



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 21 December 2010

Session 3

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**PUBLIC PETITIONS COMMITTEE**  
**20<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

Rhona Brankin (Midlothian) (Lab)

**DEPUTY CONVENER**

\*John Farquhar Munro (Ross, Skye and Inverness West) (LD)

**COMMITTEE MEMBERS**

- \*Bill Butler (Glasgow Anniesland) (Lab)
- \*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
- \*Nigel Don (North East Scotland) (SNP)
- Robin Harper (Lothians) (Green)
- \*Anne McLaughlin (Glasgow) (SNP)
- \*Nanette Milne (North East Scotland) (Con)
- \*John Wilson (Central Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

- Jamie Hepburn (Central Scotland) (SNP)
- Jamie McGrigor (Highlands and Islands) (Con)
- Dr Richard Simpson (Mid Scotland and Fife) (Lab)
- Nicol Stephen (Aberdeen South) (LD)

\*attended

**THE FOLLOWING ALSO ATTENDED:**

Des McNulty (Clydebank and Milngavie) (Lab)

**THE FOLLOWING GAVE EVIDENCE:**

- Fergus Ewing (Minister for Community Safety)
- Adam Ingram (Minister for Children and Early Years)
- Jean MacLellan (Scottish Government Primary and Community Care Directorate)
- Shona Robison (Minister for Public Health and Sport)

**CLERK TO THE COMMITTEE**

Fergus Cochrane

**LOCATION**

Committee Room 2



## Scottish Parliament

### Public Petitions Committee

*Tuesday 21 December 2010*

[The Deputy Convener *opened the meeting at 14:05*]

### Decision on Taking Business in Private

**The Deputy Convener (John Farquhar Munro):** Good afternoon, everyone, and welcome to the 20<sup>th</sup> and final meeting in 2010 of the Public Petitions Committee.

We said in our previous meeting, on 7 December, that that would be our final meeting this year but, as members will be aware, several committee members and witnesses were unable to attend that meeting due to the adverse weather and the three members who attended agreed to defer consideration of the two petitions that are before us today.

There are apologies from our convener, Rhona Brankin, which is why I am convening the meeting. We have no other apologies.

Please ensure that all mobile phones are switched off.

Agenda item 1 is to decide whether to take in private agenda item 3, under which the committee will consider current petition PE1073, on Catholics in Scottish prisons. I say to those who follow our proceedings that we take seriously the question whether to meet in private. It has been the practice that such issues are considered in private to allow open discussion by members. However, we will record our decisions in the minutes of the meeting.

**John Wilson (Central Scotland) (SNP):** I would like to clarify something. The report that we will consider under item 3 is a draft report. The current practice is that committees consider draft reports in private prior to their becoming public. After the committee has considered the draft report, it will be released for the general public.

**The Deputy Convener:** That is what I understand.

**Fergus Cochrane (Clerk):** If the committee agrees to publish the report, we will effectively treat the paper that will be discussed under item 3 as a draft report.

**The Deputy Convener:** Do members agree to take item 3 in private?

**Members** *indicated agreement.*

## Current Petitions

### Institutional Child Abuse (Victims' Forum and Compensation) (PE1351)

14:08

**The Deputy Convener:** Agenda item 2 is consideration of PE1351, by Chris Daly and Helen Holland, which calls 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.

We will take oral evidence on the petition from three ministers. This will be the first time we have done that—this has been a year of many firsts for the committee.

I welcome to the meeting the Minister for Public Health and Sport, Shona Robison; the Minister for Children and Early Years, Adam Ingram; and the Minister for Community Safety, Fergus Ewing. The ministers are accompanied by Jean MacLellan and Paul Allen, who are Government officials. This is the first time that Shona Robison, Adam Ingram and Fergus Ewing have given evidence to us, although Fergus Ewing spoke to a petition in his capacity as a constituency MSP at our meeting in Dumbarton a couple of years back.

At our meeting on 23 November we agreed to invite the ministers to give oral evidence, to provide an opportunity to discuss the issues that are raised in the petition across the ministerial portfolio range. I hope that we can all move forward with the petition in a fruitful way.

Do the ministers want to make brief comments on the petition?

**The Minister for Public Health and Sport (Shona Robison):** I do not think that we intended to make any introductory comments. We are happy to move straight to questions, if that is all right with you, convener.

**The Deputy Convener:** Does Fergus Ewing have any comments to make?

**The Minister for Community Safety (Fergus Ewing):** I am happy to hear members' views and to answer questions.

**The Deputy Convener:** I thank the ministers for their attendance. We will move to questions from members.

**Bill Butler (Glasgow Anniesland) (Lab):** I welcome the triumvirate of ministers to the Public Petitions Committee; this is a serious issue. I pose the first question to Shona Robison and Adam Ingram as, respectively, the Minister for Public

Health and Sport and the Minister for Children and Early Years.

The recommendations in the Scottish Human Rights Commission framework document make it clear that the pilot forum is a stage in scoping the needs of survivors of childhood abuse to secure effective access to justice, remedies and reparation. We are told that the forum's report should be available to ministers in the spring of 2011. Can you confirm that the pilot is only a first step in the process that will lead to effective access to justice, remedies and reparation for all survivors of childhood abuse?

**Shona Robison:** The forum was established as a pilot to look at and learn lessons about how we should go forward. As you rightly point out, we hope and expect Tom Shaw's report to appear around the beginning of February. We will have to see what his recommendations are, but there is an expectation that we will move beyond the pilot to ensure that all those who wish to use the model are able to do so.

