct of service providers and purchasers either individually or in general terms.

10. Will the NCF be independent from Government and from other bodies?

The NCF will operate independently from central and local government. While it will be located in another public body it will operate independently from that body. An independent Chair will be appointed to help ensure the NCF's autonomy from other bodies".

- 14.14. On 2 March 2012, a paper⁶⁷⁵ from a submission of 29 February⁶⁷⁶ was sent to the Cabinet Secretary for Health, Wellbeing and Cities Strategy from the Private Office of the Minister for Public Health. The paper gave two options for legislation for the Forum: a stand-alone bill for the NCF or including the NCF as a section in the Victims and Witnesses Bill. The Minister recommended that the Cabinet Secretary included a bill for the NCF in the legislative programme for 2012/13, but if a stand-alone bill was not viable, to discuss with the Cabinet Secretary for Justice the option of including it within the Victims and Witnesses Bill. The office for the Cabinet Secretary for Health, Wellbeing and Cities Strategy replied on 5 March 2012 stating that the Minister was content with the option of a stand-alone bill⁶⁷⁷.
- 14.15. An official from the SurvivorScotland team emailed the office of the Cabinet Secretary for Health, Wellbeing and Cities Strategy, on 7 March 2012. The email stated that “Mr MacAskill has asked for a short meeting to discuss whether the National Confidential Forum could be included in the Victims and Witnesses Bill. This was the alternative option to a stand alone Bill. It would be helpful to know whether we should continue to follow up this possibility given Ms Sturgeon's preference for a stand alone Bill”. The Cabinet Secretary's office replied: “Ms Sturgeon has noted this and commented she does not feel strongly about a stand alone Bill and is happy for this to be explored”⁶⁷⁸.
- 14.16. The NCF Reference Group⁶⁷⁹ first met on 1 May 2012^{680,681}. The first paper on the agenda was on remit, membership and working practices of the

⁶⁷⁵ A2475995 – Email from Minister for Public Health Private Office to Cabinet Secretary Private Office. Urgent: LEGISLATION FOR A NATIONAL CONFIDENTIAL FORM. 02 March 2012.

⁶⁷⁶ A2325852 – Submission from official to Cabinet Secretary for Health, Wellbeing and Cities Strategy. National Confidential Forum – Adult Survivors of Childhood Abuse. 29 February 2012.

⁶⁷⁷ A2476005 – Email from Private Office of the Deputy First Minister and Cabinet Secretary for Health Wellbeing and Cities Strategy, titled “RE: Urgent: LEGISLATION FOR A NATIONAL CONFIDENTIAL FORM”. 5 March 2012.

⁶⁷⁸ A2476016 – Emails between office of Cabinet Secretary for Health, Wellbeing and Cities Strategy and officials. RE: Urgent: LEGISLATION FOR A NATIONAL CONFIDENTIAL FORUM. 2 March 2012 – 8 March 2012.

⁶⁷⁹ A2517166 – National Confidential Forum Reference Group. Paper 1: Remit, Membership and Working Practices. April 2012.

⁶⁸⁰ A2875042 – National Confidential Forum Reference Group. Reference Group Meeting – 1 May 2012 - 10-12 noon - Agenda. 1 May 2012

⁶⁸¹ A2981957 – National Confidential Forum Reference Group. Reference Group Meeting 1 May 2012 – Minutes. 1 May 2012.

group⁶⁸². The paper stated, in relation to membership: “Its membership should cover the range of care providers and survivors and other former residents with an interest in the development of a National Confidential Forum and related matters. It should include current and past care providers and those with a role to play in funding any further developments”. In relation to remit, the paper stated this was: “to inform government policy and the forthcoming public consultation on the development of a National Confidential Forum”. Furthermore, that “the views of the reference Group will be reported direct to Ministers”.

14.17. In discussion at the reference group, points were raised by members about the “disparity between what survivors want and what is offered”⁶⁸³. The minutes further stated that “many want everything that is included in the recommendations of the SHRC Framework”. And that “The original consultation, prior to TTBH, had sought views on acknowledgment and accountability. The accountability element appeared to have been lost”.

14.18. In response to the points raised, the minutes noted that:

“Ministers had accepted the recommendation to establish a National Confidential Forum. The recommendations in the SHRC Framework, including accountability, are being taken forward separately as part of the Interaction. Ministers agreed that the Scottish Government would participate in the Interaction”⁶⁸⁴.

⁶⁸² A2517166 – National Confidential Forum Reference Group. Paper 1: Remit, Membership and Working Practices. April 2012.

⁶⁸³ A2981957 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Reference Group meeting. 1 May 2012.

⁶⁸⁴ A2981957 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Reference Group meeting. 1 May 2012.

- 14.19. The Reference Group (or ‘Bill Reference Group’) met further on 4 October 2012⁶⁸⁵, 5 December 2012⁶⁸⁶, 5 February 2013⁶⁸⁷, 17 April 2013⁶⁸⁸, 5 June 2013⁶⁸⁹, and the last meeting took place on 4 September 2013⁶⁹⁰.
- 14.20. In the Reference Group minutes, group members were asked to send any potential questions or points to be addressed into the consultation⁶⁹¹. On 15 May 2012, Former Boys and Girls Abused of Quarriers Homes submitted questions⁶⁹².
- 14.21. A NCF Survivor Stakeholder Group⁶⁹³ was established and first met on 31 May 2012⁶⁹⁴. The role of the group was to “help government with the preparation of a Bill to establish a National Confidential Forum for adult survivors and other forum residents abused in care as children”.
- 14.22. On 7 June 2012, an official sent a draft Cabinet paper to Cabinet Secretaries seeking Cabinet’s agreement to consult on proposals for a NCF for Adult Survivors of Abuse in Residential Care as Children^{695,696}. In their email, the official highlighted they were “seeking Cabinet clearance by 2 July, to enable publication mid July”. Ms Sturgeon and Mr Matheson confirmed they were

⁶⁸⁵ A4480321 – Email from official to Bill Reference Group. Minutes of NCF Bill Reference Group meeting on 4/10/12. 16 November 2012.

⁶⁸⁶ A4639589 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Bill Reference Group meeting. 5 December 2012.

⁶⁸⁷ A4844678 – National Confidential Forum Reference Group. Agenda for the National Confidential Forum Reference Group meeting. 5 February 2013.

⁶⁸⁸ A5270858 – National Confidential Forum Reference Group. Agenda for the National Confidential Forum Bill Reference Group meeting. 17 April 2013.

⁶⁸⁹ A6179495 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Bill Reference Group meeting. 5 June 2013.

⁶⁹⁰ A6959022 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Bill Reference Group meeting. 4 September 2013.

⁶⁹¹ A2981957 – National Confidential Forum Reference Group. Minutes of National Confidential Forum Reference Group meeting. 1 May 2012.

⁶⁹² A3065817 – Email from Secretary at FBGA to official. Re: FBGA proposed Forum consultation questions. 15 May 2012.

⁶⁹³ A3085383 – National Confidential Forum – Survivor Group. National Confidential Forum Survivor Stakeholder Group: Purpose and Remit, dated May 2012. (please see this document for the purpose, membership and remit of the group)

⁶⁹⁴ A3085263 – National Confidential Forum – Survivor Group. National Confidential Forum Survivor Stakeholder Group Meeting, Agenda. May 2012.

⁶⁹⁵ A3223035 – Draft Cabinet Paper. NATIONAL CONFIDENTIAL FORUM: DRAFT CONSULTATION DOCUMENT, PAPER BY THE DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR HEALTH AND WELLBEING. Not dated.

⁶⁹⁶ A3287073 – Email from official to Private Office. NATIONAL CONFIDENTIAL FORUM FOR ADULT SURVIVORS OF ABUSE – DRAFT CABINET PAPER. 7 June 2012.

content with the Cabinet Paper”⁶⁹⁷. The Cabinet Secretary for Justice’s Private Office asked for advice and a response was provided on 18 June 2012⁶⁹⁸. The advice read:

“NATIONAL CONFIDENTIAL FORUM - DRAFT CONSULTATION DOCUMENT (STAGE 4)

Advice to Cabinet Secretary

We consider that there are a number of potential issues around the consultation on a National Confidential Forum ("the Forum"), particularly in relation to the timing and handling should it be included in the Victims and Witnesses Bill ("the Bill") as currently planned.

Timing

The Bill is scheduled for introduction in January 2013 and cannot be delayed, as this would have an impact on other Bills in the planned legislative programme. However, the consultation paper, which asks some relatively fundamental questions about the nature and remit of the Forum, will not close until October 2012. This may present significant difficulties in taking the responses into account when drafting the Bill, the timetable for which is already very tight. Consideration may need to be given to shortening the consultation period and/or assessing the risk of drafting the Bill on the basis of current policy, with a view to potentially making changes at Stage 2 if necessary in light of the consultation responses.

Handling

The cabinet paper suggests that there will be little or no opposition to the establishment of the Forum. Given the costs involved in setting up any

⁶⁹⁷ A3287073 – Email from Cabinet Secretary for Health, Wellbeing and Cities Strategy Private Office to official. RE: NATIONAL CONFIDENTIAL FORUM FOR ADULT SURVIVORS OF ABUSE – DRAFT CABINET PAPER. 13 June 2012.

