

The Convener: Yes. We can ask that question. Are members happy that we deal with the petition in that way?

Members *indicated agreement.*

Col 1045

Current Petitions

Institutional Child Abuse (PE535)

11:43

The Convener: I ask the committee's agreement to alter the timetabling of the agenda for this item on current petitions. We have invited the Minister for Education and Young People, Peter Peacock, to attend the meeting. We had him down last on the agenda, but that was because we could not guarantee what time he would be available. I expect that there will be a full discussion of the item that the minister is here to address, and I would like to give as much time to that as possible. Does the committee agree to bring forward discussion of PE535 to now, so that we can go straight to a discussion of that petition with the minister?

Members *indicated agreement.*

The Convener: I welcome the Minister for Education and Young People to the committee. PE535 was submitted by people who were concerned about a specific issue, but in the course of considering that petition, the committee became increasingly concerned at the length of time that it was taking for a response to come from the minister's department. Therefore, on behalf of committee members, I ask that, in any opening statement that the minister makes, he give some explanation of why his department dealt with the committee in the way that it did.

11:45

The Minister for Education and Young People (Peter Peacock): I welcome the opportunity to be with you today, to address not only that question, but much wider questions that arise from the petition. They are extremely serious matters. With your consent, convener, and as I indicated to you informally, I will take quite a period of time to set out the thinking behind the Executive's decision and allow members to hear our reasoning so that they can ask questions. I expect to take about 20 minutes to set out all the things that I want to say.

The Convener: That sounds like rather a long time.

Peter Peacock: It is important. The issues are serious and the committee needs to understand what the Executive's thinking is. I want to set out the reasoning behind our decision not to commission an inquiry as requested by the petitioner and to answer members' questions.

Before I address the substance of the petition, I will deal with the lengthy delay in the Executive responding to the committee. I make very clear

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that I believe that the committee was entirely justified in complaining about the tardiness that the Executive displayed in responding to its requests for information. There is no reasonable excuse or justification for the delays, and I do not seek to proffer any. The delays should simply not have occurred and I very much regret that they did. We have taken actions within the department to ensure that such delays never happen again. I will be happy to answer questions on that later.

I will address the substance of the petition and the Executive's response to it. The response that I sent to the committee in June sets out our reasoning, but I am keen to give the committee a better feel for what lay behind our decision. In particular, I am anxious to make clear how the Executive regards any actions or inactions that may have led to young people in residential settings suffering abuse.

As the committee is aware, a number of civil actions are under way in the courts or are in the course of being prepared. Nothing that I am about to say can or should be taken as referring to any particular case or individual circumstance that is currently before the courts or may come before the courts in the future. However, I am anxious to be helpful to the committee, the petitioner and others in setting out the background to the Executive's position.

I fully recognise that there is a danger that to decline the request for an inquiry could be interpreted as the state's trying to cover something up or not acknowledge that things happened to some young people who were in residential care that should not have happened to them. I make as clear as I possibly can that the decision not to proceed to an inquiry does not imply that the Executive does not acknowledge that, at times in the past, the treatment of some of our young people fell well short of what should be regarded as acceptable. Indeed, it is shocking to imagine that, at any time in the past, what happened to some young people may have been regarded as falling within the bounds of what was acceptable.

The Executive is very clear, not least from the evidence of recent criminal convictions, that some of the things that happened to young people in residential settings were gross and truly appalling. There can be few things worse for a vulnerable young person, I imagine, than to be taken from a family setting, to be placed in a new and unfamiliar setting and then to experience treatment that the courts have now found to be unacceptable and criminal.

I assure the committee that ministers—myself included—are aware of the nature of allegations that are made against staff and institutions from previous

professional experience, quite apart from what we have learned as ministers. We are aware

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of what happened to young people in some residential settings overseas, and it would be naive to imagine that Scotland had somehow been completely immune from such behaviours. Ministers fully understand and empathise with the sense of betrayal, bewilderment and anger that many individuals who have been abused feel. We understand completely that many of those people feel diminished by the experiences that they had. We understand that many lack self-esteem and confidence and are distrustful; that some suffer depression as a result; and that some feel shame or guilt for things that were not their responsibility. When adults abuse children, the children are never to blame.