It was right to test the way in which the system will operate in Scotland—during discussions with people from Ireland, it became clear that in some ways they wished that they had established a pilot to test some of the workings of the system. We await Tom Shaw's report. I imagine that it will recommend that we take forward the model, but we must wait and see. If the report recommends that we take it forward, we will want to do that, working alongside SurvivorScotland, to ensure that there is support around the system. The pilot has shown that it is important that people feel supported when they go through this difficult process. We need to ensure that, when the system is rolled out beyond the pilot, people have that support, should they require it.

The short answer to your question is yes, of course there is a much larger stage beyond the current position—but we must wait to see what Tom Shaw says about the detail of that.

**Bill Butler:** I understand that. It is only the first step, but you have confirmed that it is the first step in a journey. Would Mr Ingram like to add to or to expand on his colleague's comments?

**The Minister for Children and Early Years (Adam Ingram):** I suggest that the pilot is more than the first step; really, the first step was Tom Shaw's review of historic child abuse in residential child care. In that review, he floated the possibility of what was originally badged as some form of truth and reconciliation forum. A number of options for taking that forward were open to us. The option on which we settled was the time to be heard forum, which allows survivors to be supported, to come forward and to give testimony to a

confidential committee on the abuse that they have suffered.

From my perspective as Minister for Children and Early Years, it is important that we gather people's testimony so that we can learn lessons from the past and apply them to residential child care now and in future. We found the pilot useful in regard to learning those lessons and considering how to reform our residential child care system to ensure that children's rights are right at the heart of the culture within it.

14:15

**Bill Butler:** Do you agree that the clear expectation, as your colleague Shona Robison put it, is to move beyond a pilot and ensure that justice is done and reparation is arrived at?

**Adam Ingram:** The time to be heard pilot included a restorative justice toolkit—we are trying to put one together—so it is not quite accurate to say that no reparation or compensation was involved. Tom Shaw will report on how appropriate the toolkit is, so I hope that we will get clear pointers on that from the report that he will produce early next year.

**Bill Butler:** Action is the watchword for the Government.

**Adam Ingram:** Yes, indeed.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** My question is addressed primarily to the Minister for Public Health and Sport. We have received submissions from survivors who have expressed deep concerns that the pilot forum has insufficient mandate or remit to address the issues in line with the Scottish Human Rights Commission's recommendations. Does the minister believe that the forum's recommendations will lack the credibility that is necessary to reassure survivors that their views, feelings and opinions have been taken fully into account?

**Shona Robison:** The pilot used the confidential committee model. There were other options, but it was felt that that model provided the opportunity for people to be heard and give testimony without the requirement for the legal processes that would surround a different model.

Whether elements of the model will have to be strengthened will depend on what Tom Shaw's report says. Part of the reason for doing a pilot is to gather the views of those who have taken part in the process. We want to reflect—as Tom Shaw will in his report—on the experiences and views of those who have experienced the model. If there are recommendations to strengthen some aspects of it, we will want to give them serious consideration. We will be open minded about considering any concerns that have been raised.

We are talking about a particular model that we have decided to test in Scotland. Other models have been tried elsewhere. The people who were involved with the reference group and in consulting on what the pilot should do agreed that the important point was the ability to give testimony to experience, and that is what the model allows.

**Cathie Craigie:** I fully accept the minister's good intentions on the matter, but we have received a submission from survivors who claim that there was no prior discussion or proper consultation—with Quarriers survivors in particular—prior to the announcement that was made. In their view, that was not acceptable or appropriate. They also question whether the pilot has a sufficient mandate or remit to address the issues in line with the recommendations of the Scottish Human Rights Commission and whether the pilot can be a truly independent voice of Scottish survivors that will reflect the concerns and views of the survivors.

I accept that you are waiting for Tom Shaw's report, but we have a large group of people who are unhappy with the way in which the pilot has been set up and who feel that their voice has not been heard. Is there anything that can be done at this stage to address that?

**Shona Robison:** Are you referring to the fact that Quarriers was selected as the institution?

**Cathie Craigie:** No. We have received a submission from former boys and girls who were abused in Quarriers homes. After the previous committee meeting at which the matter was discussed, I and some of my colleagues had discussions with survivors and we know that there is a general feeling of concern that people have not been involved in the process of getting to where we are at this moment and that, as a result, people are not sure whether the pilot will speak for them and represent their views.

**Shona Robison:** We will have the opportunity to consider the recommendations of the Scottish Human Rights Commission along with the recommendations of Tom Shaw.

We take seriously the concerns that have been expressed about the selection of Quarriers and people's perception that they have not been involved enough in the process and that there was not enough prior consultation. I imagine that Tom Shaw will reflect on those concerns when he considers the pilot.

Part of the reason for conducting the pilot was to ensure that we get the roll-out right. If there are concerns about the way in which the process was conducted, we want to reflect on them before the roll-out and work with other institutions to ensure that people feel more involved and better

consulted. I assure you that we will consider those issues in detail.

**Cathie Craigie:** When do you expect Tom Shaw to report?

**Shona Robison:** Early February.

**Nigel Don (North East Scotland) (SNP):** I thank the ministers for coming to today's meeting. It is not often that we get quite such an august gathering.

Mr Ewing is a qualified lawyer, so I do not need to tell him that the legal route has some limitations. As I understand it, if you want to sue someone for damages—the consequences of abuse are damages, as far as the law is concerned—you have three years from either the time of the action, the time when you turned 16 or the time when, one way or another, you realised the consequences of the actions. I expect that, in every case that we are talking about, those three years have passed. Are you, therefore, considering whether the rules can or should be changed or whether there are other routes, which might be different from the legal routes that we are discussing, that people might follow?

**Fergus Ewing:** We are considering the important issue of prescription and limitation. The previous Administration was quite right to ask the Scottish Law Commission to provide a report into this matter. That report was issued in 2007 and a number of matters have occurred since then, but the answer to Nigel Don's question is yes, we intend to take the matter forward.