⁶⁹⁸ A3446252 – Emails between officials and Cabinet Secretary for Justice Private Office. CABINET STAGE 4 – NATIONAL CONFIDENTIAL FORUM – DRAFT CONSULTATION DOCUMENT. 13 June 2012 – 18 June 2012.

new body, and the limited remit of the proposed Forum (which will be available only to those abused in residential care, and will not have any investigatory or compensatory powers), this may be unrealistic. In particular, there will need to be a clear rationale for why the Forum's remit is as proposed, other than on grounds of cost alone, which may be hard to defend.

In addition, some handling issues may arise as a result of including the Forum in the Victims and Witnesses Bill. On Victims and Witnesses policy generally, we have repeatedly emphasised that we are committed to spending available funds on offering immediate, practical support to victims - for example, in resisting Labour proposals for the establishment of a Victim's Commissioner. This position may be seen as inconsistent with the establishment of a new body, and raise questions about why the available funding would not be more effectively spent on other victim support initiatives.

Draft Response for Consideration

If a National Confidential Forum is to be provided for in the Victims and Witnesses Bill, further consideration may need to be given to the duration of the consultation and the ability to finalise policy within the timescales required, as introduction of the Bill (in January 2013) cannot be delayed.

In relation to the expected calls for the remit of the Forum to be widened to include other victims of childhood abuse, there will need to be a very clear rationale for restricting it as proposed. While any extension would incur significant additional costs, rejecting suggestions on those grounds alone will be criticised, particularly by victim support groups; it would be preferable to have robust, principle-based arguments for the existing proposal.

In addition, although the paper indicates that no serious opposition is expected, the necessity of establishing a new body (whether or not it sits within an existing public body) with significant set up and running costs may be questioned. In the event that stakeholder and opposition party

views are not as predicted, there will need to be a robust explanation of why a new body is required; how costs have been kept to a minimum; and why funds would not be more effectively spent on other victim support initiatives”⁶⁹⁹.

- 14.23. On 27 June 2012, Cabinet correspondence CC(12)11 on the National Confidential Forum was issued on behalf of the Cabinet Secretary for Health, Wellbeing and Cities Strategy⁷⁰⁰. The paper sought Cabinet agreement to consult on proposals for a National Confidential Forum for Adult Survivors of Abuse In Residential Care as children. The paper stated that it was “currently proposed that arrangements for the National Confidential Forum will be included in the Victims and Witnesses (Scotland) Bill”.
- 14.24. An official provided briefing and a draft response for the Cabinet Secretary for Justice to reply to an item of Cabinet correspondence⁷⁰¹. The briefing and draft response of 4 July was as follows:

“Cabinet Correspondence: National Confidential Forum

Advice to Cabinet Secretary

In previous Cabinet Correspondence, we raised several concerns relating to the inclusion of a National Confidential Forum in the Victims and Witnesses Bill. Specifically, we suggested that a robust rationale would be required for restricting the remit of the Forum to those abused in residential care, and for setting up a new body (as opposed to using funds on existing victim support initiatives); and that consideration should be given to shortening the consultation period to allow responses to be taken into account when drafting the Bill.

⁶⁹⁹ A3446252 – Emails between officials and Cabinet Secretary for Justice Private Office. CABINET STAGE 4 – NATIONAL CONFIDENTIAL FORUM – DRAFT CONSULTATION DOCUMENT. 13 June 2012 – 18 June 2012.

⁷⁰⁰ A3459952 – Email from Cabinet Secretariat to Cabinet Secretaries enclosing Cabinet Papers. RE: CC(12)11 – National Confidential Forum – DEADLINE 10 JULY at 11.30. June 2012. Contains Cabinet paper CC(12)11 – National Confidential Forum: Draft Consultation Document.

⁷⁰¹ A3459952 – Emails between officials. RE: CC(12)11 – National Confidential Forum – DEADLINE 10 July at 11.30. 27 June 2012 – 04 July 2012.

A response to the first point has been included in this paper, stating that the proposed restrictions on the remit of the Forum were made clear when Ministers committed to setting up such a body, and that briefing will be produced to address the potential handling difficulties raised. While further detail will be required in due course if this proposal is to be included in the Victims and Witnesses Bill, we consider this response to be sufficient for the moment.

Our concerns about the consultation period have not been reflected in this paper. However, we understand that the possibility of shortening this is currently under consideration.

Draft Response for Consideration

The response to the concerns raised about potential handling difficulties is noted. While more detail on the handling strategy will be required in due course should this proposal be included in the Victims and Witnesses Bill, we have no further comments at this time⁷⁰².

- 14.25. The Cabinet Secretariat emailed the First Minister's Private Secretary on 12 July 2012 attaching a draft signed-off minute in respect of the item of Cabinet correspondence 'CC(12)11 National Confidential Forum'⁷⁰³. The official asked for the First Minister's sign-off by Tuesday 17 July.
- 14.26. On 20 July 2012, the "Consultation on the creation of a National Confidential Forum for Adult Survivors of Childhood Abuse in Care"⁷⁰⁴ was published. The consultation invited written responses by 12 October 2012⁷⁰⁵.

⁷⁰² A3459952 – Emails between officials. RE: CC(12)11 – National Confidential Forum – DEADLINE 10 July at 11.30. 27 June 2012 – 04 July 2012.

⁷⁰³ A3611906 – Email from Cabinet Secretariat to First Minister's office. I: National Confidential Forum – draft sign off minute. 12 July 2012.

⁷⁰⁴ Scottish Government. National Confidential Forum – Consultation on the creation of a Forum for Adult Survivors of Childhood Abuse in Residential Care. Edinburgh; 20 July 2012 [cited 2020 Feb 19]. Available from: <https://www.gov.scot/publications/national-confidential-forum-consultation-creation-forum-adult-survivors-childhood-abuse-residential-care/pages/5/>

⁷⁰⁵ Scottish Government. National Confidential Forum - Consultation on the creation of a Forum for Adult Survivors of Childhood Abuse in Residential Care [Internet]. Edinburgh; 20 July 2012 [cited 2020 Feb 19]. P. ii. Available from:

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2012/07/national-confidential-forum-consultation-creation-forum-adult-survivors-childhood->

- 14.27. At meetings on 8 and 22 August 2012^{706,707}, the Survivor Stakeholder Group considered the consultation^{708,709}.
- 14.28. The Chief Executive of the Mental Welfare Commission (MWC) confirmed that “the MWC Board is content that the Chair and Chief Exec explore the possibility that the MWC will host the National Confidential Forum”. The email⁷¹⁰ stated that “MWC Board would need to approve a final proposal before we can give a definite commitment to hosting the NCF”.
- 14.29. The Survivor Stakeholder Group met on 8 October 2012⁷¹¹ and discussed minimising re-traumatisation in the Forum⁷¹². The minutes of the meeting noted, in respect of “answering re-traumatisation consultation questions”, that the group were asked if there was anything that should be added to “What other support do you consider that participants would benefit from before, during and after the Forum?”. It was suggested that the following be added (formatting from original):

“Psychology services should be included

An organisation such as “The Advocacy Project” could become involved

Any other organisations with appropriately accredited staff with a proven track record

abuse-residential-care/documents/national-confidential-forum-consultation-creation-forum-adult-survivors-childhood-abuse-residential-care/national-confidential-forum-consultation-creation-forum-adult-survivors-childhood-abuse-residential-care/govscot%3Adocument/00397630.pdf.

⁷⁰⁶ A3532090 – National Confidential Forum Survivor Stakeholder Group. National Confidential Forum Survivor Stakeholder Group Meeting Agenda. 8 August 2012.

⁷⁰⁷ A3985189 – National Confidential Forum Survivor Stakeholder Group. National Confidential Forum Survivor Stakeholder Group Meeting Minutes. 8 August 2012 and 22 August 2012.

⁷⁰⁸ A3533641 – Document, National Confidential Forum Survivor Stakeholder Group, Paper 4, Consultation Questions. August 2012.

⁷⁰⁹ A3534769 – National Confidential Forum Survivor Stakeholder Group. Paper 3, Consultation on the creation of a National Confidential Forum – Timescale. August 2012.

⁷¹⁰ A4517437 – Emails between an official and the Mental Welfare Commission. National Confidential Forum – hosting by MWC. 11 September 2012 – 13 September 2012.

⁷¹¹ A4085917 – National Confidential Forum Survivor Stakeholder Group. National Confidential Forum Survivor Stakeholder Group Meeting Agenda. 8 October 2012.

⁷¹² A4175188 – National Confidential Forum Survivor Stakeholder Group. National Confidential Forum Survivor Stakeholder Group Meeting Minutes. 8 October 2012.

A float to be available to enable participants to receive money for travel costs rather than wait on reimbursement when travelling to the Forum

Refreshments for participants and those who are supporting them

An information pack for participants who are due to attend the Forum

Ensure that those who do not take support and go to the Forum alone have the best preparation possible”.