It falls to this generation of ministers to acknowledge that, where wrongs occurred in the past, they were unacceptable. We share with others profound sorrow for the damage that has been experienced by individuals. Abuse will always be unacceptable and those who perpetrate abuse will be subject to the full rigour of the law. We are determined to ensure that inspection, regulation and standards are in place to prevent, detect and deal with abuse. Those who report abuse should be able to feel confident that they will be listened to and that proper action will be taken. We want no one who raises concerns to feel anything other than that they have an absolute right to do so.

However, it also falls to this generation of ministers to decide what it is right to do today to address the outstanding concerns of many individuals. Against the background of ministers' clear recognition that, for several young people, what happened to them was unacceptable, we considered whether to hold an inquiry. One of the purposes of seeking an inquiry might be to cause ministers to recognise publicly that the regimes in some residential care homes in the past occasionally resulted in some young people being treated in an unacceptable way. It is unnecessary to have an inquiry, with all the time and expense to individuals and the complex legal and evidential intricacy we know about from the experience in Ireland, to get the acknowledgement we give today, that some young people were wronged.

We considered further reasons for holding an inquiry including whether an inquiry would lead to policy changes that would further reduce the risks to children who currently live in residential care, and lead to more and high-quality support to adult survivors of past abuse. We also considered the impact of any inquiry on survivors' access to their legal rights and remedies. We identified several key questions, the answers to which would enable us to decide whether an inquiry was the best way forward. Would an inquiry prevent future abuse? Would it be in the public interest? Would it help to meet the needs of survivors today?

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In order to come to a conclusion on those questions, officials were asked to undertake several pieces of work. They were to examine current child protection measures in residential establishments; to consider the experiences in other countries where, sadly, similar events had occurred and to consider whether their processes would be suitable and helpful in Scotland; and to consider the experience of other organisations that were dealing with the aftermath of abuse in their homes. We have subsequently studied the work of the short-life working group that was set up to examine services for adult survivors of childhood sex abuse.

In recent meetings with the petitioner, my officials have shared what happened by way of background investigations and I know from correspondence that he understands that those matters were looked into. We have given careful consideration to the outcome of the findings from those tasks and weighed the evidence from each. As the committee will be aware, a great deal has changed recently and is still changing. That impacts on the consideration of the issues that I have identified.

We are committed to minimising the risk of abuse to children and young people who are currently in residential establishments in Scotland. Following inquiries and reports into residential establishments, steps have been taken to improve the protection that is offered to these vulnerable children.

Since 1995, Her Majesty's Inspectorate of Education has carried out regular care and welfare inspections of boarding schools and hostels. The Scottish Commission for the Regulation of Care also regulates and inspects boarding provision in independent special schools and will soon regulate all boarding provision and school hostels. From April 2002, the commission has also regulated and inspected care homes for children.

The Protection of Children (Scotland) Act 2003 is being implemented to provide a list of persons who are unsuitable to work with children in either paid or unpaid employment. We now have enhanced disclosure checks for those who wish to work with children, and post-Bichard, we are considering further action with colleagues in the south. We are undertaking an extensive child protection reform programme, following the publication of "It's everyone's job to make sure I'm alright" in November 2002. That programme will provide extensive advice and guidance, staff development and a rigorous inspection regime.

Most recently, in March 2004, we issued "Protecting Children and Young People: The Charter" and a framework for standards to help translate the charter into good practice. Those standards set out what children, their parents and

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members of communities can expect from agencies that are tasked with the protection of children.

Those measures will provide much greater protection for all children, including those who live in residential care homes. Beyond that, of course, Parliament has created the position of children's commissioner. Although the commissioner does not deal with individual cases, she can at any time, and of her own volition, inquire into the policies and practices of the Executive, local authorities and others in relation to child protection and residential care. That is a further level of scrutiny and inquiry into how we perform, collectively, to safeguard looked-after children.

Furthermore, the Executive funds Who Cares? Scotland to provide independent advocacy services for children who are in residential care. We also fund ChildLine and are going on to create a single national child protection helpline.

Those policy approaches and initiatives, together with the changes that were made inside organisations following recognition of past abuse, offer a measure of protection for children that was simply not available in years gone by. The nature of the changes that we have made and are making to child protection is attracting international interest and there are indications that Scotland is among the leaders in the world in such reforms.