This very matter was discussed at a meeting with the convener of the cross-party group on survivors of childhood sexual abuse, Marilyn Livingstone, at which Des McNulty was also present. At that meeting, we explained our intention to consult formally on a range of matters relating to prescription and limitation. People may ask why we have not consulted before now. As Mr Butler will know, we previously intended to consult on related issues concerning damages and personal injury, but our plans so to do—which we set out in December 2009—were postponed because Mr Butler quite fairly introduced the Damages (Scotland) Bill, which it has taken our officials a considerable amount of time to deal with, as members will accept. In addition to that, there have been significant developments in two court cases—Aitchison v Glasgow City Council and Bowden v Poor Sisters of Nazareth. It seemed sensible to take account of the very important decisions that were issued and, perhaps more important, the reasons for those decisions.

What will our consultation paper do? It will consider the SLC's recommendations to extend the standard limitation period from three years to five years and to clarify the circumstances in which

the courts might exercise their discretionary power to allow cases to proceed outwith the standard limitation period. We are minded to look at additional options, including considering the merits of the approach that has been adopted in Ireland involving the time-bar clock and the stopping of the periods of limitation. In Ireland, those periods are excluded in which a person is said to be under a disability, which includes their being under 21 years of age. That plays an important part, as the courts in Ireland have the power to disregard childhood or a proportion of childhood. We can all see the sense of that as a proposition.

In addition, in a case in 2008, Lord McEwan said:

"I very much doubt if the discussions and work which led to sections 17 and 19A"

of the Prescription and Limitation (Scotland) Act 1973

"had in contemplation the kind of case now posed involving blanking out of abuse, recovered memory and the other symptoms described here and in some of the other cases."

He went on to say:

"I have an uneasy feeling that the legislation and the strict way that the Courts have interpreted it has failed a generation of children who have been abused and whose attempts to seek a fair remedy have become mired in the legal system."

I read that out because I very much hope that the consultation document that we release and the responses from members of all parties will take to heart the sentiments that were expressed by that noble lord in relation to the kind of outcome that we seek, whereby people get justice by going to a court.

I will finish on this point, convener. It is a matter not without complexity, but this needs to be said. Justice is obtained when someone has the opportunity to go to court. The outcome of going to court cannot be guaranteed for anyone—that is, sadly, a fact. I say "sadly" because we are talking about such a sensitive issue. The evidential difficulties in cases that involve things that occurred decades ago may be hard to overcome. Even if the law opens the door to the courts to allow someone to go to court and win a judgment in their favour, there must be the evidence to substantiate the case in the civil courts, which is what I am talking about rather than criminal prosecutions, which are different as there is no time bar. Justice would be guaranteed if people had the opportunity to state their case in court—that is what I mean by providing people with justice. I very much hope that these are the kind of issues that those who wish to respond to the consultation paper put in their responses.

14:30

**Nigel Don:** Thank you for that very full and extremely useful answer. I acknowledge that there is an election around the corner, but I will ignore that and focus on matters on which there is broad agreement across the political spectrum. What is the timetable for the consultation and a decision on whether there is any prospect of generating legislation?

**Fergus Ewing:** We hope to have a consultation paper ready fairly soon—in the next month or so. I gave an undertaking to Des McNulty and Marilyn Livingstone at the meeting I mentioned that before we formally issue the consultation paper we will share a draft with the cross-party group on survivors of childhood sexual abuse, because this is not a partisan political matter.

I am happy to give an undertaking today to share that draft with the convener and committee members. We all want to get this right, and we want the consultation to allow us to look carefully at what happens and what has been achieved in Ireland. We also want to consider a more radical approach than that which is outlined in the SLC's recommendations, which I well appreciate has caused considerable frustration.

**Nigel Don:** I want to pursue one other parallel string in the legal system, which is the idea that the criminal injuries compensation scheme might be appropriate in some circumstances. Do you feel that it is appropriate or adequate? Could we perhaps expand it?

**Fergus Ewing:** Yes, I understand that the petition asks for the creation of a time for all to be heard forum, incorporating a compensation scheme, and I have read the evidence that the petitioners submitted to the committee. My understanding is that the matter will be dealt with, as my colleague Shona Robison has said, following the receipt of Tom Shaw's report early next year.

I should say that at present compensation is potentially—I come back to the word potentially—available to survivors of historic abuse through a compensation order if there is a successful criminal prosecution. There have been some—although sadly very few—of those, of which I have details here.

Secondly, an award of damages can be made if there is a successful civil action. That is open at the moment, for those who can get through that door. Thirdly, an award can be made under the criminal injuries compensation scheme, which is not dependent on any court proceedings. There are potential routes for compensation at present, but I can well understand that too many victims view those routes as more theoretical than real.



**Shona Robison:** As Nigel Don might be aware, the United Kingdom Government is undertaking a review of the compensation scheme, which is UK-wide and therefore a reserved issue. The Scottish Government can make representations to the UK Government on that review, which I am sure we would be prepared to do. We could certainly seek to raise the issues that the petition has raised with the Public Petitions Committee in the Scottish Government's general submission to the UK Government, if members would find that helpful.

**Nigel Don:** In my view of the situation, folk are looking for practical ways forward. Their frustration is that there is theoretically this way, that way and the other way, but for one reason or another those ways just do not work—and we know that they will not work. The folk who have lodged the petition, and those who are behind them, are looking for real, practical ways of doing what can be done. I—and, I suspect, my committee colleagues—take the point that perhaps all the law can do is allow the possibility because, on occasions, the evidence does not exist and the resolution that is sought cannot be achieved, but that should be possible in practice rather than theoretically possible.

**The Deputy Convener:** I welcome to the meeting Des McNulty, who has a keen interest in the petition. I invite him to make a statement or pose a question.

