

Primary and Community Care Directorate
Adult Care and Support Division

Telephone: [REDACTED]
E: [REDACTED]

Franck David
Assistant Clerk to The Public Petitions Committee
The Scottish Parliament
T3.40
Edinburgh
EH99 1SP

21 October 2010

Dear Franck

CONSIDERATION OF PETITION PE1351

Thank you for your letter of 7 October to Karen Rodger regarding petition PE1351 by Chris Daly and Helen Holland calling on the Scottish Parliament to urge the Scottish Government to establish for all victims of institutional child abuse, A Time for all to be Heard forum incorporating a compensation scheme.

Your letter has been passed to me as the Time to be Heard pilot forum is part of DG Health's policy. I enclose a response to the Petition Committee's questions. Please contact Linda Watters in the SurvivorScotland Team on [REDACTED] if you require any further information.

Yours sincerely

[REDACTED]

JEAN MACLELLAN
Adult Care & Support Division
Scottish Government

**PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1351 -
SCOTTISH GOVERNMENT RESPONSE TO WRITTEN QUESTIONS**

What is your response to the petition?

The Scottish Government announced the scoping of an Acknowledgement and Accountability forum in 2008. Following consultation and consideration of various international models, including the Irish Commission, Ministers approved a pilot forum, based on the Confidential Committee model, to hear testimony from up to 100 former residents of Quarriers. Accountability did not form part of the pilot forum, *Time to be Heard*, as it would require full investigation of any allegations and therefore would take longer and be much closer to a legal process.

Proposals for the pilot forum were discussed by the Reference Group, on 25 August and 25 November 2009 and at all meetings since. There is a dedicated section on the pilot forum on the SurvivorScotland website <http://www.survivorscotland.org.uk/>, including a statement from the Chair explaining the purpose of the pilot and reasons for selecting Quarriers. Information events for organisations and for survivors were held in February. Professor Alan Miller of the Scottish Human Rights Commission spoke at both events. The Head of the Irish Confidential Committee attended both events and said that she would have found a pilot helpful. The Chair had meetings with several former residents of Quarriers and other organisations.

The Scottish Government considers that considerable progress has been made over the last ten years, particularly since the launch of the SurvivorScotland National Strategy in 2005. This includes: a dedicated SurvivorScotland team; a dedicated SurvivorScotland website providing information on support and access to services; funding of £1.7 million between 2007 and 2009; £900,000 National Strategy funding for 2009/10; and £900,000 National Strategy funding for 2010/11.

What is the timetable for reviewing the report by the Chair of the Time to be Heard Forum? What will be the next steps following the pilot?

The hearings concluded at the beginning of October. The Chair will produce a report, including recommendations to Ministers, by the beginning of 2011. The pilot forum is currently being independently reviewed. Participants have been offered access to Restorative Justice, where meetings with Quarriers, can be facilitated. The Scottish Government's response will be issued by the end of March 2011.

Is there scope for an interim report from the Chair of the Forum?

The Chair of the pilot forum will produce his report, including recommendations to Ministers, by the beginning of next year. Producing an interim report would delay this. The Chair provided an update statement on 1

October <http://www.survivorscotland.org.uk/national-strategy/about-time-to-be-heard.html>

How can all victims of sexual/emotional abuse have their voices heard at a national level?

Time to be Heard is a pilot forum, designed to test out one way of hearing evidence, the Confidential Committee. The pilot forum will enable the Chair to make recommendations to Ministers on what should be provided on a national basis.

What is your answer to the point made by the petitioner that “The Time to be Heard Forum is discriminatory and selective. It does not include or prioritise elderly and terminally ill survivors who were not residents in Quarriers institution”?

The Advisory Group agreed to prioritise older and ill survivors from Quarriers. It would not have been feasible to widen this to include only older and ill survivors from other organisations as this, in itself, would have been discriminatory. A letter of explanation, offering alternative suggestions, was sent to the petitioner on 26 April.

Would an open forum, in line with Ireland’s Residential Institutions Redress Board, not be more appropriate to support all victims?