Against that background, and with my commitment to do whatever more is necessary and to follow other international practice if it advances child protection, it is difficult to conclude that an inquiry would be the cause of policy advances that we are not already making or will not be prepared to make if we see that they would add to what we are doing. Therefore, we did not see an inquiry in itself advancing those matters.

Potentially, the public have a number of other interests. People need to be reassured that such abuse cannot recur; that lessons have been learned; that survivors have the support that they need; and that the legal process can take its course with full access to relevant information. We believe that the work that I have described will provide significant reassurances when it is taken together with the police's work in investigating, and potentially bringing charges against, individuals when criminal acts are alleged.

We considered how an inquiry might help to meet the remaining points regarding the needs of survivors. Ministers are anxious to do the right thing by the survivors of past abuse. Malcolm Chisholm established a short-life working group to consider the detail of what is needed for services for adult survivors of childhood sexual abuse. Ministers are considering that group's report. However, I recognise that, much as the report will

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contribute to our thinking and planning, the issues at consideration in the petition are not confined to sexual abuse.

The Executive recognises that individuals who have suffered abuse have access to legal rights and remedies.

A large number of civil claims are currently before the courts, and the Executive has been asked to provide access to papers that are relevant to those cases. We want to be helpful and open to those who are pursuing their claims in that way, while taking careful account of the judicial process and ensuring that we do not inadvertently harm the interests of others. We plan to make public the information that is held by the Executive on list D schools and other residential establishments. It is clear that such papers might be of help in current cases and that access to them can help survivors understand the background to the schools and their management.

The Executive wants to be completely open about the information that it holds in relation to those cases. We want to demonstrate clearly that we are not withholding evidence of abuse or Government knowledge of such abuse in those establishments. However, the files contain personal details about pupils and teachers. We have a duty to protect the personal privacy of those individuals, so we could not open the files for public inspection in their current form.

Last year, we closed some files that had been open to the public when it was discovered that they contained personal information. We are now redacting relevant files, which is the process of blocking out names and other sensitive information so that files can be made public without damaging individuals' legitimate interests. That is a complex and time-consuming process, but it will allow us to make publicly available the information that we hold. Having consulted organisations that have extensive experience of this type of work, we are also aware that it can be very traumatic for individuals to read files and papers relating to their experiences, whether or not they are named or suffered abuse. Therefore, we are planning for support to be available to individuals who seek access to files.

We will make the files available as soon as possible, but not before they have been redacted and suitable arrangements are in place to support the individuals concerned. Two members of my staff are working on that task full time, together with two part-time staff. We hope to be able to make the files available by the end of this calendar year, at the latest.

Particular concerns have been expressed about the time bar that can operate to bar claims relating to child abuse that occurred many years ago, as was shown in the recent Kelly case. I advise the committee that we have asked the Scottish Law

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Commission to review and report on the law of limitation in relation to personal injury claims. In due course, we will consider any recommendations arising from that review.

I have an open mind on what more we can do. We have found our recent discussions with the In Care Abuse Survivors/In Care Abused Support group—INCAS—very

useful. I have made clear to my officials that I want them to continue the dialogue with INCAS and to explore a range of matters through which we can better support survivors and gain from their insights and experiences as we continue to develop our policies. I have in mind to explore with INCAS and others what more we can do to ensure that survivors who have a need to express their feelings and emotions receive support. I am willing to make resources available to help that process, because the Executive recognises that more support is needed.

12:00

The petitioner will soon receive a presentation on our child reform programme from my officials. When he and his colleagues at INCAS have heard that presentation, I am more than willing to hear, from their experience, what more they think that we can do to protect young people in the future. I know that the petitioner is keen to ensure that we learn from the experiences of people who have been in care and I have asked officials to consider how best we can take those unique experiences and perspectives into account as we develop policy standards and inspection systems. All inspectorates engage with service users as a key element of the inspection process and, in planning the inspection of services for children, HMIE will consider how best to seek the views of existing care users. We are also considering how it might make effective use of lay members of inspection teams across a range of inspection work.