**Des McNulty (Clydebank and Milngavie) (Lab):** The problem that I want to highlight is that the prescription and time-bar legislation coupled with how the courts are interpreting the Scottish Law Commission's report mean that access to redress through civil procedures is virtually impossible. A more or less blanket ruling applies to legal aid, which makes it difficult for people to take any case forward, irrespective of its content. The content cannot be considered, because of the blanket interpretation.

The courts should be able to decide whether a case can proceed on its merits—to see whether sufficient evidence or sufficient information is available to allow a case to be taken. In the context of double jeopardy, the Government has been willing to put the Law Commission's recommendations to one side and to say that it disagrees with them.

Given the comments from Lord McEwan, which the Minister for Community Safety helpfully read out, and the other cases that the minister highlighted, does the matter need to be considered urgently? Is the Law Commission's view as expressed in 2007 now outdated? Do we need to let the courts take a more permissive approach, which would allow them to consider individual cases on their merits and thereby create the possibility of civil action? Will that come out of

the consultation process? Is the minister willing to comment on that?

**Fergus Ewing:** It is correct to say that the comments that I quoted from Lord McEwan recognise implicitly that the test that is set out in sections 17 and 19A of the 1973 act is too inflexible. That is the only view that one can reach from reading the judicial comments that were made in 2008. The strong view is that the law is out of date and inflexible and that more discretion should be permitted.

It might help the committee if I go through some of the conditions that the SLC recommended be introduced to allow more discretion on whether a case that would otherwise be time barred by operation of the limitation should be heard. The conditions are in a list of matters. The first is consideration of why the action was not brought within the time limit. Was there a reason for that? If so, what was it? Was an element of responsibility involved? Could the action have been raised earlier? All those questions have a bearing.

The second issue is the quality and nature of the legal, medical and other advice that the pursuer obtained. The third factor is what other remedy—possibly none—the pursuer has if they are not allowed to bring the action. Finally, the commission referred to any other matter that appears to the court to be relevant.

Those are some of the conditions that the SLC recommended. They are a useful starting point, but to respond specifically to Des McNulty's question, my view is that we should be more radical and look more widely than that. I have already mentioned that one might wish to look at, for example, a disregard of the childhood years, where incidents of sexual abuse might be blanked out and it might therefore be completely impractical to expect the child to be able to do anything about them, in the sense of vindicating legal rights. That is plainly an issue that should be considered. I imagine that it might well have been in the minds of some of our judges as well, and that it helped them to reach the conclusion that the law as it stands—and as it has been, perhaps, for too long—is inflexible.

Whether there should be open discretion is something that we would have to consider. In other words, should there be any limit that would fetter the discretion of judges? That is a legitimate question that has to be considered. We do not have a closed mind and, in any event, we are the Government and it is for us, as the Parliament, to come to a conclusion. We all share a common interest in securing justice for those who have come here for that.

To answer Des McNulty's question, I hope and expect that the consultation will go wider, go further, and go beyond what the SLC set out in its recommendations, and I think that that is the mood of members with whom I have had the opportunity to discuss the matter. Prompted by my official Paul Allen, I say that we expect the consultation paper to be ready for consideration by the cross-party group and the committee, if it so wishes, next month or shortly thereafter.

**Des McNulty:** I welcome the minister's remarks. I would be grateful if he would confirm that, in that context, the Government might take a similar view in relation to the Scottish Law Commission's formal position on the cases as it took in relation to double jeopardy—in other words, that it is willing to go beyond what the SLC says. That would be a helpful comment.

I can understand that, in normal cases that are not to do with historical child abuse, it might be appropriate to look at why a case has not been brought previously, but in the context of cases where the abuse was truly historical—in other words, it took place a very long time ago—the victims face two barriers. The first is the failure adequately to recognise the hurt that was caused by the perpetrators, by the authorities, and by the law. In other words, we are talking about something that we now find to be entirely unacceptable, but which appears to have been tolerated to a much greater degree when the actions were undertaken.

Secondly, victims face specific legal barriers, including the prescription barrier and the time-bar barrier. The problem is particularly acute for people whose cases have been denied by prescription rather than by the time bar. The offence against them was denied, or the hurt against them was denied, and they also face the legal impossibility of taking a case forward. It seems to me that the basis of deciding whether such cases should be allowed to come to court should be whether there is sufficient evidence that the offence was committed, rather than why the person did not bring the case forward previously. The direction that needs to be given might be about the circumstances in which the courts can consider a case on its merits rather than a lengthy investigation into why the case was not brought previously, bearing in mind the particular circumstances of historical child abuse, which might have happened in the 1960s or 1970s, or even in the 1950s—a very long time ago.

14:45

**Fergus Ewing:** Mr McNulty makes a fair point, with which we as human beings instinctively sympathise and tend to support. What counts is

whether a legal case can be made rather than why it was not brought previously.

That said, if there was no reason why a case was not raised within the permitted period, the court could not ignore that. I am acutely aware that I do not wish to raise expectations falsely by anything that I say as a minister. It is therefore correct to say that, even if time-bar provisions were reformed and more cases came to court, it would not necessarily produce the outcome that the survivors of childhood sexual abuse seek. The defenders would still have to have the opportunity to respond to allegations. "Audi alteram partem" is the second rule of natural justice: the defenders must be heard. Cases would still have to be proven on the balance of probabilities.

The tragedy is that, in many cases, if there were witnesses, they are long since gone or are not able to give evidence, or their evidence is not available to the court for other reasons. One cannot change or ignore those problems.

However, Des McNulty focuses on the preliminary point, which is that the court's door should be open, not slammed shut and padlocked, which it appears to be at the moment by what seems to me to be an unduly inflexible gateway system that all too often denies the possibility of obtaining justice to people like those who have petitioned the committee.