14.30. A letter was sent by an official to members of the Survivor Stakeholder Group on 12 October 2012 thanking them for their participation in the Survivor Stakeholder Group⁷¹³. The letter also said “You will be aware that the consultation closes today. We think that this is a good point to review our engagement with survivors and I am writing to all members of the Group to seek views on how best to do that. If you have any ideas you would like to share with us please let me know”.

14.31. On 23 October 2012, the MWC agreed in principle to host the NCF. An email from the Chief Executive of MWC said:

“The Commission agrees in principle to be the host organisation for the NCF. We greatly appreciate the value placed by the Minister on the independence and integrity of the Commission to provide host services for this work. We accept the Minister’s position that there will be a visible separation between the forum and the ongoing work of the Commission. Accordingly, the agreement in principle is that the Commission will provide shared services for the work of the forum in terms of IT, finance, payroll (using our existing shared service with the Scottish Government for payroll). It is our understanding that the Minister does not wish the Commission to manage and govern the work of the forum. This agreement in principle is given on the basis that this will be the case and

⁷¹³ A4203119 – Letter from official to Christopher Daly. National Confidential Forum – Survivor Stakeholder Group. 12 October 2012.

that the Commission will not be responsible for the conduct of hearings and the reports from the forum.

This agreement in principle is also subject to final agreement on the financing of the forum, especially in relation to start-up costs, that we have previously agreed in principle will be met by the Scottish Government”⁷¹⁴.

- 14.32. An official updated the Minister for Public Health on MWC’s acceptance of hosting the forum in a briefing paper of 24 October⁷¹⁵ (and a revised version on 6 November⁷¹⁶).
- 14.33. An email of 25 October 2012 confirmed that Ministers were content for policy proposals on the Victims and Witnesses (Scotland) Bill to proceed for Cabinet consideration⁷¹⁷. The Cabinet Secretary for Justice agreed to the paper being issued⁷¹⁸ and it was circulated to the Cabinet Distribution List on 7 November 2012⁷¹⁹.
- 14.34. The Cabinet paper was discussed at Cabinet on 13 November 2012⁷²⁰. In the summary of proposals in relation to the NCF, starting at paragraph 9. The paper stated:

“9. Our consultation on the NCF included specific questions on the operation of the Forum. Feedback from respondees highlights a strong preference that the NCF be independent of government. Respondees were also asked specifically how they envisaged the NCF sitting within an existing public body (on the premise that a new body would not be

⁷¹⁴ A4318462 – Email from Donald Lyons, Mental Welfare Commission to officials. Hosting of the National Confidential Forum by the Mental Welfare Commission. 23 October 2012.

⁷¹⁵ A4318462 – Email from official to Minister for Public Health. Hosting of the National Confidential Forum by the Mental Welfare Commission. 24 October 2012.

⁷¹⁶ A4396642 – Email from official to Cabinet Secretary for Justice. Submission to Cabinet Secretary – Victims and Witnesses Bill – Cabinet paper on final policy proposals. 6 November 2012.

⁷¹⁷ A4396795 – Email from official, enclosing 8 emails. Victims and Witnesses Bill – Cabinet papers – Stage 4 – 12 11 06 – All responses from cabinet members. 6 November 2012.

⁷¹⁸ A4415266 – Email from Cabinet Secretary for Justice to official. RE: Submission to Cabinet Secretary – Victims and Witnesses Bill – Cabinet paper on final policy proposals. 6 November 2012.

⁷¹⁹ A4415232 – Email from Cabinet Secretariat to official. RE: Victims and Witnesses Bill – Cabinet paper. 7 November 2012.

⁷²⁰ A26633443 – Cabinet Paper SC(12)137. Victims and Witnesses (Scotland) Bill – Final Policy Proposals. November 2012.

created). Respondees have indicated that the NCF should be hosted by a body which can afford it functional and operational autonomy. Confidentiality for participants was also highlighted as a critical dimension of the way in which the NCF will perform its functions.

10. Following this consultation, and drawing on the experience of TTBH, it is likely that the Bill will contain a number of provisions in respect of the NCF, including:

i. functions

11. It is intended that the proposed functions of the NCF will be set out clearly in the Bill. It is not considered that these proposed functions fall within the current functions of an existing public body, including the Mental Welfare Commission (“MWC”). Express provision in the Bill will clarify the functions of the NCF which will, in practice, support its functional and operational autonomy.

12. The proposed functions of the NCF are as follows:

- To receive and listen, in private and in confidence, to the experiences of adults who were placed in institutional care as children.
- To contribute to the prevention of the abuse of children placed in institutional care in the future. The Bill will, therefore, contain provision empowering the NCF to make findings of a general nature in order to improve policy and practice responses and to mitigate the risk of abuse to children in care in the future.
- To bring together accounts that can contribute to a permanent record of life in care in Scotland.
- To signpost to participants services which can offer support, advocacy, advice and information.

ii. status as part of an existing public body

13. On the basis that the NCF will be hosted by the MWC, the Bill will have to make provision as to how the NCF will discharge its functions in this context in order to create the maximum level of operational autonomy. It is envisaged that the NCF will be set up as a mandatory committee of the MWC, with appointments made by the Scottish Ministers in consultation with the MWC. It is envisaged that the Head of the NCF will have a reasonable degree of operational autonomy in discharging the functions of the NCF and that the NCF will only be able to be dissolved on the instructions of the Scottish Ministers, on satisfactory performance of its functions.

iii. participation

14. The Bill will define who will be able to participate in the NCF, purposely widening participation beyond the scope of TTBH to encompass a range of institutions offering care to children. The rationale for offering access to the NCF to adults who were placed in institutional forms of care as children is that there are particular aspects of that care which distinguish it from other forms of care, in particular care at home (including foster care and home supervision). This was highlighted in testimony given to the TTBH Pilot Forum.

iv. confidentiality

15. The Bill will make provision in order that participants can be given assurances of confidentiality in advance of participation in the NCF, something which was not possible in respect of TTBH.

16. These provisions will include protection from action of defamation for participants in the event that they, for example, make allegations of abuse. This specific form of protection will also be offered to the Head of the NCF and its members and employees. There will also be a general provision in the Bill prohibiting the disclosure of information provided to the NCF in the fulfilment of its functions. This also provides protection to persons against whom allegations of abuse may be made and institutions whose reputations may be called into question in participant

testimony. As such, I consider this to be a balanced and proportionate measure.

17. In addition, an exemption of the NCF from the subject information provisions of the Data Protection Act 1998 is being sought. As data protection is a reserved matter, we are discussing with colleagues in Whitehall how best to make provision in this regard, most likely using a section 104 Order⁷²¹.

14.35. On 26 November 2012, the Minister approved the following communication lines for publication:

“Minister for Public Health, Michael Matheson, said: "It is intended that the National Confidential Forum will be open to all adults who were in institutional care as children to allow them share their experiences in confidence. Legislation for the National Confidential Forum will be included as part of the Victims and Witnesses (Scotland) Bill. We plan to report the findings from our consultation on the Forum early in December"⁷²².

14.36. On 11 December 2012, briefing was sent to the Minister for Public Health on the NCF in advance of the Victims and Witnesses Bill Management Meeting on 13 December 2012⁷²³. The briefing provided an update on negotiations with MWC on it hosting the Forum, and highlighted four issues surrounding the establishment of the NCF which were expected to arise during the passage of the Bill and provided background briefing on each issue:

- Hosting of the NCF by the MWC.
- The focus of the NCF on acknowledgement.

⁷²¹ A26633443 – Cabinet Paper SC(12)137. Victims and Witnesses (Scotland) Bill – Final Policy Proposals. November 2012.

⁷²² A4564731 – Emails between official and Minister for Public Health’s office. Line – historic child abuse – national confidential forum. 26 November 2012.

⁷²³ A4680150 – Email from official to Minister for Public Health Private Office. Victims and Witness (Scotland) Bill – National Confidential Forum – Briefing – Bill Management Meeting 13 December 2012. 11 December 2012.

- The scope of the NCF.
- Compensation and time-bar for survivors of abuse.

- 14.37. On 17 December 2012, officials sought approval from the Minister for Public Health to publish the consultation report on the proposal to establish the NCF⁷²⁴. The Minister approved publication of the consultation report on 19 December⁷²⁵ and it was published on 3 January 2013⁷²⁶.
- 14.38. Briefing on the NCF and provisions in the Victims and Witnesses (Scotland) Bill for the Minister for Public Health was provided ahead of a meeting with officials on 9 January 2013⁷²⁷.
- 14.39. On 11 January 2013, a submission went to the First Minister and Cabinet Secretary for Justice seeking clearance for the Victims and Witnesses (Scotland) Bill and accompanying documentation to be sent to the Presiding Officer⁷²⁸. Clearance was given. Provisions to establish a NCF, as part of the Victims and Witnesses (Scotland) Bill, were introduced to the Scottish Parliament by the Cabinet Secretary for Justice on 6 February 2013⁷²⁹.
- 14.40. The Minister for Public Health was provided with briefing from officials on 19 February 2013 ahead of an interview on 21 February 2013 with BBC Radio Scotland to discuss the NCF⁷³⁰.

