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BRIEF ON PETITION PE 535**THE PETITION**

Petition PE535 was lodged with the Public Petitions Committee by Mr Christopher Daly on 19 August 2002. The full text of the petition can be found at <http://www.scottish.parliament.uk/business/petitions/pdfs/PE535.pdf>.

In summary it is calling for the Scottish Parliament to urge the Scottish Executive to (a) make an inquiry into past institutional child abuse, in particular for those children who were in the care of the State under the supervision of religious orders and (b) make unreserved apology for said State bodies and to urge the religious orders to apologise unconditionally.

ACTION TAKEN BY PUBLIC PETITIONS COMMITTEE

On receipt of the petition the Public Petitions Committee sought the Executive's views.

The Minister for Education and Young People provided a full written response on 30 June 2004 and gave evidence at the Committee on 29th September 2004 at which time he reiterated that the Executive does not plan to hold an Inquiry; outlined actions that the Executive is taking to address the needs of survivors and to ensure such abuse cannot happen again; acknowledged that abuse took place and expressed profound sorrow about the damage that had been caused to individuals.

The Committee then sought a Parliamentary Debate to discuss the petition. This debate is due to take place on 1st December 2004.

WHAT THE PETITIONER (AND THE IN CARE ABUSE SURVIVORS GROUP – INCAS- OF WHICH HE IS A MEMBER) WANT

Executive officials have had several discussions with Mr Daly and the vice-chair of INCAS, Helen Holland, to establish what types of action INCAS members would find of help. From these discussions it was clear that their priorities were as follows:

- **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.
- **Access to appropriate counselling and support for survivors.**
- **Compensation.** There are a range of views on this issue. What is clear however is that those who are unable to bring civil cases at present due to the prescription of the law on limitation are keen to have a compensation scheme.

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- **A public inquiry into past abuse** – there are really two strands to this request.
 1. An inquiry into, and explanation of, why institutional abuse was able to happen. Such an inquiry should establish the nature, cause and extent of the abuse which occurred as well as the circumstances in which it was allowed to happen.
 2. An opportunity for individuals to be able to discuss their experiences of abuse and to be listened to, and believed, by an informed and sympathetic audience.

WHAT THE EXECUTIVE IS DOING

- **Access to information**

1. Redaction of Files

Files held by the Executive which hold information on residential establishments are being redacted so that they can be made available to members of the public to view. It is hoped to be able to make the files available by the end of this year

Redacting is the process of blocking out names and other sensitive information so that files can be made public without damaging individuals' legitimate interests. When a file is redacted each piece of information which is blocked out is given a code. When an individual contacts the Executive they will be advised if their name appears on any of the files held. If it does the Executive will tell the individual and inform them of their personal code. This will allow them to access the relevant files and read any personal information pertaining to them whilst protecting the rights of others.

Access to un-redacted files, and thus personal information relating to a third party, will be made available by the Executive only where an order from the court has been obtained.

The redaction of files meets the aims of the Code of Practice on Access to Scottish Executive Information, the spirit of the FOI (Scotland) Act and the requirements of the Data Protection Act. The redactions to the files are allowable within the terms of FOI and are required by DPA. The Executive is therefore acting in the spirit of FOI, whilst still protecting personal data, in agreeing to release this information.

2. Awareness raising with the Church and other organisations

The Minister for Education & Young People plans to write to the Church and other organisations making them aware of the actions the Executive is taking to make all relevant files held available for public inspection and seeking confirmation that they are willing to make any information held available on a similar basis.

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- **Support to Survivors**

1. *Current support*

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 the Domestic Abuse and Victims' Support strategies across Scotland.

2. *Funding for INCAS*

The Executive plans to provide funding to INCAS to build their capacity to provide peer support and possibly access to other services.

3. *Meeting with INCAS*

The Executive is also in detailed discussion with the In Care Abuse Survivors (INCAS) group to explore what further action the Executive might take to best meet the needs of survivors and to ensure that the experiences of survivors inform policy. The Minister for Education & Young People is meeting with INCAS on 23rd November 2004.

- **Review of law on limitation**

The Executive has asked the Scottish Law Commission to review the law on limitation as currently a number of survivors are prevented from taking forward civil cases due to the length of time which has elapsed since the alleged abuse took place.

- **Child Protection**

Following previous reports and inquiries, the Executive has implemented a range of measures which, taken together, provide greater protection for all children, including those in residential care homes. These include:

- Since 1995, HMIE has regularly inspected boarding schools and hostels.
- Since April 2002, the Scottish Commission for the Regulation of Care has inspected children's care homes.
- The Protection of Children (Scotland) Act 2003 will provide a list of people unsuitable to work with children (paid or voluntary work).
- The child protection reform programme will provide extensive advice and guidance, staff development and a rigorous inspection regime.
- In 2004, the Executive issued the Children's Charter which sets out what children, parents and communities can expect from child protection agencies. Protecting Children and Young People – The Charter and a Framework for Standards were published in March 2004 to help translate the charter into practice

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ACTION STILL UNDER CONSIDERATION BY THE EXECUTIVE**1. A State response.**

Ministers are actively considering how best to express their feelings over past abuse.

2. The Establishment of a Working Group

Consideration is being given to the establishment of a working group to look at issues such as the existing provision of services for survivors of abuse.

3. Commissioning of Research

Consideration is being given to what sort of research in this area might prove helpful.

WHY THE EXECUTIVE DECIDED NOT TO HOLD A PUBLIC INQUIRY

In coming to a decision not to proceed to an Inquiry this does not imply that the Executive does not acknowledge that at times in the past the treatment of some young people did fall well short of what should be regarded as acceptable. The Executive believes that abuse is always unacceptable and those who perpetrate abuse will be subject to the full rigour of the law.

Careful consideration was given to the calls for an inquiry based on three points:

- whether an inquiry could prevent future abuse;
- whether an inquiry would meet the needs of survivors;
- whether an inquiry would address a gap in the legal right and remedies available to survivors

Consideration was also given to whether an inquiry was required to restore public confidence in the system.

The Executive decided against an Inquiry as:

- 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 police. 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.

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- As set out above, the Executive will do more for survivors and will continue dialogue with them as it believes the needs of survivors are best met from examining and improving services available to them rather an inquiry. There have been a number of prosecutions and there are a large number of civil cases currently before the courts arising from abuse in residential settings. Given the very serious nature of these allegations, any inquiry would almost certainly need the protection of legal representation and rules of evidence for those accused of abuse, similar to these existing civil and criminal proceedings. An inquiry is not therefore required to provide a legal remedy for survivors and would risk duplicating existing proceedings. Perhaps most important, a formal public inquiry would lead to victims being subjected to cross examination to protect the legal interests of those alleged to have abused them. This conflicts with the express wish of INCAS that survivors wish their experiences to be listened to and believed.