

my language so feel free to edit that.

Clearly it shouldn't go to the Minister till we've checked that B2 are content but I thought it might be helpful to share this with you, Colin and others in this state at same time as with B2.

Happy to discuss and I will get back to you probably later this afternoon following discussion with Lindsey and Gillian.

Regards

Louise Donnelly

Ext [REDACTED]



PE 535
latement.doc (33 KE)

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

From: Laing SG (Shirley)

Sent: 16 November 2004 18:43

To: Donnelly LM (Louise); Nelson G (Gillian)

Cc: PS/ED; MacLean CR (Colin); Henderson RM (Richard) (Solicitor); Layden P (Patrick); Edgar R (Rachel); McKinlay FE (Fiona); Verrall M (Maureen)

Subject: I; ADVICE ON PETITION PE 535

Importance: High

Louise
Gillian

Copy to: PS/ED
Colin Maclean
Richard Henderson
Patrick Layden
Rachel Edgar
Fiona McKinlay

ADVICE ON PETITION PE 535

1. As you know the Minister gave evidence at the Public Petitions Committee on 29th September re Petition PE 535 from Christopher Daly which called "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." At that time Mr Peacock 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. For the benefit of copy recipients I also attach a background briefing paper to the issues which may be helpful. << File: 12-11-04drftbackbenchbrief.doc >>
2. As you may be aware the Public Petitions Committee has now secured a 2.5 hour debate on the afternoon of Wednesday 1st December on Petition PE 535. Colin Maclean and I met with

Ministers on Tuesday afternoon to discuss handling for the debate. At that meeting Ministers discussed further with us the request by the petitioner for an apology. He has asked for further advice on a number of issues:

- Given the Minister has already publicly stressed the improvements in child protection and the inspection of residential care has he by default admitted some responsibility for past failure to detect and prevent abuse? If so, what are the legal and financial consequences?
- If Ministers make a statement similar to the one set out below what are the likely consequences?

"It is clear from recent criminal convictions that some children were abused in Scottish residential care homes in the past. These young people deserve a full apology for what happened to them. They should not have been abused. They should not have been placed in homes where abuse took place. That abuse should have been detected and prevented. It falls to this generation of Ministers to say quite clearly that where children were abused when being looked after this was completely unacceptable. That is why I want to take the opportunity today to apologise on behalf of the people of Scotland for those cases where the State placed vulnerable young people in unsuitable environments and failed to detect and deal with what was happening to them. It is for others now to consider whether they too ought to apologise for any abuse which took place in the homes for which they, or their predecessors, were responsible.

This abuse should never have happened and I share with others profound sorrow for the damage experienced by individuals. We are committed to minimising the risk of abuse to children and young people currently in residential establishments in Scotland and are anxious to do the right thing by the survivors of past abuse. That is why we are ensuring that inspection, regulation and standards are in place to prevent, detect and deal with abuse and why officials are continuing to explore with the In Care Abuse Survivors Group a range of matters where we can better support survivors and gain from their insights and experiences as we continue to develop our policies. There will be a Committee debate in Parliament on 1st December when Peter Peacock will set out how the Executive plans to deal with the issues raised by the petitioner."

- Whether or not such a statement is made if the Executive is found liable for past failures is it possible to estimate the likely financial implications of this? e.g. If we lose current McEwan vs Hendron test case does that mean we have automatically lost all of the other cases waiting in the wings – we think there may be a few 100? (And have to pay damages/compensation as a result?) Or do we have to contest each of these separately? (and thus incur the legal costs each time?) Or does there come a point where it is better to settle out of court? Are there other test cases on different legal points? What is the scale of these? Have we any idea of likely costs attached? We recognise that colleagues may not be able to give definitive answers to all of these points but any steer/view would be immensely helpful.
- 3. Subject to the advice received the Minister is minded to discuss the matter with the Lord Advocate and First Minister this week with a view to the First Minister – in advance of the debate (ideally w/c 22/11) – making a statement in the Chamber, perhaps during FMQs, which includes an apology for past abuse.
- 4. Given the tight timescales we are working to on all of this an early reply would be much appreciated. I am also very happy to discuss

Many thanks,

SHIRLEY LAING
ED-LACY 1

16th November 2004

Tracking:

Recipient

- Laing SG (Shirley)
- Donnelly LM (Louise)
- McNicol G (Gordon)
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- Edgar R (Rachel)
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- Henderson RM (Richard) (Solicitor)

Read

Read: 18/11/2004 16:13