⁷²⁴ A4740216 – Email from official to Minister for Public Health Private Office. National Confidential Forum – consultation on the proposal to establish the NCF – draft Consultation Report – 17 December 2012. 17 December 2012.

⁷²⁵ A4744310 – Emails between Minister for Public Health Private Office and officials. Urgent: National Confidential Forum – consultation on the proposal to establish the NCF – draft Consultation Report – 17 December 2012. 19 December 2012.

⁷²⁶ Scottish Government. Consultation on the proposal to establish a National Confidential Forum – Analysis of Consultation Responses [Internet]. Edinburgh; 2013 [cited 2020 Feb 19]. Available from: <https://www.gov.scot/publications/consultation-proposal-establish-national-confidential-forum-analysis-consultation-responses/pages/1/>

⁷²⁷ A4844140 – Email from official to Minister for Public Health private office. National Confidential Forum – provision in Victims and Witnesses (Scotland) Bill – Minute to Minister – 7 January 2013. 7 January 2013.

⁷²⁸ A4883777 – Email from official to First Minister and Cabinet Secretary for Justice Private Offices. Submission to Ministers – Victims and Witnesses Bill – Clearance to submit Bill to Presiding Officer. 11 January 2013.

⁷²⁹ Scottish Parliament. Victims and Witnesses (Scotland) Bill. Edinburgh. Not dated [cited 2020 Feb 19]. Available from: <http://www.parliament.scot/parliamentarybusiness/Bills/59133.aspx>

⁷³⁰ A5749872 – Email from official to Minister for Public Health Private Office. Briefing for Minister – BBC Radio Scotland interview – 21 February 2013. 19 February 2012.

14.41. The Minister for Public Health was provided with briefing from officials, ahead of a meeting with the Chair and Chief Executive of the MWC on 14 March 2013⁷³¹. The briefing stated that the “meeting will provide you [the Minister] with an opportunity to restate the strategic policy goals which underpin the establishment of the National Confidential Forum (NCF), following the introduction of the Victims and Witnesses (Scotland) Bill”. The briefing noted that there had been “a series of ongoing meetings with Commission staff to develop a Memorandum of Understanding (MoU), setting out a number of operational matters in anticipation of the establishment of the NCF”.

14.42. On 8 May 2013, a meeting took place between officials and organisations who were funded by government to help develop the NCF. A FAQ document was sent to the attendees with a full list of organisations and what project/area they were working on⁷³². The minutes of the meeting noted that:

“From the consultation, it was identified that further work was required to find out what barriers certain groups could face if wanting to participate in the NCF. This included people with learning disabilities, mental health issues, minority ethnic, physical health and those who had been in foster care and whether they would want to participate in an acknowledgement forum. It was confirmed that the timeframe allocated for the organisations to carry out the project work is from March to September 2013 however it was noted that the NCF will not be established and ready to start hearings until early 2014. As a result, funded organisations will attempt to complete their projects by September 2013 however allowances will be made for those who require more time”⁷³³.

14.43. On 12 June 2013, a submission went to the Cabinet Secretary for Justice enclosing: a draft response to the Justice Committee’s Stage 1 report on the Victims and Witnesses (Scotland) Bill; opening and closing speeches for the

⁷³¹ A5324086 – National Confidential Forum: Meeting with the Mental Welfare Commission. Not dated.

⁷³² A6195729 – Email between officials, enclosing document titled National Confidential Forum - FAQ. NCF Funding Meeting – 8 May 2013. 19 June 2013.

⁷³³ A6195729 – Email between officials, enclosing document, Meeting of organisations funded to develop the National Confidential Forum (NCF). NCF Funding Meeting – 8 May 2013. 19 June 2013.

Stage 1 debate for both the Cabinet Secretary for Justice and Minister for Community Safety and Legal Affairs; and a briefing on the Bill and a separate briefing on the NCF⁷³⁴.

- 14.44. In August 2013, related to Stage 2 of the Bill process, a brief on the NCF was developed by officials for the First Minister's meeting with the Convenor's Group⁷³⁵.
- 14.45. On 4 September 2013, the NCF funding group met. The minute of the meeting noted that the purpose of the meeting was to obtain an overview of progress⁷³⁶.
- 14.46. A note of a phone call between an official and SHRC regarding InterAction next steps stated that: "it may be helpful for you to know that the SHRC appears to have accepted that the Bill will go ahead before the Interaction process is completed. While the SHRC retains the right to propose amendments as the SHRC the Interaction process will not attempt to do so. It seems to be accepted that the NCF provisions should be kept separate from any developments following on from the Action Plan"⁷³⁷.
- 14.47. On 24 September 2013, a submission from an official to the Minister for Public Health sought clearance for various government amendments related to the Forum being considered at Stage 2 of the Bill process⁷³⁸. The submission noted amendments not being taken forward, including giving the Forum investigatory or inquiry powers:

"20. During the Stage 1 sessions and in evidence given to the Health and Sport Committee a number of stakeholders suggested that the NCF should be more than an acknowledgement forum and should include

⁷³⁴ A6167978 – Email from official to Cabinet Secretary for Justice and Minister for Community Safety and Legal Affairs. Victims and Witnesses Bill – Submission to Minister – Response to Stage 1 report and briefing for Stage 1 debate. 12 June 2013

⁷³⁵ A6601500 – Emails between officials, National Confidential Forum: Brief for Convenors' Group Meeting. 21 August 2013.

⁷³⁶ A6984238 – Email from official to members of the funding group. National Confidential Forum – Funding Group Minutes and Forthcoming Appointments. 14 October 2013.

⁷³⁷ A6773570 – Email between officials. RE: Historic Abuse InterAction Next Steps. 11 September 2013.

⁷³⁸ A6827176 – Submission to Minister for Public Health. Victims and Witnesses (Scotland) Bill – National Confidential Forum – Proposed stage 2 amendments. 24 September 2013.

elements of accountability. In particular the inclusion of inquiry powers - “powers sufficient to inquire into the operation of prevention and protection regimes at the time” - was regarded by the Scottish Human Rights Commission (SHRC), Barnardo’s and Former Boys and Girls Abused of Quarriers as necessary.

21. We have consistently taken the view that the NCF should focus on acknowledgement only and that a dilution of this focus could be detrimental to those who participate. This view was shared by Tom Shaw, the Chair of the Time to be Heard Pilot Forum, in his evidence to the Committee. The Committee noted in its Report that the evaluation of the Time to be Heard pilot indicated “the therapeutic value of an acknowledgement forum” and the Committee did not make any recommendations to amend the NCF’s functions to include an investigatory or inquiry function”.

14.48. The Minister noted and agreed to the recommendations⁷³⁹. Briefing for the Minister for Public Health was provided on 1 November 2013 ahead of Stage 2⁷⁴⁰. Eleven government amendments were supported by the Committee. No opposition amendments were lodged⁷⁴¹.

14.49. A submission went to the Minister for Public Health on 19 November 2013 that sought approval for the proposed membership of the NCF Selection Panel⁷⁴². The submission recommended:

“That you approve the composition of the NCF selection panel so far as follows:

- Maureen Bruce, Deputy Director, Adult Care and Support Division as Chair

⁷³⁹ A6851541 – Email from Minister for Public Health Private Office to official. RE: NATIONAL CONFIDENTIAL FORUM – PROPOSED STAGE 2 AMENDMENTS. 26 September 2013.

⁷⁴⁰ A6948217 –Submission to Minister for Public Health. Victims and Witnesses (Scotland) Bill, National Confidential Forum Briefing for stage 2. 1 November 2013.

⁷⁴¹ A7117403 – Email from official to Minister for Parliamentary Business. ROUTINE: Victims and Witnesses (Scotland) Bill – National Confidential Forum – Stage 2”. 5 November 2013.

⁷⁴² A7231745 – Email from official to Minister for Public Health. National Confidential Forum – selection panel. 19 November 2013.

- Reverend Graham Forbes, Chair of the Mental Welfare Commission.
- David Whelan, Former Boys and Girls Abused of Quarriers”.

14.50. The Minister approved the composition of the Forum selection panel⁷⁴³. David Whelan was appointed on 11 December 2013⁷⁴⁴.

14.51. A briefing on 6 December 2013 to the Minister for Public Health in advance of Stage 3 of the Victims and Witnesses (Scotland) Bill noted⁷⁴⁵:

“Evidence from the Time to be Heard Pilot Forum suggests that the NCF should focus on acknowledgement. Evaluation of the Time to be Heard Pilot Forum indicated “the therapeutic value of an acknowledgement forum”. Tom Shaw, Chair of TTBH, considered that including an investigative or inquiry function could seriously weaken the focus of the NCF and would change the whole nature of the Forum, which is designed to be informal and participant-focused.

There are already other ways to achieve the accountability of abusers and of institutions where abuse took place (i.e., through criminal prosecutions and, potentially, restorative justice).

The Action Plan that has been produced as the result of the InterAction process has not recommended that an inquiry should be established. Instead it proposes that there should be a review of the lessons learnt from previous inquiries, including the identification of any gaps. In the InterAction process a strong lobby of survivors and other stakeholders did not favour the idea of an inquiry and did not support the extension of inquiry powers to the NCF.

