

**Nelson G (Gillian)**

**From:** Nicoll L (Lindsey)  
**Sent:** 01 February 2005 12:03  
**To:** Anderson L (Lindsay); Nelson G (Gillian)  
**Subject:** FW: IN CARE ABUSE - INDEPENDENT EXPERT REMIT

**Importance:** High

For your information

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

**From:** Tullis D (Douglas)  
**Sent:** 01 February 2005 11:23  
**To:** Henderson RM (Richard) (Solicitor); Towers LA (Lynda); Layden P (Patrick); McNicoll G (Gordon); Nicoll L (Lindsey)  
**Cc:** Donnelly LM (Louise); Anderson L (Lindsay)  
**Subject:** FW: IN CARE ABUSE - INDEPENDENT EXPERT REMIT  
**Importance:** High

I attach paper which has been put together by Rachel Edgar of LACY. Louise & I are planning to meet informally with her later this week.

I would be interested to know were the risks flagged up by Richard, Patrick & Gordon altho I gather these may have related to the matter of an "apology" rather than the independent investigation. *No, I think indep (investig) - also.*

I am conscious that this issue is highly sensitive and involves various interests within OSSE but (& forgive my ignorance!) I am not clear as to who has the specific responsibility for the co-ordination of our position

Douglas

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

**From:** Edgar R (Rachel)  
**Sent:** 31 January 2005 17:37  
**To:** Tullis D (Douglas)  
**Cc:** Donnelly LM (Louise); Laing SG (Shirley)  
**Subject:** independent expert remit  
**Importance:** High

Douglas,

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 Richard Henderson, Patrick Layden and Gordon McNicholl in previous discussions about this issue before the parliamentary debate.

You had kindly offered to meet up last week to have a chat about anticipated workload from our division to OSSE. I am sorry I didn't get back to you on that last week. If it would be useful, perhaps we could meet up this week to discuss that, and I could do my best to give you the background on this.

Kind regards,



independent expert  
remit.doc (...)

Rachel.

**Remit for the appointment of an independent expert to consider the mistreatment of children in residential homes and schools in the past.**

1. It might be useful to set out some of the background. As you know, there have been significant demands for a public inquiry into the abuse of children while they were resident in children's homes or residential schools. We are aware of allegations dating back to the 1910s, but most of the people who are now active in organisations like INCAS (In Care Abuse Survivors) attended these institutions in the 1950s, 60s and 70s. Most commonly the allegations relate to institutions either run by religious orders, in particular the Sisters of Nazareth and the De La Salle Brothers, or by charities, such as Barnardos and Quarriers.
2. We have no reason to doubt that abuse took place in such institutions. In some instances, that abuse was of a sexual nature; more commonly it took the form of physical abuse or what we might describe as emotional abuse, such as separating children from their siblings without contact for many years. We are less clear about the extent of the abuse. There have been a small number of criminal cases where former employees of institutions have been convicted of sexual offences or assault. We are also aware of some people receiving compensation from the Criminal Injuries Compensation Board. We are not aware of successful civil actions in this area, although, as you know, *McEwan v. Hendron* is currently before the Court of Session. Three further cases relating to residential children's homes (in which the Executive is not a party), including Nazareth House in Glasgow are now before the courts. There are also believed to be about 1000 other cases awaiting the outcome of these cases. At present Scottish Ministers are defenders only in those actions that relate to the former List D schools, not those that relate to children's homes.
3. Experience in other countries, where the same organisations and orders ran institutions, eg Canada, Australia and Ireland, suggests that the abuse was institutional in nature. There have been large numbers of successful civil actions and in some instances the organisations and religious orders have admitted liability.
4. INCAS and others have sought a public enquiry, which they see as the mechanism to address a range of concerns:
  - To secure public recognition of the abuse and an apology from the state and the institutions involved;
  - To ensure that all the relevant information that government and institutions hold is made publicly available
  - To obtain an explanation of why the abuse was allowed to take place without the perpetrators being held to account;
  - To ensure that adequate and appropriate services are available for the survivors of abuse;
  - To ensure that appropriate compensation is available to those who seek it.
5. The Executive's position is that there is no need for a public enquiry to achieve many of the outcomes that survivors seek. The First Minister has now apologised to survivors on behalf of the people of Scotland. Mr Peacock has indicated that we will take forward various streams of work:
  - a working group to look at services available to survivors;

- support for INCAS;
  - we have agreed to make our relevant files available (in a redacted form where they contain sensitive personal information);
  - support will be available to survivors who wish to access our files;
  - the Scottish Information Commissioner is currently investigating whether we have taken sufficient action to make files available;
  - encouraging other organisations to take a similarly open approach to files;
  - appointment of an independent expert to consider why abuse was able to happen and was not stopped.
6. We have had the opportunity to discuss further with Mr Peacock the proposed remit of the independent expert. On the basis of that discussion, I shall set out the policy intention below and should be grateful for your advice on how the remit might be worded to minimise the risks that you have previously identified.
7. The independent expert would consider what legislation, standards, quality assurance and inspection regimes were in place during the relevant period, and why they failed to identify and address abuse taking place. The focus would be on the sector rather than on individual institutions. The independent expert would produce a report, which would be made publicly available. This report would bring together all the available information about the systems in place and how they operated. It is not anticipated that this would be in the form of recommendations. However, if the expert identified issues that are or may continue to be relevant today, we would expect these to be highlighted, in order that Ministers can consider whether further action needs to be taken to ensure the safety and well-being of children currently in residential care.
8. The independent expert would have available to him or her all the information that is in our files and other public records. In addition he or she would have available, on an anonymised basis, information collated by counselling/support services about the extent and pattern of abuse. It is not envisaged that the independent expert would take formal evidence from witnesses nor be granted any powers to require production of documents. He or she would certainly not consider nor report on individual allegations, and would therefore not be expected to form a view about whether or not abuse took place within individual institutions. However, he could invite the organisations that ran residential schools/homes to submit any information they hold about their own quality assurance mechanisms at the relevant time.
9. In order to carry out their job, the independent expert would need to have an understanding of the type of abuse that took place and the extent and pattern of the abuse. To some degree, this might be provided through information from counselling/support services, (such as Who Cares Scotland, who will be providing the support to people wishing to access our files). We also wish to explore with INCAS their ideas for providing further background information, such as documentaries, anonymised accounts, etc. that might inform the expert.
10. We envisage that the type of information that might be useful to the expert in reaching his/her conclusions are:
- Legislation
  - Any standards set nationally or locally (some may be held in our files)

- Inspection reports by national education inspectors or local inspectors. (some are held in our files).
  - Information about quality assurance provided by local authorities, or by organisations that ran institutions.
11. Depending on the particular person identified to carry out this work, they may require assistance from other(s). For example, they may need to appoint someone to undertake research. We would explore these issues with the individual concerned, but the remit would need to allow for this possibility.
12. Please let me know if it would be useful to have further background information, such as the transcript of the parliamentary debate, where the commitment was made.

**Rachel Edgar**  
[REDACTED]