**Des McNulty:** I have a final question, convener. I am grateful to the committee for its indulgence and I thank the minister for that clarification.

I am highly conscious of the minister's remarks about the court not being the most appropriate or available route to some kind of reparation or effective justice for all survivors of historical abuse. The minister seems to acknowledge that the current position prevents the court being such a mechanism for anyone. Perhaps we might want to move in the direction of unlocking some of the bars that prevent anyone from getting that justice and allowing it for those for whom it is possible to go down that route, should they so wish.

There will be people for whom the court route is not possible, not through their fault but because of a lack of evidence or witnesses in their cases, as the minister suggested. In those circumstances, is there any investigation into alternative mechanisms to court that would allow the victim of historical abuse to unburden themselves of what happened to them in a tribunal or other setting that would allow us to record the injury that was done from the victim's perspective, not necessarily in the context of a court where there is no likelihood of them being able to achieve such redress? What thinking is being done on that?

**Shona Robison:** That is very much what the confidential committee process is about, and the

pilot is intended to test out the thinking on that. It gives people—people who could pursue the court route or, as in the cases that you have cited, people who may not—the opportunity to testify to what happened to them in a safe environment where they can be heard.

The pilot was established in recognition of the fact that the legal process would not be an option for some people or might not be the choice of some others. What the victims want is to unburden themselves and tell someone what happened to them. That is an important element of the system.

We await Tom Shaw's report. We must now decide how that pilot and the lessons that are learned from the way that it operates—I am sure that there are lessons to be learned from it—move forward to ensure that anyone who wishes to give such testimony is able to do so.

**Fergus Ewing:** Mr McNulty asked whether there are non-legal means of finding a remedy. It is fair to say that the criminal prosecution system has taken account, in a number of ways, of the cases that he mentioned. There were successful prosecutions of Gordon Knott and Brian MacLennan in 1997, David Murphy in 2001 and Matthew George and John Muldoon in 2006. Jail sentences were imposed in all those cases. There is no statute of limitations in relation to criminal proceedings. The problem, of course, is evidence beyond reasonable doubt but, in fairness to the prosecuting authorities, I should put on record the fact that they have taken that approach, which demonstrates that the matter has been taken seriously.

I am aware from the petitioner's remarks, which I read before I came to committee, that there has also been dissatisfaction with some decisions that have been taken. I can well understand, from the remarks that have been made, that that would be the case. However, it was not ministers who made those decisions, but the prosecution authorities. Those authorities are entirely independent of ministers, as we all know. That must be the case in any civilised country, because one cannot have ministers deciding who is guilty and who is not.

June 2009 marked the full implementation of the 50 recommendations that were contained in the Crown Office and Procurator Fiscal Service review of sexual offences. I felt it important to bring that to the committee's attention in its consideration of the matter in the round.

**The Deputy Convener:** I thank Mr McNulty. As I said, he has a keen interest in the petition and I am glad that he was able to get responses from the minister.

**Cathie Craigie:** I will continue with the line of questioning that Des McNulty was taking with the Minister for Community Safety.

After the previous committee meeting, a few of us spoke to petitioners in the foyer. Among the issues that they raised were judicial discretion, not being able to get over the time-bar hurdle, getting legal aid and getting to court in the first place. The minister has acknowledged those issues and all the victims and survivors would agree with the point that he made in answer to Nigel Don: all they want is the opportunity to get to court and be heard.

However, as our discussion has progressed, I have begun to wonder whether the point is the opportunity to get to court or the opportunity to be heard by a tribunal or other body that could deal with the matter. Is a change in the law the only way forward, or could we use another mechanism in existing legislation to give victims their opportunity to get to court or be heard by some other organisation?

As the minister mentioned, time is not on our side. The victims and survivors have taken a long time to gather the strength to be able to make their complaints, so time is probably not on their side, either. We must find a quicker solution.

**Fergus Ewing:** New legislation is the only way to amend the existing law as set out in the 1973 act, if the Parliament wishes to do that. That is why I hope that, as I indicated, the consultation paper will be issued fairly early in the new year after consideration with members and colleagues in all parties.

For the reasons that Mr McNulty described—fairly well, I think—it is extremely difficult, or impossible, for people who want to take an action to court. The legal aid problems follow the law, which is why legal aid is not available. If the law is changed, the Scottish Legal Aid Board's responses to applications would inevitably change accordingly, because it applies the law in considering whether there is a probable cause of litigation, which is one of its tests for granting legal aid.

The law would need to be changed to provide an opportunity for people to be heard in court. My colleagues might have something to say on extrajudicial outcomes.

**Shona Robison:** The time to be heard pilot has focused on prioritising older and frailer people, for the reasons that Cathie Craigie outlined. We want to provide the opportunity for people to give testimony. So far, the pilot has heard testimony from, I think, 98 people. I imagine and hope that, in his report, Tom Shaw will recommend that a national roll-out would take the same approach of prioritising those who are older and frailer so that they have an opportunity to give testimony at an earlier point.

Adam Ingram mentioned the restorative justice pilot. We will get a report on that alongside the one on the time to be heard pilot.

We recognise that some people who are in their later years may worry about having the opportunity to testify. That is why we want to give them priority within the process.

**Nanette Milne (North East Scotland) (Con):** My question is for Shona Robison and Adam Ingram. What are the mechanisms to provide support services to all victims of institutional abuse?

15:00

**Shona Robison:** As I said, the pilot has focused on Quarriers. We could have established a pilot either through making a random selection of people or through focusing on an institution in which there had been acknowledged historical abuse, and we decided to do the latter. However, the roll-out would go beyond Quarriers to take in all other institutions. In that respect, other people will have the opportunity to give testimony.

