

Message

Page 1 of 2

Nelson G (Gillian)

From: Robertson FJ (Fiona)(Sols)
Sent: 28 September 2004 14:14
To: Edgar R (Rachel)
Cc: Donnelly LM (Louise); McNicoll G (Gordon); Nelson G (Gillian); Byrne G (Gerald)
Subject: FW: Latest version of opening Statement---IMMEDIATE
Importance: High

Sorry – didn't attach the changed doc with my last email.

*Mrs Fiona J Robertson
 Divisional Solicitor
 OSSE Division B2
 Victoria Quay
 Edinburgh*

Telephone: [REDACTED]

-----Original Message-----

From: Edgar R (Rachel)
Sent: 28 September 2004 11:31
To: Donnelly LM (Louise); Robertson FJ (Fiona)(Sols)
Cc: Ross N Campbell (Neil)
Subject: FW: Latest version of opening Statement----IMMEDIATE
Importance: High

Louise/Fiona,

The attached has just come back from the Minister. I have had only a quick look but it seems to go far, far further than I am sure you will be comfortable with. Perhaps we can all read it and then discuss.

Rachel.

Rachel Edgar
 Head of Looked After Children and Youthwork Division
 Education Dept
 VQ 2-B46
 ext. [REDACTED]

-----Original Message-----

From: Minister for Education and Young People
Sent: 28 September 2004 11:23
To: MacLean CR (Colin); Edgar R (Rachel); Laing SG (Shirley); McKinlay FE (Fiona)
Subject: FW: Latest version of opening Statement
Importance: High

Grateful for any comments? Still work in progress but thought you should have a quick look at this ASAP.

David

28/09/2004

Happy to discuss.

Many thanks
Gillian

-----Original Message-----

From: Byrne G (Gerald)

Sent: 28 September 2004 10:56

To: Robertson FJ (Fiona)(Sols); Edgar R (Rachel); Donnelly LM (Louise); Ross N Campbell (Neil); Nelson G (Gillian); Hogg O (Olive)

Cc: McNicoll G (Gordon); Laing SG (Shirley); McKinlay FE (Fiona); MacLean CR (Colin); MacKay MJ (Marion)

Subject: RE: List D Schools - petitions Committee 29th September

Importance: High

Fiona
Gillian
Louise
Neil

I have been asked to look at lines on the civil court cases. I am taking forward the legal aid point separately with the Legal Aid Branch.

I am starting for the premise that the Minister will want to be as helpful as possible, and give as much detail of the cases as he can. So I would be grateful for advice on what we can say beyond not commenting on current legal proceedings (tempting as it is to stick with that). He will also want to justify the Executive defending these cases without suggesting that survivors are not justified in taking their cases forward.

My suggested lines are:

1. What civil cases are before the courts?

We are aware that a large number of cases - numbering in the hundreds - have been started in the civil courts, seeking damages for abuse alleged to be suffered at a large range of residential institutions. The Executive itself is a defender in approximately 100 cases. The first of this group of cases has been running since May 2000.

2. What stage are these cases at? How long before they are settled?

A number of legal issues are raised by the cases, including the question of whether they are time barred, that is too much time has passed since the events complained about for a case to be successful. These issues are currently the subject of legal debate in one of the cases, which the Scottish Legal Aid Board is treating as a 'test' case. Many of the other cases are currently on hold, pending the outcome of this lead case. The debate will finish on 13 December 2004, and the judge's decision is unlikely to be available until early next year. There are a number of possible disposals open to the judge hearing the debate. She may dismiss the action against some of the defenders, appoint the case to a preliminary proof on time bar (in which evidence will be led to allow the court to determine whether the case is time-barred), or fix a proof at large, to allow evidence to be led on all the issues in the case. It may be a year or more before the case proceeds to proof.

3. What is alleged against the Executive in these cases?

I cannot comment in detail on these cases as they are live legal proceedings. In broad terms, it is alleged that the Secretary of State failed to ensure proper regulation and inspection of establishments and as a result incidents of alleged abuse went undetected. [the Executive is said to have had a duty of care towards the pupils at these schools because of the then Scottish Office's role in approving and inspecting the regime. It is alleged that a breach of this duty contributed to any abuse alleged to have been suffered by pupils at the schools. Delete]

4. Why and on what basis is the Executive defending these actions?

I cannot comment in detail on these cases as they are live legal proceedings. However, I can say that decisions on how to handle legal actions taken against the Executive are made on the circumstances of individual cases. As well as looking at the facts of the particular case, we [might] also have to consider wider legal issues raised by a case, which could have application in a number of other areas. Broadly speaking we are not satisfied that civil servants responsible for regulating and inspecting establishments on behalf of the Secretary of State undertook that task in a manner that could be said to be negligent, given the state of knowledge at the time the alleged incidents took place. It is important not to judge their actions at that time against the standards and knowledge of today.