⁷⁴³ A7233265 – Email from Minister for Public Health Private Office to official. RE: National Confidential Forum – selection panel. 20 November 2013.

⁷⁴⁴ A7462078 – Letter from official to Mr David Whelan. National Confidential Forum – Appointments Panel. 11 December 2013.

⁷⁴⁵ A7372500 – Email from official to Minister for Public Health. IMMEDIATE: Victims and Witnesses (Scotland) Bill – National Confidential Forum – Stage 3 Update. 6 December 2013.

There have been a number of independent inquiries into individual institutions (for example, Kerelaw Residential School in 2009) that have resulted in significant changes to the inspection regimes and oversight of childcare institutions. There has also been a national inquiry into child abuse in residential schools and children's homes, commissioned by the Scottish Government (*Historical Abuse Systemic Review 2007*). This led to the establishment of the National Residential Child Care Initiative (NRCCI), which has taken forward fundamental changes in, for example, the recruitment and training of staff and care planning. It is unlikely that providing the NCF with an investigative function would add greatly to what is already known about abuse in institutional childcare⁷⁴⁶.

14.52. On 10 December 2013, the Minister for Public Health wrote to the Convener⁷⁴⁷, Duncan McNeil, in response to the Health and Sport Committee's Stage 2 Official Report, and responded to two points that had been raised by the Committee on broadening the remit of the Forum and eligibility.

14.53. On 7 January 2014, the Minister for Public Health wrote to the Convener of the Health and Sport Committee following the Stage 3 debate with an update on progress⁷⁴⁸:

"The Committee will be aware that the NCF is to be hosted by the Mental Welfare Commission and will operate independently. The Head and membership of the NCF will be selected through a Public Appointments process. These roles are expected to be advertised in February 2014. It will be the responsibility of the Head of the NCF and the Mental Welfare Commission to comment on its functions and outcomes by publishing Annual Reports once the NCF is operational.

⁷⁴⁶ A7372500 - Email from official to Minister for Public Health. IMMEDIATE: Victims and Witnesses (Scotland) Bill – National Confidential Forum – Stage 3 Update. 6 December 2013.

⁷⁴⁷ A7390652 – Email from Minister for Public Health Private Office to officials. IMMEDIATE: Victims and Witnesses (Scotland) Bill - National Confidential Forum - Letter to Health and Sport Committee. 11 December 2013. (Attachment within dated 10 December 2013).

⁷⁴⁸ A7538325 – Email from Minister for Public Health to official, enclosing letter. RE: ROUTINE: Victims and Witnesses (Scotland) Bill - National Confidential Forum - Letter to Health and Sport Committee. 8 January 2014. (Attachment within dated 7 January 2014).

Scottish Government officials continue to work closely with the Mental Welfare Commission and other stakeholders to help inform the implementation of the NCF. Attached in Annex A are details of the work currently being progressed.

Finally, at Stage 3 the Cabinet Secretary for Justice responded by acknowledging that "There was a historic wrong and the Forum will be unable to resolve what happened to the individuals concerned, but it is the start of a process that we hope will help them." The intention of the NCF has always been not only to offer therapeutic value to individuals by acknowledging their experiences of institutional care, but also to learn from past experiences of abuse and neglect, so that care and health services for children in Scotland can be improved. I am confident that the National Confidential Forum can help in achieving this".

- 14.54. On 16 January 2014, a NCF planning meeting took place with the selection panel in attendance⁷⁴⁹. The selection panel conducted a shortlist meeting on 8 April 2014 and interviews were conducted on 22, 23, 29 and 30 April for the positions of Head of the NCF and up to three members of the NCF. A submission was sent to the Minister on 20 May 2014 that took into account advice from the Office of the Commissioner for Ethical Standards in Public Life⁷⁵⁰. Five candidates were deemed suitable for the role. The Minister decided to appoint four of the candidates, after meeting them⁷⁵¹.
- 14.55. On 24 June 2014, Ms Currie was appointed as Head of the NCF⁷⁵², and Ms Everingham, Ms Hampton and Ms Calder were appointed as Members of the NCF⁷⁵³.

⁷⁴⁹ A7542494 – Email from officials to Selection Panel. NCF – Planning Meeting 16 January 2014. 7 January 2014.

⁷⁵⁰ A8470190 – Email from officials to Minister for Public Health. National Confidential Forum Appointments – Selection Panel's Recommendations. 20 May 2014.

⁷⁵¹ A8599379 – Email between official and Minister for Public Health Private Office. National Confidential Forum – Head and Member Appointments. 5 June 2014.

⁷⁵² A8710432 – Email between Minister for Public Health and official. RE: National Confidential Forum – Head Appointment. 23 June 2014 – 24 June 2014.

⁷⁵³ A8763707 – Email between officials and Minister for Public Health Private Office. RE: NATIONAL CONFIDENTIAL FORUM – MEMBER APPOINTMENTS. 25 June 2014 – 26 June 2014.

- 14.56. Ahead of a meeting between Ministers and survivors including Christopher Daly, Helen Holland and David Whelan on 13 August 2014, a briefing was provided on a number of issues, including the NCF⁷⁵⁴.
- 14.57. On 28 August 2014, a survivor submitted a complaint to the Public Appointments Complaints Team regarding the Forum panel members all being female⁷⁵⁵. The complaint stated that: “It was recorded by Tom Shaw in the Time to be Heard Pilot Forum report that some survivors who gave their account of childhood sexual abuse in Quarriers were very uncomfortable when presenting details of that abuse to members of the opposite sex on the Panel... the Gender of Panel Members for the NCF has raised some serious concerns in the victim/survivor community”⁷⁵⁶.
- 14.58. The Scottish Government replied to the survivor on 8 September 2014. The response said that [in relation to the appointment of the Forum members]⁷⁵⁷: “only the candidates who most closely meet the necessary skills, knowledge and experience for the position in question are recommended to Ministers for appointment. All stages of the appointment round for the National Confidential Forum (NCF) Head and Members, from the development of the role description and person specification through to the recommendations made to the Minister, were overseen by an Adviser from the office of the Commissioner for Ethical Standards in Public Life. In addition to this, a male survivor [David Whelan] undertook the role of the panel’s independent member. He participated in all of the panel’s discussions and provided input into all of their decisions”.
- 14.59. On 29 October 2014, discussions took place between officials about expenditure in relation to the NCF⁷⁵⁸.

⁷⁵⁴ A8938683 – Document, “Ministerial Meeting with Survivors of Childhood Abuse – Wednesday 13 August 2014 – 15:00 to 16:00”. 7 August 2014.

⁷⁵⁵ A9341961 – Email from ██████████ to Public Appointments Complaints, “COMPLAINT – (NCF) Gender of Panel Members”. 28 August 2014.

⁷⁵⁶ A9341961 – Email from ██████████ to Public Appointments Complaints, “COMPLAINT – (NCF) Gender of Panel Members”. 28 August 2014.

⁷⁵⁷ A9706874 – Email from official to ██████████ enclosing a letter, “FW: COMPLAINT – (NCF) Gender of Panel Members”. 8 September 2014.

⁷⁵⁸ A9669394 – Emails between officials. FW: NCF costs. 29 October 2014.

- 14.60. On 10 November 2014, following the complaint about the gender of Forum members, Ms Currie (Head of the NCF) met the complainer to discuss how to proceed. On 11 November 2014, an official emailed Ms Currie and the Chair of the MWC to recommend: seeking legal advice, views from FBGA and INCAS, and inviting people to express any concerns about the way the Forum was set up⁷⁵⁹. An email on 19 November 2014 from the Chair of the MWC, to officials, explained the proposed approach, which was to “state upfront that we are aware of the issue and that there is a willingness to offer choice where a survivor wishes to opt for people of a particular gender to hear testimony”⁷⁶⁰. An email on 17 December 2014 between officials said that “Neither the Head nor the members were happy with referring specifically to gender” [in the NCF information booklet and application form] and that “The information booklet and Application Form have been amended so that people are invited to tell the Forum about any issues that “might put them off”⁷⁶¹.
- 14.61. On 16 December 2014, an official sent a submission to the Minister for Sport, Health Improvement and Mental Health requesting permission to publish the memorandum between the Scottish Ministers and the MWC. The Minister approved the publication on 17 December 2014 and it was published on 7 January 2015⁷⁶².
- 14.62. The Victims and Witnesses (Scotland) Bill received Royal Assent on 17 December 2014⁷⁶³. The National Confidential Forum was established soon after in 2015⁷⁶⁴.

⁷⁵⁹ A9703730 – Email from official to Anne Currie (Head of NCF). NCF: Gender Preferences. 11 November 2014.

⁷⁶⁰ A9761619 - Email from Graham Forbes (MWC) to officials. FW: NCF. 19 November 2014.

⁷⁶¹ A10108165 – Email between officials. Problems for the Forum Start Date. 17 December 2014.

⁷⁶² A10022504 – Email between official and Minister for Sport, Health Improvement and Mental Health. Re: Memorandum of Understanding between the Mental Welfare Commission and the Scottish Government on the National Confidential Forum. 16 December 2014 – 17 December 2014.