Outside that, we have the national strategy. We have a number of projects that support survivors. That support recognises two things: that survivors need support in general, and that people who give testimony often need support because they might be talking for the first time about what happened to them. That will open up a range of issues on which they will need support. Since 2007, we have funded a number of organisations to provide support. There are other support mechanisms and a website, which is an important element of the package of support for people who have suffered abuse.

**Nanette Milne:** Is there evidence that those services are well funded? How are they advertised? Are they being used?

**Shona Robison:** Perhaps Jean MacLellan can say a little bit more about use of the services.

**Jean MacLellan (Scottish Government Primary and Community Care Directorate):** I will start with the time to be heard forum and then move on to the broader strategy.

We consulted on the possibility of the retraumatisation of people who went to the time to be heard forum, and worked with a clinical psychologist who specialises in that field in order to set up a protocol for dealing with people as they went through the process. The in-care survivors service Scotland, which is one of the organisations that the Government funds, was available for anybody who went to the time to be heard forum and wanted specific support before, during or after their hearing.

More generally, there have been three batches of funding under the survivor strategy. The first was for 25 voluntary organisations throughout the country, such as rape crisis centres and organisations that deal with people who are threatened with homelessness. The funding was for places in which we knew people who may be survivors of such harm were likely to be.

More recently, we have recognised that there is a particular need for people in rural and remote areas to have places to which they can go, but to which their community would not necessarily know they had gone. We have considered rural and remote support.

We have also recognised that male survivors can sometimes have particular difficulties with disclosing what happened to them. Therefore, we have put resources into male survivor organisations.

There is a range of funding allocations, from very specific to quite broad allocations.

**Nanette Milne:** So there has been a range of mechanisms for people to find out what is available.

**Jean MacLellan:** There is a website on which everything is explained. People have been able to make bids for funding in each of the cycles that we have had, and those bids are considered.

**Nanette Milne:** Are the services being used?

**Jean MacLellan:** They are being used very much. The SurvivorScotland team has evaluated each of the allocated funds to find out what the successes were, what the gaps in policy were, and what we should do as we go forward. The funds are formally evaluated regularly, and they have been highly successful in bringing people forward and giving them the information and support that they have required.

**Anne McLaughlin (Glasgow) (SNP):** My question is probably for the Minister for Community Safety.

As we have heard, in February 2010, the Scottish Human Rights Commission published a human rights framework to deal with such issues. In its letter to the committee, the commission says:

"In delivering the Framework the Commission noted that Scotland has taken a series of significant steps to addressing historic childhood abuse. The Commission ... paid particular credit to the dignity and determination of those who have been subject to gross human rights abuses in the past and continue to seek justice, remedies and reparation."

I echo that. I have met the petitioners outwith the committee, as most of us have, I think. I also have a constituent who came forward some years ago having been through institutional child abuse and went through a court case.

I am aware that people continue to seek justice, remedies and reparation not just for themselves but for others as well. It is right that we pay tribute to that. I know someone who at the age of 38 started to have flashbacks, which was the first time that she became aware that she, too, had been a victim of child sexual abuse. So, the discussion about a time bar is of real interest to me.

The SHRC framework included recommendations for immediate next steps as well as for more long-term steps. I am aware that we have already implemented some of those recommendations and I note what Fergus Ewing said about the 50 recommendations of the Crown Office report on sexual abuse having been implemented in full. Will the Government implement the recommendations of the framework report in full? If it will, is there a timescale for that?

**Fergus Ewing:** Plainly, as a Government we are keen to do the right thing by those whose human rights have been so abused. However, it is probably correct to consider first the publication of the report by Tom Shaw, which my colleague Shona Robison mentioned, and in particular his recommendations. In other words, having asked him to opine and report, I think that we should wait to see what his report will say. However, I would very much expect our response to be in the spirit of what Anne McLaughlin asked.

I do not know whether that answers the question fully or, indeed, whether my colleagues have anything else to add. I hope that it does answer the question.

**Shona Robison:** As I mentioned, we would want to look at the recommendations from the SHRC framework alongside Tom Shaw's recommendations and take those forward together. It would make sense to do that rather than to consider them in isolation. We can certainly keep the committee apprised of how we do that as we take it forward.

**Anne McLaughlin:** You said that Tom Shaw is reporting back in February.

**Shona Robison:** Yes.

**John Wilson:** My question is for the Minister for Public Health and Sport and the Minister for Children and Early Years. I am aware that funding has been allocated to the forum. Do the ministers think that the funding that has been provided represents value for money? In particular, has it produced positive outcomes for the survivors of abuse?

**Shona Robison:** In total, 98 people have gone through the forum process so far. Much of the detail of their experience of the forum and whether they felt it to be all that they wished for in being

able to give testimony will of course be in Tom Shaw's report, which will indicate whether the pilot has been a success and recommend any changes. I was struck by what Cathie Craigie said earlier about some people's view that they were not consulted as fully as they would have wished to be at the start of the process. We need to look at things like that.

Certainly, the anecdotal evidence so far is that the process is really useful for those involved. Jean MacLellan might be able to say a little bit more about that. Our intention would be to act on any recommendations from Tom Shaw on changes that he believes are required for a national roll-out.

I do not know whether Adam Ingram has anything to add to that.

**Adam Ingram:** Not really. The proof of the pudding will be in the eating. The committee is quite rightly concentrating on the petition before it and the important aspect of how we actually address the issues of survivors of in-care abuse. As I indicated in my opening remarks, I am trying to use that, particularly people's testimony about what has happened to them, to invest in the future of residential child care in Scotland by moving away from the cultures, practices and behaviours that were prevalent in the 1950s, 1960s and 1970s and bringing residential child care into a new era that has children's rights at the core, where individual children feel that they are able to express their concerns or issues, and where the workforce has been given all the skills, qualifications and scrutiny that it requires to provide an excellent, high-quality service. We want residential child care to become an option of first choice, or the best choice to meet the needs of an individual child. We around this table know about some of the complex difficulties that some youngsters have to face, and residential child care is the best option for them.