On none of those matters is an inquiry needed to cause the Executive to take action—we are willing to take that action now. I hope that I have made it clear that, although we think that an inquiry is not necessary, that is not the end of the matter from the Executive's point of view. There is a range of things that we should, can and will do to give more support to survivors, to learn from them and to have better policy as a consequence.

We considered whether the holding of an inquiry would have an unpredictable impact on public confidence. An inquiry might be perceived as a means to ensure that there are no residual issues, but it might be perceived, mistakenly, as an admission that there are major issues still to be resolved and it might lead to an unfair and damaging loss of confidence in existing provision.

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We concluded that an inquiry would not add to our current actions and considerations for the reasons that I set out: because of our recognition that wrongs were committed in respect of some young people; because we are further reforming our child protection measures; because we believe that our actions meet the public interest considerations that we have examined; because we will do more for survivors and continue dialogue with them; and because an inquiry could have unintended consequences.

I recognise that that is not the outcome that the petitioner wants and that he represents a view that is held by many

others, but I hope that I have set out clearly what lies behind our decision. We have investigated what is happening elsewhere, we have considered a range of issues and we have been thoughtful in reaching our conclusions. We are not closing the book on historic abuse, but opening another chapter as we seek to do right by those who have been wronged.

I am happy to take questions from members of the committee.

The Convener: Thank you for that statement, which contained a lot of food for thought. On behalf of the committee, may I say that I appreciate your full and frank apology for the delay in responding. I assure you that we will watch to see that responses are more timely in future and we will let you know if we are disappointed.

We will move on to questions from members, but first I will set out the process. When we seek answers and get responses from the Executive, we consider what to do with those responses. The process remains the same whether it relates to written evidence or oral evidence. Members have the opportunity to ask the minister questions in response to the statement that he has just made, then the committee will discuss what to do with the information that we have obtained.

Helen Eadie: I thank the minister for his detailed statement. Everyone who has followed the issue will be glad to hear his explanation.

Children 1st raised a number of issues in correspondence with the petitioner. I think that you have covered those issues to some extent, but you could amplify your comments on the subject of the final point:

"there needs to be an investigation into why the voices of children are not sufficiently heard when accusations are made and are being investigated. The inquiry should also ascertain why children are too often powerless when those investigations take place, and make substantial recommendations as to how that will be changed."

Peter Peacock: There has been broad general criticism about children's policy and the way in which we, as a society, treat children. Traditionally, we have not listened to children's

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concerns strongly enough. The Government, local government and the voluntary sector, which provide those services, now widely acknowledge that, historically, that has been the case. I come from the generation in which children were not only to be seen and not heard, but it was preferable that they were not seen for much of the time as well. When children might be suffering abuse, it is hugely important that we listen to and take account of what those children say and do the right thing by them.

One of the reasons for our funding Who Cares? advocates in our residential care homes is to allow young people to speak to someone who is not part of the home setting and to have their views listened to and acted

upon. A range of other voluntary agencies that receive Government or local government support is also active in that field. For example, we fund the Childline helpline, which allows young people to report things that are happening to them so that they can be properly investigated. We are also going to trigger our own national helpline. We have yet to decide the details of how that will operate, but it will not only allow young people to phone for information and advice but will trigger action by agencies to deal with that young person's situation.

That brings me to a critical point. In my introduction, I mentioned our framework for standards of child protection. With the benefit of hindsight this might seem astonishing, but until six months ago we never had such standards. We have now introduced those standards, two of which ensure that children have the absolute right to speak to someone when they make allegations and that agencies make others aware of that right and make people available to listen to children. I am quite happy to provide a copy of the standards to members with those sections highlighted. From memory—my officials will keep me right on this—I am pretty sure that the standards state that a child will be given the right and the opportunity to say things in confidence once they have alerted people to their situation. Such a standard will not only allow young people to know what they can expect, but give us something against which to inspect children's services.

I acknowledge that we need to do much more on this matter, which is why we are introducing the range of measures that I outlined. We must ensure that, over time, our desire to have children's voices heard is turned into practice that is implemented everywhere and on every occasion when a child requires to be heard. As I have said, that has not happened adequately in the past.

Helen Eadie: You said that the compensation time bar is under review. That issue is causing concern right across Scotland; I believe that the cross-party group on survivors of sexual abuse

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discussed it at one of its meetings. When do you expect that review to be completed and what impact will it have? For example, will it extend beyond institutions to include survivors of sexual abuse in any other setting?