⁷⁶³ Scottish Parliament. Victims and Witnesses (Scotland) Bill. Edinburgh. Not dated [cited 2020 February 19]. Available from: <https://www.parliament.scot/parliamentarybusiness/Bills/59133.aspx>

⁷⁶⁴ National Confidential Forum. 2017 [cited 2020 February 19]. Available from: <https://www.nationalconfidentialforum.org.uk/>

CHAPTER 15

PREScription AND LIMITATION

- 15.1. This chapter of the report builds on what is asked for by point 5 of the section 21 notice and provides an explanation of the Scottish Government's work on the issue of prescription and limitation (otherwise known as 'time-bar'), including the involvement of survivor groups and campaigners. It includes reference to Petition PE888, lodged by Christopher Daly.
- 15.2. Chapter 2 of this report ("Reasons for not establishing a public inquiry, 2002 to 2014") refers to time-bar in the Scottish Government's consideration of whether to establish a public inquiry. This chapter provides more detail on the key events related to prescription and limitation including related work under the Scottish Human Rights Commission Framework and InterAction Process (the Framework and Process are covered more fully in chapter 12 of this report). Following on from the InterAction Process and further consultation, the Scottish Government worked to bring forward legislation and secured the passage of the Limitation (Childhood Abuse) (Scotland) Act 2017⁷⁶⁵, which removed the three year limitation period.

Background

- 15.3. Between September 2002 and November 2002 fourteen MSPs wrote to Ministers (often enclosing letters from constituents and/or their constituents' lawyers) requesting that the Scottish Executive amend the law on prescription and limitation and asking about the extent of Ministers' involvement in current court actions⁷⁶⁶. This included, on 8 October 2002, two letters from Jackie Baillie MSP to the Deputy First Minister (who was also the Minister for Justice) on behalf of her constituent Helen Holland about historical child abuse at Nazareth House children's home⁷⁶⁷. The letters requested an update,

⁷⁶⁵ Limitation (Childhood Abuse) (Scotland) Act 2017. Available from:

<http://www.legislation.gov.uk/asp/2017/3/contents/enacted>

⁷⁶⁶ A17816112 - 2ADQ 004/001 Part 1. Letters from MSPs to Ministers relating to Historic Child Abuse Allegations. September – November 2002.

⁷⁶⁷ A17816112 - 2ADQ 004/001 Part 1. Letters from Jackie Ballie MSP to Minister of Justice. p. 35-145. 8 October 2002.

following earlier correspondence from Ms Baillie dated 13 April 2000⁷⁶⁸ (a draft response from the Deputy First Minister was prepared and dated June 2000⁷⁶⁹). Ms Baillie asked the Deputy First Minister to investigate a number of issues, including: a formal apology to victims, a commission of an inquiry, funding a telephone support service for survivors and the possibility of a change in the law to allow victims who suffered abuse prior to 1964 to receive compensation. A reply from the Deputy First Minister to the letters of 8 October 2002 was drafted, dated November 2002. It noted that there had been an earlier response by Sam Galbraith (then Minister for Children and Education) to the letter of 13 April 2000, explained the relevant prescription and limitation legislation and stated that the Scottish Executive had no plans to establish a compensation scheme⁷⁷⁰.

- 15.4. On 23 October 2002, the Deputy First Minister received a briefing from an official entitled “Compensation to Victims of Abuse – Prescription and Limitation Issues”. It advised that it was unlikely that the Scottish Executive would be found liable as a result of the historical child abuse allegations and that a compensation scheme was therefore not something which would be required unless Ministers decided on it. It asked for a steer from Ministers on this issue. The briefing included a draft template letter which could be sent to MSPs (and any others) requesting information on these issues. The draft letter stated that the Minister cannot comment on individual cases, explained the background and implications of prescription and limitation legislation and advised MSPs and their constituents to wait for the appeal decision in the case of *K vs. Glasgow City Council*⁷⁷¹. It stated that the Scottish Executive had no plans to provide a compensation scheme and that the Minister was considering if the issue of prescription and limitation should be the subject of

⁷⁶⁸ A17816112 - 2ADQ 004/001 Part 1. Letter from Jackie Ballie MSP to Minister of Justice. p. 154. 13 April 2000.

⁷⁶⁹ A17816112 - 2ADQ 004/001 Part 1. Draft Letter from Minister of Justice to Jackie Ballie MSP. p. 156. June 2000.

⁷⁷⁰ A17816112 - 2ADQ 004/001 Part 1. Draft Letter from Minister for Justice to Jackie Ballie. p. 137. November 2002.

⁷⁷¹ Refers to case of *Kelly vs. Glasgow City Council*, in which the pursuer (Kelly) sought an award of damages on allegations of abuse between 1955 and 1961. *Joseph Philip McGrath Kelly v. Mrs. Mary Cox+Glasgow City Council (2004)*. Available from: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=85f186a6-8980-69d2-b500-ff0000d74aa7>

a reference to the Scottish Law Commission⁷⁷². Between October to December 2002 the Deputy First Minister replied to a number of MSPs in relation to their inquiries about constituents' cases being "time-barred"⁷⁷³.

- 15.5. The private secretary to the Deputy First Minister replied to the briefing of 23 October in an email dated 28 October 2002⁷⁷⁴. The email stated that the Deputy First Minister hoped to find an "equitable solution for those who suffered such trauma" and that he did not believe the Scottish Executive should "shoulder the financial responsibility for what is the liability of others". He stated he believed it better to pursue changes in the law rather than set up a fund and that officials should engage with the Scottish Law Commission. Specifically, he stated: "Officials should engage with the Scottish Law Commission to consider a possible reference". Gordon West (Deputy Minister for Justice) added his reply on 30 October 2002, agreeing that the Law Commission should be asked to carry out a review⁷⁷⁵.
- 15.6. On 14 November 2002 an official responded regarding Petition PE535 and the prospect of the Scottish Law Commission review into prescription and limitation is mentioned⁷⁷⁶. With regards to the call for an apology, the official said that she "[did not] see any great problem with a general expression of regret – it is hardly an admission of liability" but suggested that this is an issue for legal colleagues. She went on to note that: "One issue which it would be important to consider is to what extent an inquiry would focus on reform of the law rather than examining the extent, patterns and effects of abuse and good practice measures to try to prevent future cases. If changes to the law were contemplated, some consideration would need to be given to how an inquiry

⁷⁷² A17816112 - 2ADQ 004/001 Part 1. Briefing for Deputy First Minister from official. COMPENSATION TO VICTIMS OF ABUSE PRESCRIPTION AND LIMITATION ISSUES. p. 15. 23 October 2002.

⁷⁷³ A17816112 - 2ADQ 004 Part 1. Letters from Minister for Justice to MSPs. p. 97-104, 137, 170, 241. October - December 2002.

⁷⁷⁴ A17816112 - 2ADQ 004/001 Part 1. Email from PS/DFM, Email from the PS/Deputy First Minister to official. FW: COMPENSATION TO VICTIMS OF ABUSE – PRESCRIPTION AND LIMITATION ISSUES. p. 182. 28 October 2002.

⁷⁷⁵ A17816112 - 2ADQ 004/001 Part 1. Emails from Jim Wallace and Gordon West to official. FW: COMPENSATION TO VICTIMS OF ABUSE – PRESCRIPTION AND LIMITATION ISSUES. p. 181. 28 October 2002.

⁷⁷⁶ A17816112 – 2AQD 004-001 Part 1. Email correspondence between officials regarding PE 535. RE: Petition on Abuse. p. 115 - 116. 14 November 2002.

would interact with other initiatives in the legal field. Although this is not for public consumption as yet, there is a prospect of a reference to the Scottish Law Commission to review the Prescription and Limitation (Scotland) Act”.

- 15.7. A briefing by an official for the Minister for Education and Young People noted that the lead civil case *McEwan vs. Hendron* (the ‘test case’) was due to be heard in court in June 2004; and it would be considered by the court whether the action for damages was barred by the passage of time from proceeding⁷⁷⁷. The briefing noted that many cases were on hold, pending the result⁷⁷⁸ (the Inner House dismissed the action on the grounds of time-bar in 2007⁷⁷⁹).

Reference to the Scottish Law Commission and Petition PE888

- 15.8. In September 2004 (day not stated), the Minister for Justice wrote to Lord Eassie (Chairman, Scottish Law Commission) inviting the Commission to undertake a review of the law in Scotland related to limitation. In particular, the Commission was asked to examine the operation of the sections of the 1973 Act relating to (a) the calculation of the time period where awareness of the claimant of the injury is a factor and (b) the discretion of the court to disregard the time limit in a particular case where it seems equitable to do so. The reference was made primarily in response to concerns around claims arising from asbestosis and related conditions, but was not restricted to such cases⁷⁸⁰. The letter from the Minister for Justice was as follows:

“MINISTERIAL REFERENCE: LIMITATION OF ACTIONS

I am writing to invite the Commission to undertake a review of the law in Scotland relating to limitation of actions. The formal terms of the reference are as follows: "To examine the operation of sections 17(2)(b), 18(2)(b) and 19A of the Prescription and Limitation (Scotland) Act 1973

⁷⁷⁷ A17759083 – FZJ 003-008 Part 1. Briefing for Minister for Education and Young People. Allegations of abuse at residential schools. p. 42 - 48. 20 May 2004.