It is also important to gather all the evidence we can from what has happened in the past and to invest that knowledge to improve the outcomes for all our youngsters who happen to have experience of the residential child care system. Obviously the survivors' individual needs must be addressed, but there is a wider need to improve residential child care across the piece. This is a valuable process in achieving that objective.

**Jean MacLellan:** The minister talked about the experiences of the 98 people who have gone through the process. Tom Shaw has given us a snapshot of those people, and a positive message. I am not able to add much, because it was important that the process that people went through was independent of Government. The Scottish human rights framework asked for that specifically, so it would have been inappropriate

for officials to have been closely involved in the process.

To offer Ms Craigie some reassurance about communication, it is absolutely true that we must continue to learn from people's experience and never be complacent. Officials went to the Quarriers board to get permission for the pilot forum to go ahead. We then worked with members of Quarriers staff to identify former residents. We were provided with the names and addresses of several hundred people who had been in Quarriers, although there is not always a forwarding address for people who leave care that goes up to the present time. We held two meetings with people who had an interest in the pilot forums going ahead and former boys and girls from Quarriers were represented. I imagine that Mr Whelan is the person you were talking about earlier, and he was invited to those meetings.

**John Wilson:** I welcome the responses from the ministers and Jean MacLellan. However, I did not get from them whether they feel that the pilot funding has provided value for money. That will become an important issue, depending on the recommendations made by Tom Shaw and the commissioners on how we fund any future work on this. Although I and the Minister for Children and Early Years are particularly interested in the institutions as they are now, not as they were in the 1950s, 1960s and 1970s, we need to be aware of the institutional abuse that might be taking place up to and including the present day that might come back to the Government. Can it be guaranteed that the work that Tom Shaw and his commissioners are doing will fully address the issues that we could face in the future? I am thinking, in particular, about the situation in a particular care home in Ayrshire in the 1980s and 1990s.

15:15

**Shona Robison:** I think that we will be better able to make a judgment and to answer the question about value for money once we have the report, which will tell us what the outcomes have been for those who have been through the process. As Jean MacLellan said, it is a difficult matter at the moment—for the reasons that she set out, we have not been directly involved in the operation of the forum. We await the forthcoming report to tell us about many things, value for money being one aspect. We should ensure that people have found the process to have worked and to have benefited them—that is what it is about. We will have to wait.

On the question about the here and now, Adam Ingram emphasised the point that the learning from all of this should go towards improving

practice in the present day, to ensure that children who are using residential care services have a safe and caring service. We should very much be learning lessons from the past.

**Adam Ingram:** As I indicated to Bill Butler at the outset, when he was suggesting that the time to be heard pilot was the first step, we have been taking steps since devolution and all the way through towards reforming residential child care. The original Shaw report stimulated and fed into the national residential child care initiative, which set out a series of recommendations, including those around raising the status, morale, skills and qualifications of the workforce and ensuring that children have access to advocacy services and can raise issues of concern to them within their institutions.

We are not finished yet—we still have a way to go. We can never give a 100 per cent guarantee that nothing will ever go wrong—I am afraid that that is just not possible in what are human institutions. However, we can guarantee a commitment to continuous improvement and to pushing the agenda further forward.

**Nanette Milne:** As you know, the survivors are calling for a forum to be set up in line with Ireland's Residential Institutions Redress Board, to support all victims. Is it likely that you will set up such a board or forum in Scotland?

**Shona Robison:** As I said in answer to an earlier question, the intention would be to learn lessons from the pilot and then roll measures out. We have to hear from Tom Shaw about what things could look like and what his recommendations are.

As I indicated to Cathie Craigie, one feature of the pilot has been to prioritise older, frailer survivors. There is a good principle behind that. We need to consider how we approach things to ensure that priority is given to people who are older and frailer, so that they can give testimony first. There are some details to be worked out, but the answer in principle is yes.

**Cathie Craigie:** One point still troubles me. You announced the pilot scheme back in November before publication of the commission's recommendations. Why was the announcement about setting up the pilot made before the recommendations were seen? Given that you have heard that some victim survivors are still unhappy, and February is a couple of months away, could Tom Shaw's remit be looked at and changed to take account of the views expressed? I am sure that we could circulate our committee papers to the ministerial team.

**Shona Robison:** As you know, the Scottish Human Rights Commission report included specific recommendations on the pilot forum and

wider recommendations on a full forum, as several people today mentioned. The Scottish Government discussed the recommendations with the advisory group for the pilot forum and addressed the specific recommendations of the report before the commencement of time to be heard. We wrote to Allan Miller of the SHRC on 8 June to respond to the recommendations on the pilot forum. On where we go from here, it is important that we consider all the recommendations in the SHRC framework alongside Tom Shaw's report because it would not be sensible to consider them separately.

Members have raised some of the issues that have transpired since then. Whether or not they are in Tom Shaw's report, we want to take notice of them when we consider how to go beyond the pilot. I give you a reassurance that if there are issues about what has happened so far that have a bearing on what we do next, then obviously we will want to take cognisance of them.

**The Deputy Convener:** Des McNulty wants to make a brief comment.

**Des McNulty:** Yes; it is about the letter from Duncan Wilson of the SHRC. He said:

"Upon completion of the pilot forum and the publication of the report by Tom Shaw and the other Time to be Heard Commissioners"

and presumably the consultation document to which the Minister for Community Safety referred,

"the Commission intends to pursue an interaction involving those affected and key decision makers to identify how the recommendations related to the broader human rights based process referred to above can be implemented."

