

Cameron B (Blair)

From: Robertson G (Graham) on behalf of Minister for Community Safety
Sent: 27 March 2008 11:09
To: Minister for Public Health; Minister for Children and Early Years
Cc: Cabinet Secretary for Justice; Cackette PH (Paul); Brownlee LC (Lorna); Hampson A (Anne); Maclellan J (Jean); Brock J (Jackie); Scott C (Catherine); DG Justice and Communities; DG Health; DG Education
Subject: Note of meeting on Timebar in Historic Abuse Cases

Peter/Grant,

Copy as above

Note of meeting on Timebar in Historic Abuse Cases

Please find attached a note of Mr Ewing's recent meeting with Margaret Curran MSP and her constituent in relation to Timebar in Historic Abuse Cases. Mr Ewing has asked if Ms Robison and Mr Ingram would be content for the truth/reconciliation process to be jointly developed between all three respective portfolios and if they would be content for him to be copied into future submissions on the issue?

Thanks

Graham

Graham Robertson
PS/Minister for Community Safety
Telephone: [REDACTED]

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Limitation - Note
of Meeting 2...

Minister for Public Health
Minister for Children and Early Years

Copy to:

Cabinet Secretary for Justice
Paul Cackette, Civil and International Justice Directorate
Lorna Brownlee, Civil and International Justice Directorate
Anne Hampson, Civil and International Justice Directorate
Jean Maclellan, Adult care and Support – Change Team
Jackie Brock, Children Young People and Social Care Directorate
Catherine Scott, SGLD
DG Justice and Communities
DG Health
DG Education

**NOTE OF MEETING ON TIMEBAR IN HISTORIC ABUSE CASES – 25 MARCH
2008**

Purpose

1. To inform you for your portfolio interests of a meeting I and my officials had on Tuesday 25 March with Margaret Curran MSP and her constituent [REDACTED]

Background

2. During Adam Ingram's Statement to Parliament on support for survivors of historic in-care and institutional abuse Margaret Curran asked if the Minister would meet with her and her constituent to explain the Scottish Government's position in relation to time bar and childhood abuse. Mr Ingram agreed to a meeting and pointed out that the Government was moving forward on consideration of a truth and reconciliation model which he hoped would be able to get to the facts of her constituent's case. As I have portfolio responsibility for the law on prescription and limitation I agreed to meet with Ms Curran and her constituent Mr [REDACTED]. Mr [REDACTED] is represented by Cameron Fyfe and his claim for damages is currently sisted pending the outcome of an appeal in three test cases to the House of Lords - *AB, DM and JW v Sister Bernard Mary Murray and Others*.

Discussion

3. I had an open discussion with Mr [REDACTED] for whom I had a great deal of sympathy, about childhood abuse and timebar. Mr [REDACTED] spoke candidly about his experiences while in Smyllum Park Home where he lived for 14 years from the age of 2. He explained that after his mother died his father was unable to cope with his 7 children and they were placed in care where they were separated. Mr [REDACTED] father died within a year of his mother and Mr [REDACTED] had no contact with his brothers and sisters while in care. Mr [REDACTED] explained that during his time in care he was regularly abused, battered with a hairbrush, kicked, punched, and degraded. An incident which occurred while he was in care caused deafness in his left ear and the Criminal Injuries Compensation Board subsequently awarded Mr [REDACTED] £2,000 compensation for serious physical abuse in respect of this injury.

4. I explained to Mr [REDACTED] that Scottish Ministers cannot intervene in relation to an ongoing court case but that we have every sympathy for survivors of historic childhood abuse. While a change to the law of limitation is technically possible, I do not believe that it would achieve the desired outcome. We cannot force courts to reach a conclusion by removing their discretion to allow a case to proceed. Witnesses may be missing or may have died. Documents may be unavailable. Judges may therefore continue to dismiss the case due to lack of evidence and survivors will be no nearer to feeling they have achieved some kind of redress.

5. I advised that currently there is no guidance provided to Judges in Scotland on how they should exercise their discretion. However, the Scottish Law Commission (SLC) Report on Personal Injury Actions: Limitation and Prescribed Claims recommends that the law should be amended to include a non-exhaustive list of matters to which the court may have regard in determining whether to allow an action to be brought. I passed Mr [REDACTED] a copy of the recommended list for information and advised him that the SLC had also recommended an increase in the limitation period from 3 years to 5 years and that the recommendations in the Report are currently under consideration by the Scottish Government.

6. I told Mr [REDACTED] that officials working in Shona Robison's portfolio area have come to understand, through close working with survivors and the organisations that represent them, that for many survivors an acknowledgement from society of the abuse they have suffered would be more beneficial than monetary compensation. We think therefore that an approach based on truth and reconciliation principles would be a better way forward. Mr [REDACTED] said he was not looking for compensation but would like acknowledgment of what he went through while in the care of nuns and priests. He thought that the truth and reconciliation model could provide a forum for this but only if the Catholic Church were willing to participate, he was sceptical about this happening as he says their standard response is to say that abuse didn't happen. Mr [REDACTED] indicated that he would like to be involved in the consultation process for developing a truth and reconciliation forum and I agreed to pass his details on to those responsible for taking this work forward.

7. Mr [REDACTED] mentioned the recent House of Lords Judgment in *A v Hoare* (lottery winner/rape case) and that it had done away with timebar in England. Officials explained that the effect of the Judgment is that the claimants' cases now fall within the scope of judicial discretion in relation to time-bar, which was not previously the case because of the way the cases had been classified under English law. In Scotland it is already the case that people pursuing a case for, e.g. childhood abuse or rape, which is outwith the 3 year period for raising a claim, can ask the courts to exercise discretion and allow the case to proceed. The Judgment therefore brings English law on personal injury claims in line with that already in place in Scotland. Their Lordships appear to be in favour of a more generous approach to the use of judicial discretion than has been taken in the past. This point was noted by Lord McEwan in *JA v Glasgow City Council*, even though that case did not turn on time bar. So it may be that the *Hoare* case will have an impact on the exercise of judicial discretion in Scotland even though it does not impact directly on the law.

8. Mr [REDACTED] mentioned that he had made a statement to the police 9 years ago about the abuse he suffered as a child. He was not aware of what investigation had taken place or whether it was ongoing. I explained that there is no timebar in criminal law for cases such as his and that if evidence could be found charges could still be brought. Ms Curran thought that Cameron Fyfe may be able to explain what the position is in relation to Mr [REDACTED] statement. If necessary, she would write to me to see if I could help obtain information to clarify the position and perhaps move the case forward. I said I would be happy to help if I could.

Conclusion

9. You are invited to note the discussion which took place for your portfolio interests.

FERGUS EWING