5. And of course, the extent of the Executive's liability for the acts of individuals employed by others in an area inspected by central government is clearly an issue with wide-ranging implications. We have a duty to consider the interests of the public more widely in establishing the exact extent of the [Government's] Executive's liability[, and when responsibility should fall on others delete?].

6. Does the Executive not believe the allegations made by survivors?

I cannot comment in detail on these cases as they are live legal proceedings. But in defending these actions [the Executive is] Ministers are not asserting that abuse did not take place. Neither are they implying the proceedings should not have been brought by the claimants. They have a right to do so, and the Executive has not resisted any applications for legal aid to support these cases. The issue is whether Ministers are legally responsible for the actions of others. The court will hear evidence and come to a view on the ~~truth~~ merits of claims in due course ~~in due course~~. The court will also consider a range of legal questions in coming to its decision. This process will allow responsibility to be placed where it properly belongs.

7. Who are the other defenders and what are they arguing?

There are a number of other defenders in these actions including individuals, ~~those who ran the schools~~ the Orders of monks or nuns which supplied staff to the schools, representatives of the Managers of the schools (including authorities of the Roman Catholic Church), and local authorities. I cannot comment on their arguments in the cases.

Grateful for comments by 1200 today, if at all possible

Gerald
 [REDACTED]

-----Original Message-----

From: Robertson FJ (Fiona)(Sols)
Sent: 27 September 2004 19:50
To: Edgar R (Rachel); Donnelly LM (Louise); Ross N Campbell (Neil)
Cc: McNicoll G (Gordon); Byrne G (Gerald); Laing SG (Shirley); McKinlay FE (Fiona); Nelson G (Gillian)
Subject: RE: List D Schools - petitions Committee 29th September

Rachel

It will be enough if the final version is copied to PS/Lord Advocate and PS/Sol Gen.

Mrs Fiona J Robertson
Divisional Solicitor
OSSE Division B2
Victoria Quay
Edinburgh

Telephone: [REDACTED]

-----Original Message-----

From: Edgar R (Rachel)
Sent: 27 September 2004 18:55
To: Robertson FJ (Fiona)(Sols); Donnelly LM (Louise); Ross N Campbell (Neil)
Cc: McNicoll G (Gordon); Byrne G (Gerald); Laing SG (Shirley); McKinlay FE (Fiona)
Subject: RE: Shirley McKie - Statement 22 June 2004

Louise/Fiona,

Will do. Gerald is pulling together answers on the legal issues and will be in touch. I suspect the Minister may come back tomorrow with an alternative from of words. If he does, obviously we will let you see that immediately. Do you want PS/Lord Adv and Sol Gen copied to that or just to the final version of briefing that we agree?

Thanks for coming along today, and sorry it dragged on for so long.

Rachel.

Rachel Edgar
 Head of Looked After Children and Youthwork Division
 Education Dept
 VQ 2-B46
 ext. [REDACTED]

-----Original Message-----

From: Robertson FJ (Fiona)(Sols)
Sent: 27 September 2004 18:09
To: Donnelly LM (Louise); Edgar R (Rachel); Ross N Campbell (Neil)
Cc: McNicoll G (Gordon)
Subject: RE: Shirley McKie - Statement 22 June 2004

Louise/Rachel – thanks. I am at Calton House for a meeting tomorrow am and then being trained on new performance indicators from 2.30pm

- 5pm!

Please could everything be copied to both Gillian Nelson & me tomorrow and I will try and help where possible.

F

Mrs Fiona J Robertson
Divisional Solicitor
OSSE Division B2
Victoria Quay
Edinburgh

Telephone: [REDACTED]

-----Original Message-----

From: Donnelly LM (Louise)
Sent: 27 September 2004 18:03
To: Edgar R (Rachel); Ross N Campbell (Neil); Robertson FJ (Fiona) (Sols)
Cc: McNicoll G (Gordon)
Subject: RE: Shirley McKie - Statement 22 June 2004

Rachel

Not sure who from your team is going to be putting forward the revised and additional briefing. Because of the current litigation grateful if they could ensure that a copy of the pack goes to PS/Lord Advocate and PS/Sol Gen.