Peter Peacock: You will appreciate that I am not a lawyer. As a result, I must qualify the following remarks by saying that we will have to double-check their legal accuracy.

The review that we seek centres not on compensation as such, but on the ability to seek a legal remedy. Compensation might be one of several such outcomes. However, the current time bar limits people even in seeking to make an application to pursue their cases. My colleague Cathy Jamieson has just referred the matter to the Scottish Law Commission, which, although it sits beyond Government, is still an instrument of

Government. Since the commission's establishment in the 1960s, it has reviewed very complicated legal matters and recommended to Government any changes to legislation that might be required, for example, as a consequence of that review. The commission will take the usual time over the review process. I cannot honestly predict how long that will take. The important point is that the commission is examining these limitations, which I know are a source of frustration to the petitioner and to many other people. I cannot predict the outcome of that review. After all, we have asked that the commission's examination of the current law's implications has regard to all the circumstances that we are discussing today and to the law's wider impact.

You also asked whether any change would apply to organisations beyond Government.

Helen Eadie: To clarify, my question was whether individuals who were outwith institutions would be covered by the extension to the time bar.

Peter Peacock: It would relate to all personal injury claims.

Campbell Martin: My first question is about the delay in your and your department's response to the committee. The length of the delay showed contempt for the committee and, by extension, the Parliament and, by further extension, the people whom we represent. Given that the committee wrote to you more than once to ask for a response, what caused the long delay?

Secondly, without an inquiry, what mechanism is available to the people who were abused in homes some years ago to bring to account the people who ran and were responsible for the homes? What mechanism do they have to get those people to acknowledge that abuse took place and to get an apology?

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Peter Peacock: I am not sure about the benefit of going into the fine detail of what went wrong in my department. All I will say is that there were breakdowns in communication and inappropriate allocations of time to task, given the circumstances. I do not seek to diminish the point that you and the committee have made—your position is entirely justifiable and the delay simply should not have happened. However, we have taken steps to ensure that such a delay does not happen again. I note what the convener said. In future, I would welcome observations if things were going wrong so that ministers knew about the situation early enough to take the necessary action. We could spend hours talking about the matter, but I simply put up my hands and say that we were guilty, but we have sorted the problem. I do not want to go further than that, unless I have to.

You asked what mechanism people would have without an inquiry. There is a legal mechanism. There is potential for hundreds of cases to go before the court in which people will pursue their rights in law and seek redress for what they feel happened to them. People would have to

prove what has happened to them and then seek redress through the courts—that is the normal provision in any society. That is why we are anxious to make available all the information that we have at our disposal to allow people to make their cases as fully as possible. We do not wish to hide anything because it is hugely important that the issues are brought to the surface and that the cases are allowed to proceed.

You mentioned bringing people to account. If criminal acts are apparent or if there are allegations of criminal acts, the police will investigate and, if necessary or appropriate, charges will be brought. In recent years, criminal acts have been proven in the courts and, partly as a consequence, individuals are now pursuing compensation claims. Those are the criminal law provisions.

I have gone out of my way this morning to acknowledge that abuse has taken place in the system and that it should not have happened. I can speak only for the Government, not for the other agencies that were involved in the provision of services at the time. Those agencies need to consider how to respond. I encourage those who were involved to be open with their former clients about what happened, and I must say that many of them have been. I cannot see a problem with other agencies taking our approach of redacting files and providing access to information. However, that is ultimately a matter for those agencies.

As I said in my statement, I want my officials to explore with INCAS and others what mechanisms

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can be put in place to allow people to express their feelings. Of course, people in such situations come at the matter from a different point of view and we must have a system that allows people to do what is suitable for them. I am prepared to make resources available for that process. That might mean working with voluntary sector organisations or the creation of new organisations to help consider the issues constructively and allow people to express the burdens that they carry as a consequence of the experiences that they have had and to get appropriate support to work through the issues and achieve closure on what has happened to them.