What thoughts does the Scottish Government have about the future involvement of the Scottish Human Rights Commission in the process? How do we ensure that the survivors are fully informed about how the various strands are to be developed? There is a general acceptance that not everything was got right up to now. Looking ahead, we want to ensure that the victims are properly informed about what is going on and that the involvement of the SHRC is maintained.

**Shona Robison:** I can certainly give a guarantee that we will be as inclusive as we can be. Once we get the report, we will want to discuss it with a number of people. Survivors are important and key to that process, but we are also keen to sit down with Allan Miller and the SHRC to look at how we take things forward.

**The Deputy Convener:** Thank you all very much. We have had a lengthy and useful discussion on the petition. I invite the committee to decide on what we do with it.

**Bill Butler:** I hope that colleagues agree that it has been a useful evidence-taking session. Adam

Ingram said that action is the Government's watchword. That action is on behalf of victims of institutional child abuse to try to obtain justice where it can be obtained.

I think that, if colleagues agree, it would be helpful if the committee were to ask the Government whether ministers could appear before us again soon after publication of Tom Shaw's report in February so that we can look at it together. That would allow the committee to interact with the Government to find out its thoughts on the report's recommendations and possible ways forward.

I also think that it would be helpful if, at that time or on as near coincidental an occasion as possible, we could discuss with the Minister for Community Safety the draft of the time bar consultation, which he said would be ready in the new year. I think that what he said about prescription and limitation is absolutely correct—I quote him correctly, he said that the gateway system that we have at the moment is "inflexible". We need to work with the Government and all concerned to arrive at a more just situation. I accept the definition that the minister gave of justice being the opportunity to go to court. I think that that is important as well.

We would all agree, I think, with what Adam Ingram said about the objective being to have practical, effective reform of residential child care in which children's rights are paramount. I take comfort from the fact that the Minister for Public Health and Sport said that the Government had not ruled out a forum in line with Ireland's Residential Institutions Redress Board. In fact, she went further—she said that, in principle, the Government's response was yes to that suggestion. The quicker that we can move forward on that, the better it will be for doing what we all want to do, which is to deliver justice.

**John Wilson:** Although I accept Bill Butler's attempt to try to get the issue resolved as quickly as possible, I feel that the Government needs time to consider the report of Tom Shaw and his commissioners. I recommend that, rather than expect ministers to come before the committee some time in February or March, we invite Tom Shaw and some of the commissioners to appear before us in February or March, so that we can ask them how they came to the recommendations and conclusions in their report. We could hold a subsequent meeting with the ministers, at which we could, hopefully, get some considered responses from them on the report.

As I said, I feel that instead of bouncing ministers into making knee-jerk responses to the report, it would be better for us to invite Tom Shaw along so that we can discuss the report with him,

after which we can consider how we wish to take forward the report and its recommendations.

**Bill Butler:** I do not disagree with what John Wilson has said—it is very sensible. I know that time is short as far as this session of Parliament is concerned, but perhaps we could agree to have Tom Shaw and others before us in February, which is when the minister said that Mr Shaw's report should be available, and to fit in another meeting in March—I do not know whether that would be possible—at which we could hear from the ministers, so that we get an articulation that is practicable and, I hope, productive and efficient.

15:30

**Anne McLaughlin:** Do we have a date in February when we know that the report will be available? I think that I am right in saying that our final meeting will be on 8 March—I recall the date because [REDACTED] members should not forget it. If the report is to be published at the end of February, perhaps we could include the matter on our agenda on 8 March, if there is time to do so. However, that would leave no time for the committee to question ministers. I like John Wilson's idea, and I understand what Bill Butler said, but I am not sure whether it is practically possible.

**Bill Butler:** I accept that it all comes down to what is practicable. I am not trying to be difficult; I know that there are time constraints. If we can fit in both the meetings that I proposed, that would be fine. It will be up to the committee to decide what is likely, given when the report is to be produced. We could leave matters on the basis that that is a way forward, in principle. I am delighted to accept colleagues' sensible observations.

**The Deputy Convener:** I am sure that our clerking team will keep its ear to the ground and note what is happening. When the report has been produced, it will be a simple matter of calling the committee together to discuss it, if nothing else.

**Cathie Craigie:** I agree with John Wilson and I appreciate Bill Butler's good intentions for the committee to try to finish work that it has begun.

On a practical note, we received a letter in the notes from former residents of Quarriers homes who were abused as boys and girls—I spoke about it to the Minister for Public Health and Sport. Our correspondents posed a number of questions in their paper and it was not possible to go through them all today. We should ensure that the ministerial team—that is what I am calling you—gets a copy of the letter and responds to the points that were raised. Although there are concerns, I think that we all want the pilot to go forward and link in with the recommendations that have been made. If we can fix people's concerns and

grievances and bring people on board before the pilot is complete, that would be all to the good.

**Des McNulty:** It is not for me to intervene in the committee's consideration of how it handles matters, but a point of clarification arises from Bill Butler's comments. It would not be a good idea for the consultation that Fergus Ewing mentioned to be delayed until the committee has time to fit it into its agenda—I am sure that that is not Bill Butler's intention. I certainly want the minister to consult as quickly as possible.

**Bill Butler:** If I gave that impression, I apologise. Heaven forbid that there should be a delay; delay is not what we want or what I was suggesting. I am happy to clarify that.

**The Deputy Convener:** That seems to conclude consideration of the points that have been raised and discussed. I thank members and Des McNulty for coming along to the meeting and I thank the ministers for giving up their time to speak to the committee. I hope that between the ministerial team and the committee, who are beavering away behind the scenes, we will secure success. We look forward to meeting you in the weeks ahead.

That concludes the public part of the meeting. We agreed at the start of the meeting that the next item would be discussed in private.

15:34

*Meeting continued in private until 16:08.*



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