L

-----Original Message-----

From: Edgar R (Rachel)
Sent: 27 September 2004 15:14
To: Donnelly LM (Louise); Ross N Campbell (Neil); Robertson FJ (Fiona)(Sols)
Subject: FW: Shirley McKie - Statement 22 June 2004

For info, the form of words used re Shirley McKie
 Rachel

Rachel Edgar
 Head of Looked After Children and Youthwork Division
 Education Dept
 VQ 2-B46
 ext. [REDACTED]

-----Original Message-----

From: Byrne G (Gerald)
Sent: 27 September 2004 14:49
To: Edgar R (Rachel); Laing SG (Shirley); McKinlay FE (Fiona)
Subject: Shirley McKie - Statement 22 June 2004

Michael Russell (South of Scotland) (SNP): I thank the Minister for Justice for making the statement and having the

Robertson FJ (Fiona)(Sols)

From: McNicoll G (Gordon)
Sent: 27 September 2004 15:42
To: Donnelly LM (Louise)
Cc: Ross N Campbell (Neill); Robertson FJ (Fiona)(Sols)
Subject: RE: Words of apology

I would take out the second sentence which is too sweeping a statement. And if we do that the third sentence could go as it would be effectively a repetition of the first. I've tried to come up with a form of words to replace the second sentence but each time I think of something that doesn't effectively repeat the final sentence I come up against the concern that it could be construed as an admission of liability. I am a bit unclear why we need to address the concern of survivors given the ongoing court proceedings. Those proceedings give survivors the opportunity to prove their case and given Ministers' involvement in these cases it is not unreasonable to say as little as possible.

I suspect that I am weakening but how about, as a parting shot "Although it was not appreciated at the time, we have learned as a result of court proceedings that there were some instances of abuse of children in the past in some (a few?) residential establishments in Scotland". However I still don't like this!

Gordon

-----Original Message-----

From: Donnelly LM (Louise)
Sent: 27 September 2004 15:21
To: McNicoll G (Gordon)
Cc: Ross N Campbell (Neill)
Subject: FW: Words of apology

-----Original Message-----

From: Edgar R (Rachel)
Sent: 27 September 2004 15:11
To: Donnelly LM (Louise); Robertson FJ (Fiona)(Sols)
Cc: Ross N Campbell (Neill); Laing SG (Shirley); McKinlay FE (Fiona)
Subject: Words of apology

Louise,

As discussed, how about the form of words below.

Fiona,

This revisits the issue of an apology for the historic abuse in List D schools. The aim is to acknowledge that abuse took place to address the concern of survivors that we are helping to cover it up. What do you think?

- We all join in condemning the abuse of children. We now know that abuse of children took place in residential establishments in Scotland. Any case of child abuse is unacceptable. Abuse of vulnerable children in institutions which should provide them with safety is particularly deplorable.

Rachel

Robertson FJ (Fiona)(Sols)

From: Donnelly LM (Louise)
Sent: 27 September 2004 15:04
To: McNicoll G (Gordon); Robertson FJ (Fiona)(Sols)
Cc: Ross N Campbell (Neil)
Subject: FW: Pre-Meeting PPC Appearance

Importance: High

This is Fiona's earlier advice on apologies.

I am going to go with the clients to the pre-brief at 3.30. If Fiona is available then that will be most welcome. If not then is there anything for this afternoon's meeting that I should draw the Ministers/clients' attention to?

Rachel is going to work up a form of words to offer the Minister.

Think she is thinking along the following lines:

We all condemn abuse of children. Recent criminal convictions show that there has been abuse in the past at residential establishments in Scotland. We are clear that any abuse of a child is unacceptable.

I would like her to drop the reference to the recent criminal convictions but if you think that is unnecessary then happy to be guided.

I will give Fiona a ring at 3.20 to find out the lie of the land if we haven't spoken/e-mailed before then.

Louise

-----Original Message-----

From: McKinlay FE (Fiona)
Sent: 27 September 2004 14:09
To: Edgar R (Rachel); Donnelly LM (Louise); Ross N Campbell (Neil); Laing SG (Shirley)
Subject: Pre-Meeting PPC Appearance
Importance: High

Neil

This is the advice we received from OSSE about an apology.