That can be done in a wide variety of ways and without a public inquiry, but I am more than willing to explore the matter openly in order to determine the best way in which we can meet people's requirements. I recognise that people need to be able to express themselves in the way in which they want to express themselves. Not everybody who has been the subject of abuse wants a public inquiry, but many people do. We must ensure that we accommodate everything that it is appropriate to accommodate.

12:15

Rosie Kane: I thank you for your statement and welcome your acknowledgement that abuse has taken

place—I think that all of us would like the organisations to acknowledge that abuse has taken place.

You mentioned the costs, time and other things that are involved in an inquiry. You will understand that we in the Scottish Parliament know more about such things than anybody else. I refer to the Fraser inquiry, which was about economics, politics, the building, backbiting, grandstanding and a great many other things. That inquiry cost a lot of money and took a lot of time but last week it was said that the inquiry was cleansing, that it brought things to an end and that we can start afresh. I would hazard a guess that having an inquiry in this case would have exactly the same effect as the Fraser inquiry and that it would therefore be useful. Children 1st hints at that in its letter.

Do you agree that an inquiry would consider the issues of who, what, where and how? Perhaps it would consider who should be subject to Disclosure Scotland checks. I am not subject to those checks, but I enter the homes of very vulnerable people and very vulnerable people enter my office. I work with children a lot and have done so in the past. I do not know whether employees of the Catholic Church and priests go through Disclosure Scotland checks. Perhaps an inquiry would allow that whole area to be opened up, considered and reflected on.

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We talked about looking at files. There are missing files that have never seen the light of day, and I wonder whether an inquiry would find out what happened to them.

I worked at ChildLine, where there is a confidential helpline. We did not always manage to locate perpetrators, but we took children's and adults' hands and assisted them through difficult periods of their lives and—I hope—pointed them in the right direction. Many children who were abused in organisations and institutions in the past are still being abused by perpetrators, while we leave matters lying.

An inquiry would be about many different things that the Parliament is perhaps not fully addressing at the moment. We all welcome the Parliament's forthcoming consideration of legislation to protect children from grooming and so on, but if we walk backwards a wee bit and consider what happened in the past, we will find answers for the future.

The committee might be asked to seek the views of the petitioner, but he has made his views clear: he wants to protect children in care and his view is that there should be an inquiry.

Peter Peacock: I understand clearly the arguments for an inquiry, but I have tried to say why, having considered all the arguments closely and in detail, we are not convinced that an inquiry is necessarily the right answer—indeed, it is not the right answer. We think that

we can deal effectively with all the things that an inquiry could deal with in the ways that I have outlined.

I have said that I have an open mind about how we should work further with people to satisfy their need to have such matters explored more fully. We do not think that an inquiry is the right way to proceed for the reasons that I have given, but there are many other possibilities beyond an inquiry.

It would be a mistake to think that an inquiry is a simple and straightforward process. I acknowledge the point that Rosie Kane made when she drew a comparison with the Fraser inquiry, but very different matters are involved. We know from what has happened in Ireland that the decision to have an inquiry was the easiest part of the process. More than six years after that decision was taken, Ireland still has to find new legislative vehicles to get the work fully under way. I think that two acts of the Irish Parliament have had to be passed to enable that inquiry to take place and that amendments to those acts are being considered because of the changes in the Irish system that are required to allow evidence to be heard. Regard has had to be paid to the provision of various protections that are necessary for evidence of a certain kind to be obtained. That

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raises all sorts of questions about immunity from prosecution and so on.

Although, on the face of it, having an inquiry might seem to be a simple proposition that would do the things that Rosie Kane suggests, it would involve entering hugely complex legal territory—I include the interests of organisations and individuals, both those who seek a remedy and those who seek to defend such claims. The situation is not straightforward. That is one of the reasons why we are anxious to get on with things. We want to do the right thing by survivors in the way that I have indicated and we are doing a huge amount.

The purpose of the inquiry in Ireland was not just to establish what happened. We know a huge amount about what happened and I have acknowledged that wrong things happened to young people in institutional settings. The issue is how we help the survivors now. We are addressing such issues in the way that I have described. We will be happy to discuss how we do that with a range of people and in my view we do not need an inquiry to do so.

As regards what we are doing to protect looked-after kids in the future, I have set out a range of measures that can be taken without holding an inquiry. We are taking those actions now; an inquiry is not necessary to trigger them. For all those reasons, we are not convinced that an inquiry would be the right way of doing things.

