

From: Gerald Byrne
ED-YPLAC
14 November 2002

Minister for Education and Young People

Copy to: PS/First Minister
PS/Deputy First Minister
PS/Lord Advocate
PS/Minister for Finance and Public Services
PS/Minister for Health and Community Care
PS/Deputy Minister for Education and Young People
PS/ED
PS/JD
Colin MacLean
Rachel Gwyon, YPLAC
Peter Beaton, JD
Sarah Smith, Children & Families
Fiona Robertson, OSSE
Stuart Bond, SWSI
Jackie McRae, HD Women's and Children's Unit
John Storey, HD Community Care Division
Ian Fleming, Police Division
Bill Gilchrist, Deputy Crown Agent
Morag McLaughlin, Crown Office
Press Education
Adrian Colwell
Jeane Freeman
Liam McArthur

PE535 – MR CHRISTOPHER DALY

Purpose and Recommendation

1. To give further advice to Ministers on PE535 on past institutional child abuse. The Memorandum has been revised to keep open the possibility of an inquiry and to comment on past child abuse.

Priority

2. **Immediate.** The draft memorandum has to be returned to the Committee Clerk by 15 November.

Background

3. The Minister was not content with my advice of 13 November on this petition which asks that the Scottish Executive to hold an inquiry into past institutional child abuse and that the Scottish Parliament makes an unreserved apology for said State bodies in which abuse took place. In particular, the Minister was not convinced we could resist doing something about this; did not support the argument that there not, at this point, was sufficient evidence to justify an inquiry; and indicated that we should make a very clear statement that abuse was

and is wrong. The Minister would also like to look in more detail at the action taken in Ireland and elsewhere.

Discussion

4. The petition essentially asks for three things:

- i. a forum (public or private) to establish facts around physical, emotional, and sexual abuse of children institutions from the 1940s until now, which would also allow victims of abuse to tell their stories;
- ii. a report from the forum including recommendations;
- iii. the recommendations to include actions to address the continuing effects of abuse on survivors.

5. As the memorandum details, a lot of work has been done on child protection at institutions over the last few years, and it is hard to see what recommendations an inquiry into practice since the 1940s could add. On support to adult survivors of childhood abuse (generally not just in institutions), the Executive has been in contact with the Parliamentary 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.

6. However, the main request is for a forum of inquiry and this raises complex issues that would require considerable further thought. For example, the interaction with the criminal justice system and civil claims for compensation; the status of the inquiry and who should chair it; whether it was in public or private; representation for individuals against whom allegations were made; the exact remit in terms of the time period and type of abuse to be included. The timescale and cost of the inquiry would also have to be examined.

7. We would have to consider the link between a forum and claims for damages; and it might well raise strong expectations that the Executive would pay compensation to those claiming childhood sexual abuse in these institutions even when there was no liability established and no direct Government responsibility. Further details on the inquiry in Ireland are attached at Annex A, which give an idea of its scale and the questions we need address. In summary, we do not think that the Executive could agree to the request for the sort of inquiry sought in the petition without these issues being discussed extensively, including with the Crown Office.

8. There remain two options:

- i. to turn down the request at this point;
- ii. to indicate that the Executive will consider this matter further.



The advantage of the first approach is that it provides a firm line that the Executive is not becoming involved in the issue at the moment, and that the focus should be on the civil cases being taken forward, and any criminal proceedings, as it has been up to now. The disadvantage is that we will be criticised for not providing a forum for people to come forward who have not been able to gain satisfaction (many people, whether or not they want compensation, would want an acknowledgement of the facts and an apology) and that we are being complacent about the extent of the problem. The advantage of the second approach is that it allows us to avoid these criticisms without committing ourselves to an inquiry while we examine the issues described above. The disadvantage is that we raise expectations we will have an inquiry and may pay compensation, possibly distract attention from the cases in the justice system, and only postpone a decision on whether we think an inquiry is justified.

9. In the light of the Minister's comments, the memorandum has been redrafted to reflect the second option above, and now holds out the possibility of the Executive establishing an inquiry in the future. An alternative form of words reflecting the first option is also included for the Minister's consideration.