Fiona

-----Original Message-----

From: Byrne G (Gerald)
Sent: 27 September 2004 14:01
To: McKinlay FE (Fiona)
Subject: FW: Petition on abuse
Importance: High

OSSE advice as discussed

This is the draft which they were commenting on



PE535.doc (29 KB)

-----Original Message-----

From: Robertson FJ (Fiona)(Sols)
Sent: 14 November 2002 15:26
To: Byrne G (Gerald); Beaton P (Peter); Mulheron L (Laura); McLeod DG (Dave)
Cc: Gwyon R (Rachel); Nellands S (Susan); Fleming I (Ian)
Subject: RE: Petition on abuse
Importance: High

Gerald - sorry have just seen your email now and Louise Miller's note. I agree with Louise as far as coordination is concerned but not in relation to the terms of the apology. 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. I think the first two sentences in par 1 are sufficient but if you want to go further then something like 'the SE agrees/believes that any instances of abuse in Scottish Institutions are regrettable.'

Fiona Robertson

-----Original Message-----

From: Byrne G (Gerald)
Sent: 14 November 2002 13:55
To: Beaton P (Peter); Mulheron L (Laura); Robertson FJ (Fiona)(Sols); McLeod DG (Dave)
Cc: Gwyon R (Rachel); Nellands S (Susan); Fleming I (Ian)
Subject: Petition on abuse
Importance: High

Colleagues

You will have seen that the Minister was not content with my advice on this petition. I have prepared further advice which is attached. I would be grateful for any comments by 1500 if possible. I would particularly welcome Peter, Laura and Fiona's comments on the apology section of the memorandum (now Para 1).

Dave - you were going to provide me with a brief line on adult survivors of childhood abuse.

Gerald

<< File: PE535.doc >> << File: submission PE535 II.doc >> << File: Ireland.doc >>

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. The Scottish Executive expresses its regret at all cases of abuse that have occurred in institutions in Scotland.
2. The Scottish Executive will consider whether an inquiry of the sort requested is required in the light of recent and current criminal and civil cases. The Scottish Executive will also consider the experiences of institutional child abuse in other countries. [OR The Scottish Executive does not consider that an inquiry into these cases is needed at the moment but will be following progress in the civil cases currently being brought against a number of institutions.]
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 following the Hammond report into the death of Kennedy McFarlane. 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

Robertson FJ (Fiona)(Sols)

From: McNicoll G (Gordon)
Sent: 27 September 2004 14:09
To: Robertson FJ (Fiona)(Sols)
Cc: Nelson G (Gillian); Cavin F (Fiona); Ross N Campbell (Neil); Donnelly LM (Louise)
Subject: FW: Briefing for Minister's Appearance at PPC - 29 September

Fiona

Attached is the briefing material supplied by our clients for Mr Peacock's forthcoming appearance before the Public Petitions Committee. We are not yet clear what he might want to apologise for. He may apologise for the delay in progressing this Petition and if that is all I suspect that that will not be a problem. On the other hand Mr Daly clearly wants an apology for the abuse that he and others suffered as children. That is obviously more of a problem given current and possible future litigation.

Gordon

-----Original Message-----

From: McKinlay FE (Fiona)
Sent: 27 September 2004 13:32
To: Ross N Campbell (Neil)
Cc: Donnelly LM (Louise); McNicoll G (Gordon)
Subject: FW: Briefing for Minister's Appearance at PPC - 29 September

Neil

As discussed I attach the briefing that was sent to the Minister. We are looking through past files for papers on the apology question and will forward to you asap.

Fiona

-----Original Message-----

From: McKinlay FE (Fiona)
Sent: 23 September 2004 15:55
To: Minister for Education and Young People
 PS/ED; Deputy Minister for Education and Young People; Edgar R (Rachel); Laing SG (Shirley); MacLean CR (Colin); Byrne G (Gerald)
Subject: Briefing for Minister's Appearance at PCC - 29 September



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 ex.doc (28 ...)



31-08-04drftopen.dto
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Convenor to PPC
 - 30 Jun 04...



Petition
 35summarypage.do



02-09-04Q&A.doc
 oc (49 KB)



Update on Position
 re Christop...

PS/Minister for Education and Young People

Copy to: As above

BRIEFING FOR MR PEACOCK'S APPEARANCE AT PUBLIC PETITIONS COMMITTEE - 29