The Irish model had two elements, a Confidential Committee, in which 1090 participated and an Investigation Committee in which 1300 people participated. The cost of this was 136 million Euros, with 60% of this spent to cover legal fees.

The Chair and Commissioners of the pilot forum, based on the Confidential Committee, will make recommendations on what they consider appropriate, based on the testimonies made to them during the hearings.

Can victims of institutional abuse receive any financial compensation? If not, will you introduce a compensation element in line with the Residential Institutions Redress Board Ireland? If not, what are the reasons why it can be done in Ireland but not Scotland?

Survivors may make an application for financial compensation through the Criminal Injuries Compensation Scheme. There are, however, restrictions to this, including:

- Applications cannot be accepted for injury sustained before 1 August 1964.
- An award may be withheld/reduced where there is failure to take ‘all reasonable steps’ to inform or co-operate with police (or other appropriate body).
- Application must be made within two years of the date of the incident.

Legislation was introduced to establish the Irish Commission including both the Confidential and Investigation Committees and Residential Institutions Redress Board. Similar legislation would be required in Scotland.

Should such a forum be open to all victims or only to those who have been abused in specific institutions? In that case, in what way is the current forum representative of all victims?

Time to Be Heard is a pilot forum. A pilot cannot be completely representative but, selecting an organisation which had care of children from across Scotland, will enable the Chair to make recommendations for the future, that will apply to survivors of all residential childcare.

What was the rationale for restricting the access to the Time to be Heard Forum to former Quarriers residents only?

Quarriers was chosen because it was one of the largest institutions providing residential care for young people - over 30,000 children, many of whom would have been placed there by local authorities from across Scotland, which is therefore fairly representative. Quarriers has clearly recognised past abuse. The Chief Executive gave written evidence, including an apology to anyone who suffered abuse at Quarriers, to the Public Petitions Committee in 2004. **Quarriers was not given any funding.**

Will you provide financial resources for adequate support services for those survivors who are participating in the pilot as well as to all victims of institutional sexual abuse?

Support services for all survivors of institutional abuse is available through the In Care Survivors Service Scotland (ICSSS), <http://www.incaresurvivors.org.uk/> set up in 2008. The Scottish Government has committed £750,000 over three years. The pilot forum also had its own support staff.

Why did you set up the Forum before responding to the recommendations in the report from the Scottish Human Rights Commission on "Acknowledgement and Accountability Forum and other remedies for historic child abuse in Scotland"?

The timescale for the Human Rights Framework was delayed. Officials met twice with the Scottish Human Rights Commission to discuss arrangements for the pilot. The Framework, **which cost £28,050**, includes specific recommendations for the pilot and further recommendations for a full forum. The specific recommendations for the pilot were taken into account. An interim response was sent on 8 June 2010.

Will you implement in full, and when the recommendations made in the report from the Scottish Human Rights Commission?

The recommendations in the Human Rights Framework will be considered along with the report by the Chair of the pilot forum. A full response will be provided at that time.

What is your response to the points made by Cathie Craigie MSP regarding the “time bar” law in Ireland?

The Scottish Government's position is informed by the work of the Scottish Law Commission in the period 2004-2007. The Commission's final report on *Personal Injury Actions: Limitation and Prescribed Claims* took account of approaches around the world (including Ireland) and, with careful reasoning, recommended firmly *against* reviving claims which had been extinguished by negative prescription before 1984 (i.e. essentially claims relating to events prior to 1964) and *against* reviving a special category of such claims in respect of personal injury resulting from institutional childhood abuse. However, the report made recommendations for reform in relation to non-prescribed claims, including extending the standard limitation period from 3 to 5 years, while retaining and clarifying the capacity of the courts to exercise judicial discretion to allow otherwise time-barred claims to proceed if it appears equitable to do so. The Scottish Government has given a commitment that it will develop the options for reform in this area of the law. The intention is that a consultation paper, taking full account of the Commission's report and of subsequent developments (including a range of court judgements), will be issued before the end of this year.