⁷⁷⁸ A17759083 - FZJ 003/008 Part 1. Briefing for Minister for Education and Young People. Allegations of abuse at residential schools. p. 42 - 48. 20 May 2004.

⁷⁷⁹ 2007 SC 556; the case is also known as *McEwan v de la Salle Brothers*.

⁷⁸⁰ A17661716 - QQP 126/067 Part 1. Submission for the Deputy Minister for Justice. PETITION PE888: RESPONSE TO PUBLIC PETITIONS COMMITTEE. p. 4 - 7. 9 January 2006

and to make any appropriate recommendations for possible reform of the law".

As you know, the origins of this reference lie in concerns that have been expressed that the law as it stands may operate to the disadvantage of persons who wish to make claims for compensation for personal injury arising from asbestosis and other occupationally-induced diseases. I realise, however, that your review will be more wide-ranging than this and will examine issues affecting the general operation of these provisions. I am also content that the review should be able to consider other provisions of the 1973 Act inasmuch as relevant to the operation of the provisions specified in the reference.

On timing, I appreciate that the Commission is already heavily committed to a range of projects and also is in the final stages of considering its proposed Seventh Programme of Law Reform to begin at the start of next year. I would be grateful to have the Commission's views on a possible timescale as soon as would be reasonably practical⁷⁸¹.

- 15.9. In their later report on the subject, the Scottish Law Commission described the background to this request in the following terms: "[This] first reference arose from concerns expressed by practitioners involved in personal injury litigation in the Scottish courts and others representing people with claims for compensation for occupational diseases that certain provisions of the Prescription and Limitation (Scotland) Act 1973 were not operating fairly. In particular they were concerned that the test for establishing the date from which the limitation period starts to run (known as the "date of knowledge test") was too restrictive, and that the effect of the test was less favourable to claimants in Scotland than the equivalent statutory test in England and Wales"⁷⁸².

⁷⁸¹ A19810504 - KNX 1/56 Part 15. Letter from the Minister for Justice to the Chairman of the Scottish Law Commission. MINISTERIAL REFERENCE: LIMITATION OF ACTIONS. p. 838. August 2004.

⁷⁸² Scottish Law Commission. Report on personal injury actions: Limitations and prescribed claims [Internet]. 2007 [cited 2020 February 19]. Available from: <https://www.scotlawcom.gov.uk/files/3412/7989/7451/rep207.pdf>

- 15.10. On 30 September 2004 the Minister for Education and Young People and the Minister for Justice received a briefing from an official from the Civil Law Division entitled “Prescription and Limitation: Allegations of Historical Abuse at List D Schools”. This was an update on recent developments concerning the operation of the law on prescription and limitation in cases of alleged child abuse. It mentioned that the original decision in the case of “K” was upheld so that case and others remained “time-barred”⁷⁸³.
- 15.11. On 19 November 2004, in preparation for the debate on Petition PE535 at the Scottish Parliament on 1 December 2004 (see Chapter 2), ‘lines to take’ in the ‘Briefing for Ministerial Debate on Historical Abuse’ (cleared with the Scottish Law Commission) stated that the Law Commission was expected to publish a discussion paper. The remit of the review was: “To examine the operation of sections 17(2)(b), 18(2)(b) and 19A of the Prescription and Limitation (Scotland) Act 1973 and to make any appropriate recommendations for possible reform of the law”⁷⁸⁴.
- 15.12. On 23 November a legal official sent advice to an official on petition PE535⁷⁸⁵. It contained a number of points, some of which dealt with the financial and legal implications of litigation against the Scottish Government, particularly as it related to compensation schemes.
- 15.13. On 18 July 2005 a briefing was sent from an official to the Minister for Justice, entitled “Prescription of claims arising from pre-1964 child abuse reference to Scottish Law Commission”⁷⁸⁶. The purpose of the briefing was: “To respond to your request of 9 May for a revised proposal to address the legal issues relating to claims in cases of child abuse occurring prior to 1964; and to invite

⁷⁸³ A17661716 - QQP 126/067 Part 1. PRESCRIPTION AND LIMITATION: ALLEGATIONS OF HISTORICAL ABUSE AT LIST D SCHOOLS. P. 45 – 46. September 2004.

⁷⁸⁴ A17759083 - FZJ 003/008 Part 1. Briefing for Minister for Education and Young People. LINES TO TAKE. p. 19 - 39. 19 November 2004.

⁷⁸⁵ A18234214 - KNX 1/56 Part 12. Letter between officials. ADVICE ON PETITION PE 535 LIST D SCHOOLS. p. 467 – 470. 23 November 2004.

⁷⁸⁶ A19810504 - KNX 1/56 Part 15. Letter from official to the Minister for Justice. Subject: PRESCRIPTION OF CLAIMS ARISING FROM PRE-1964 CHILD ABUSE REFERENCE TO SCOTTISH LAW COMMISSION. p. 458 - 459. 18 July 2005.

you to write to the Scottish Law Commission requesting them to undertake a further reference in this area”.

- 15.14. Following this, on 3 August 2005, the Minister for Justice wrote to Lord Eassie (Chairman, Scottish Law Commission) regarding prescription of claims for damages⁷⁸⁷. The Minister wrote “to invite the Commission to review the position of claims for damages in respect of personal injury which were extinguished under legislation in force until 1984. I propose the following formal terms of reference:

‘to consider the position of claims for damages in respect of personal injury which were extinguished by operation of the long negative prescription prior to 26 September 1984; and to report”.

- 15.15. The Minister further wrote: “I also understand, and would be grateful for your confirmation, that the Commission will dovetail its processes for consulting and reporting on both the limitation review and this review of prescription so that the issues, though distinct in legal terms, can be dealt with together. I would very much welcome this. I appreciate that, while the Commission hope to be able to complete the work according to the timetable already set for the limitation review, the additional strand of work may result in there being some adjustment to that timetable”⁷⁸⁸.

- 15.16. On 27 September 2005, Petition PE888 was lodged by Christopher Daly before the Scottish Parliament, calling on the Parliament to “urge the Scottish Executive in the interests of those who have suffered institutional child abuse, to (a) reform Court of Session rules to allow ‘fast-track’ court hearings in personal injury cases; (b) review the implementation of the Prescription and Limitation (Scotland) Act 1973; and (c) to implement the recommendations of the Law Commission report on the Limitation of Actions”.

⁷⁸⁷ A19810504 - KNX 1/56 Part 15. Letter from the Minister for Justice to the Chairman of the Scottish Law Commission. MINISTERIAL REFERENCE: PRESCRIPTION OF CLAIMS FOR DAMAGES. p. 360 - 361. 3 August 2005.

⁷⁸⁸ A19810504 - KNX 1/56 Part 15. Letter from the Minister for Justice to the Chairman of the Scottish Law Commission. MINISTERIAL REFERENCE: PRESCRIPTION OF CLAIMS FOR DAMAGES. p. 360 - 361. 3 August 2005.

- 15.17. Having been invited by the Scottish Ministers, the Scottish Law Commission's review was completed and published in December 2007⁷⁸⁹. The Scottish Law Commission made a number of recommendations, including that: (a) claims in respect of personal injury which had been extinguished by negative prescription before 1984 should not be revived; (b) personal injury actions should be subject to a five year limitation period; and (c) Section 19A of the 1973 Act should be amended to include a non-exhaustive list of matters to which the court may have regard in determining whether to allow an action to be brought.
- 15.18. The Scottish Law Commission's report⁷⁹⁰ considered whether a special category of claims in respect of personal injury resulting from institutional childhood abuse which had been extinguished by negative prescription before 1984 should be recognised to allow this category only to be revived. The SLC concluded that such a category should not be created in respect of prescribed claims but it did not consider whether victims of abuse, or a class of victims of abuse, should be recognised in the context of the limitation regime.
- 15.19. On 15 January 2008 the Scottish Parliament's Public Petitions Committee agreed to seek a response from the Scottish Government to the SLC report "to ascertain what it intends to do... At that point we may be in a position to say that we have been through every hoop"⁷⁹¹.
- 15.20. In his statement before the Scottish Parliament on 7 February 2008, the Minister for Children and Early Years stated:

"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-

⁷⁸⁹ Scottish Law Commission. Report on personal injury actions: Limitations and prescribed claims; [Internet] 2007. [cited 2020 February 19] Available from:

<https://www.scotlawcom.gov.uk/files/3412/7989/7451/rep207.pdf>

⁷⁹⁰ Scottish Law Commission. Report on personal injury actions: Limitations and prescribed claims; [Internet] 2007. [cited 2020 February 19] Available from:

<https://www.scotlawcom.gov.uk/files/3412/7989/7451/rep207.pdf>

⁷⁹¹ Scottish Parliament. Public petitions committee official report 15 January 2008 [Internet]. 2008 [cited 2020 February 19]. Available from: <https://archive.parliament.scot/s3/committees/petitions/or-08/pu08-0102.htm#Col431>

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 [the Acknowledgement and Accountability Forum]⁷⁹².