10. On the question of an apology, the Minister indicated that she wanted to make a statement that the abuse was and is wrong. The first paragraph of the Executive response has been amended to reflect that wish. Our legal advice is that we should not go further and express regret at any cases of abuse because of the current civil cases.

Conclusion

11. The Minister is invited to note the further advice above and to decide on the wording of the revised memorandum attached.


Gerald Byrne
ED-YPLAC
2 B (S) VQ
Ext. 

14 November 2002

MEMORANDUM

Response from the Scottish Executive to the Scottish Parliament Public Petitions Committee on the petition submitted by Mr Christopher Daly.

PE535 Petition by Mr Christopher Daly calls for the Scottish Parliament to urge the Scottish Executive to commence an inquiry into past institutional child abuse. The petition makes particular reference to children who were 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.

The petition requests that the Scottish Parliament makes an unreserved apology for the State bodies and that the Scottish Parliament urges the religious orders to apologise unconditionally.

In particular the petition asks the Scottish Parliament and Scottish Executive:

- To afford victims of institutional child abuse in Scotland an opportunity to tell of the abuse they suffered to a sympathetic 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 appropriate including actions which should be taken to address the continuing effects of the abuse examined by the inquiry.
- To appoint specialist advisers [to] 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.

Scottish Executive Response

1. Any case of child abuse is unacceptable. Abuse of vulnerable children in institutions which should provide them with safety is particularly deplorable.
2. The Scottish Executive will consider whether a forum of inquiry of the sort requested should be established having regard to cases that have come to light in recent years. The Scottish Executive will also consider the experiences of institutional child abuse in other countries. [OR The Scottish Executive does not consider that an inquiry into these cases is needed at the moment although we are aware of a number of cases that have come to light in recent years.]
3. The Scottish Executive is committed to ensuring that appropriate systems are in place to protect vulnerable children from abuse. Much has been done to improve child protection in recent years and further measures are planned including:

- A review of the safeguards in place to protect children in residential care from abuse and their effectiveness was carried out by Roger Kent, and a report of the review, *Children's Safeguards Review* was published by the Scottish Office in 1998. Many of the report's recommendations have now been implemented.
- Guidance on inter-agency collaboration in child protection was published at the same time.
- Funding has been provided to groups providing advocacy services to young people in residential care so their voices are heard
- The Protection of Children (Scotland) Bill currently at Stage 1 provides for a list of persons unsuitable to work with children in either paid or unpaid employment. Those on the list will commit an offence if they apply to work with children as will organisations which employ a listed individual. The Bill is an important piece of legislation which will close a loophole currently allowing people who have lost a child care position – over clear concerns about their conduct towards children – to then find other positions working with children.
- An inter-agency audit and review of child protection in Scotland was set up in March last year. The Review has looked at ways of reducing child abuse and neglect and ways to strengthen services for those children who have experienced abuse or neglect. The review report, including recommendations, is due to be published shortly.

Scottish Executive Education Department
November 2002

Anderson S (Susan)

From: Minister for Education and Young People
Sent: 18 November 2002 10:17
To: Byrne G (Gerald)
Cc: First Minister; Deputy First Minister (Minister for Justice); Lord Advocate; Minister for Finance and Public Services; Minister for Health and Community Care; Deputy Minister for Education and Young People; PS/ED; PS/JD; MacLean CR (Colln); Gwyon R (Rachel); Beaton P (Peter); Smith S (Sarah); Robertson FJ (Fiona)(Sols); Bond S (Stuart); McRae J (Jackie); Storey J (John); Fleming I (Ian); Gilchrist B (Bill) (COPFS); McLaughlin M (Morag); Press Education; Colwell A (Adrian); Freeman J (Jeane); McArthur L (Liam); Neilands S (Susan)
Subject: RE: PE535 - allegations of abuse at institutions

Gerald Byrne

Copy as above

PE535 - MR CHRISTOPHER DALY

Ms Jamieson has seen your submission of 14 November on the above. She 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. You suggested that a meeting to discuss this further would be helpful. We will arrange this shortly.

PENNY CURTIS

PS/Minister for Education and Young People
18 November 2002