- 15.21. As noted in Chapter 4 of this report, on 15 April 2008 the Public Petitions Committee closed Petition PE888 (along with Petition PE535). To repeat Committee members' statements here: "there have been fairly extensive debates and discussions on the issues that have been raised – indeed, ministerial statements have been made"; and "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

⁷⁹² Scottish Parliament. Plenary 07 Feb 2008. 2008 [cited 2020 Feb 19] Available from: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4774&i=39672>

taken seriously the concerns that have been expressed, as they should have done⁷⁹³.

Scottish Government Consultation and the Interaction Process

- 15.22. On 26 October 2009 a note from the Minister for Community Safety (Mr Ewing) was sent to the Ministers for Public Health and Sport, and Children and Early Years⁷⁹⁴. In it, he wrote:

“I acknowledged the profile of time-bar for survivors of historic childhood abuse and explained that our approach to the issue is informed by the Scottish Law Commission (SLC) Report on Personal Injury Actions: Limitation and Prescribed Claims. I indicated that Kenny MacAskill and I would be looking again at that approach, but that I would not want it to be expected that we would depart fundamentally from the SLC’s recommendations for reforming the law in this area. I am writing now to update you on our thinking...

Neither Kenny [MacAskill] nor I would wish to raise expectations which we could not ultimately fulfil. To this end you should be aware that unfortunately it seems extremely unlikely that any Bill following from a wide-ranging consultation on damages-related issues will contain provisions that would wholly satisfy those focussed on historic childhood abuse”.

- 15.23. As discussed in Chapter 12, in 2009, the Scottish Government commissioned the Scottish Human Rights Commission (SHRC) to produce a Human Rights Framework to inform the design and delivery of an acknowledgement and accountability forum for survivors of historical childhood abuse. The Framework was published in February 2010 and outlined a comprehensive approach to ensuring effective access to justice, remedies and reparation for childhood abuse. The Scottish Government participated in the InterAction

⁷⁹³ Scottish Parliament. Public petitions committee official report 15 April 2008 [Internet]. 2008 [cited 2020 February 19]. Available from: <https://archive.parliament.scot/s3/committees/petitions/or-08/pu08-0602.htm#Col663>

⁷⁹⁴ F2525555 – Email between Ministers. Limitation and Prescribed Cases. 26 October 2009.

Process that followed, which as noted below, led to the publication of an InterAction Action Plan in 2014. The Action Plan included a recommendation in relation to time-bar.

- 15.24. On 21 December 2010, before the Scottish Parliament's Public Petitions Committee in respect of Petition PE1351 (lodged by Christopher Daly and Helen Holland, calling on the Scottish Parliament to urge the Scottish Government to establish for all victims of institutional child abuse a time for all to be heard forum, incorporating a compensation scheme – see Chapter 13), the Minister for Community Safety addressed questions from members on prescription and limitation. He provided an update:

“We are considering the important issue of prescription and limitation. The previous Administration was quite right to ask the Scottish Law Commission to provide a report into this matter. That report was issued in 2007 and a number of matters have occurred since then, but...we intend to take the matter forward.

This very matter was discussed at a meeting with the convener of the cross-party group on survivors of childhood sexual abuse, Marilyn Livingstone, at which Des McNulty was also present. At that meeting, we explained our intention to consult formally on a range of matters relating to prescription and limitation. People may ask why we have not consulted before now. As Mr Butler will know, we previously intended to consult on related issues concerning damages and personal injury, but our plans so to do—which we set out in December 2009—were postponed because Mr Butler quite fairly introduced the Damages (Scotland) Bill, which it has taken our officials a considerable amount of time to deal with, as members will accept. In addition to that, there have been significant developments in two court cases—*Aitchison v Glasgow City Council* and *Bowden v Poor Sisters of Nazareth*. It seemed sensible to take account of the very important decisions that were issued and, perhaps more important, the reasons for those decisions.

What will our consultation paper do? It will consider the SLC's recommendations to extend the standard limitation period from three years to five years and to clarify the circumstances in which the courts might exercise their discretionary power to allow cases to proceed outwith the standard limitation period. We are minded to look at additional options, including considering the merits of the approach that has been adopted in Ireland involving the time-bar clock and the stopping of the periods of limitation. In Ireland, those periods are excluded in which a person is said to be under a disability, which includes their being under 21 years of age. That plays an important part, as the courts in Ireland have the power to disregard childhood or a proportion of childhood. We can all see the sense of that as a proposition"⁷⁹⁵.

- 15.25. In 2012, the Scottish Government published a consultation paper on the Civil Law of Damages: Issues in Personal Injury⁷⁹⁶. The paper asked a series of questions in relation to proposals to reform the law of damages for personal injury. The proposals were based on a number of SLC reports (including its 2007 report on limitation and prescribed claims), and included psychiatric injury and issues around time bar. The consultation did not specifically ask whether limitation should be removed for any particular category of pursuer.
- 15.26. The Scottish Government's subsequent response to the consultation, on the Civil Law of Damages: Issues in Personal Injury, was published in December 2013⁷⁹⁷. It included, among other things, a proposal to amend the 1973 Act to increase the limitation period for raising an action for damages for personal injury from three years to five years and provide a non-exhaustive list of matters which the court may take into account in exercising its discretion under section 19A, as recommended by the SLC. The combination of these measures was intended to address some of the practical difficulties in

⁷⁹⁵ Scottish Parliament. Official report [Internet]. Public petitions committee; 2010. p. 17 [cited 2020 February 19]. Available from:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=6068&mode=pdf>

⁷⁹⁶ Scottish Government. Civil law damages: Issues in personal injury – A consultation paper. 2012 [cited 2020 February 19]. Available from: <https://www2.gov.scot/Publications/2012/12/5980>

⁷⁹⁷ Scottish Government. Civil law of damages: Issues in personal injury – Scottish Government response to the consultation. 2013 [cited 2020 February 19]. Available from:

<https://www2.gov.scot/Publications/2013/12/7197>

pursuing claims for personal injuries. It was thought in particular that the provision of a detailed list of factors which may be taken into account when judges exercise their discretion would assist the courts and practitioners to address difficulties faced by survivors of historical childhood abuse.

15.27. On 3 June 2014, an official emailed the Minister for Public Health, Minister for Community Safety and Legal Affairs, and Minister for Children and Young People, in relation to developing the Scottish Government's response to the InterAction recommendation on "time bar"⁷⁹⁸.

15.28. The SHRC InterAction Plan was published on 17 June 2014 (see Chapter 12) and contained a number of recommendations on justice for survivors of historical childhood abuse in care. On the civil justice system, the SHRC recommended that:

"The civil justice system should be increasingly accessible, adapted and appropriate for survivors of historic abuse of children in care, including through the review of the way in which time bar' operates"⁷⁹⁹.

15.29. The Scottish Government responded to the InterAction Plan in October 2014 and committed to working with survivors and other key stakeholders across the legal sector to understand what the difficulties were in that context and how they could be overcome.

Limitation (Childhood Abuse) (Scotland) Act 2017

15.30. Further engagement with stakeholders followed in 2015, including with survivors as part of the on-going InterAction Process, which highlighted the particular issues faced by survivors in relation to time-bar. From June 2015 to September 2015 the Scottish Government ran a consultation on "The Removal Of The Three Year Limitation Period From Civil Actions For Damages

⁷⁹⁸ A8916933 – Email from official to Ministers. SHRC InterAction process and action plan: Note of meeting between three Ministers 3 June 2014. 1 July 2014

⁷⁹⁹ Centre for excellence for looked after children in Scotland. SHRC Interaction on historic abuse of children in care – Action plan on justice for victims of historic abuse of children in care [internet]. 2013 [cited 2020 February 19]. p. 11. Available from: <https://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

For Personal Injury For In Care Survivors Of Historical Child abuse”, which led to the Scottish Government publishing an independent analysis of the responses, its own response to the consultation outcome, and a draft Limitation (Childhood Abuse) (Scotland) Bill on 14 March 2016⁸⁰⁰.

- 15.31. Following further engagement with survivors, the Bill was introduced to the Scottish Parliament on 16 November 2016 and received Royal Assent on 28 July 2017. The Act did not reform the law on prescription and therefore, in relation to abuse that occurred prior to 26 September 1964, any claim arising from the abuse will usually (although not always) have been extinguished⁸⁰¹. The Act did apply to limitation and removed the three year statutory time limit ('time-bar') where the claim relates to childhood abuse.

⁸⁰⁰ Limitation (Childhood Abuse) (Scotland) Bill 2017. Available from: <https://www.parliament.scot/parliamentarybusiness/Bills/102163.aspx>

⁸⁰¹ The Scottish Law Commission considered whether it would be possible to allow claims which were extinguished by prescription prior to 26 September 1984 to be revived and concluded that it might well be incompatible with Article 1 of the First Protocol to the Convention (interference with the right to enjoy peaceful possession of property/possessions). In 2013 the Scottish Government accepted the Scottish Law Commission's recommendation that such claims should not be revived. Given the concerns about these cases, the Scottish Government considered the position again before introducing its Bill in 2016.

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.