Rosie Kane asked about missing files. I am more than happy to do whatever my powers allow me to do to help people to locate files. The best way for me to do that might be for me to encourage organisations to help

people to locate files. We have all sorts of contacts and arrangements with local government, which no doubt holds certain files. There are successor agencies to local authorities that may have access to files. I am more than happy to explore all of that. It is not in my—or anyone's—interest for such matters to be covered up in any way. The more they come out into the open, the better for all concerned. However, there are limits to my powers in that regard. We are talking about the need to interact with agencies that are entirely independent of Government, which must come to their own conclusions on such matters, but I will do everything in my power to encourage them.

Through Disclosure Scotland, we have new mechanisms for exposing people who may still be around in the system and who are believed to be guilty of abuse, and convictions have been made. We have other mechanisms, such as the register of people who are unsuitable to work with children, for alerting us to other individuals. Again, that is complicated territory, because of the burden of proof and the need to have evidence.

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It is not in my interest—in fact, it is the opposite of being in my interest—for there to be a belief that there are people in the system who ought not to be in it because they are guilty of past abuse. I encourage all the agencies and individuals involved in the system to state their position, to make clear their suspicions, doubts and concerns and to have them investigated by the police, by Disclosure Scotland or by the people who are responsible for the register of individuals who are unsuitable to work with children. We need to ensure that we continue to make progress. I do not want such matters to be hidden; the more they become public, the better the situation will be.

The Convener: Rosie Kane has had a good bite at the cherry.

Rosie Kane: Other members had the chance to follow up their questions.

The Convener: You had a long time to ask a series of questions. A number of members are indicating that they want to ask questions. I am trying to keep the discussion on the subject of the petition. I want members to restrict themselves in the questions that they ask; it would also help if the minister could provide shorter answers, although I understand that, if he is asked a long question, he will have to give a long answer.

Rosie Kane: I do not think that I took longer than anyone else.

The Convener: I will let you back in, but I ask you please to make your questions a bit briefer. If we also get some briefer answers, that will give everyone a chance and we will not have to go on for too long before we get to the point.

Rosie Kane: I do not doubt that the minister is attempting to remedy the situation, but I think that holding

an inquiry might be a more cohesive way of doing that. Perhaps we can learn from the experience in Ireland by approaching an inquiry in a different, more productive way.

Peter Peacock: I completely understand the arguments for an inquiry, but I have set out why the Executive has come to a different conclusion. We have dealt with the issue seriously and thoroughly, and I have set out where we stand.

Jackie Baillie: I will try to be brief. I will not rehearse the points about the public inquiry other than to say that I am disappointed with the decision. I am equally disappointed that it has taken two and a half to three years since many MSPs quietly raised the matter with ministers for action to be taken. However, I shall not be churlish but will welcome the fact that some of the things that you have said today are positive.

You said that you have an open mind about how you will engage with survivors of abuse. Can I push you on that? Your short-life working group

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was set up 18 months to two years ago and had nobody on it who had a background with an historical focus on institutional child abuse. In that respect, although the group's work is worthy, there is something missing. How do you intend to plug that gap so that it is not just a question of your officials saying, "Let's have a conversation", but a question of there being a permanent mechanism in place to enable people to be listened to?

My second question is about information release. I heard what you said about local government and health, where there are missing records. What about the freedom of information regime as it applies to religious orders that were part of that whole package of institutional abuse?

Thirdly, I would like to clarify something. You seemed to invite the children's commissioner to consider the matter and perhaps even pursue an inquiry. Did I pick you up correctly on that?

Peter Peacock: On your last point, no, I was not asking the children's commissioner to pursue an inquiry. I was simply saying that the whole policy field has changed since a lot of the abuse occurred to some of the individuals. We now have a children's commissioner who, at her discretion, can do what she likes in that regard. If she wants to hold an inquiry, she is perfectly capable of looking into matters that relate to the Executive's performance concerning its policy on abuse. I am not suggesting or encouraging that, but merely pointing out a fact. It is a matter for the children's commissioner to decide her priorities and the matters that she wants to investigate. I was simply observing a fact rather than making a specific invitation.

On your point about freedom of information, the short answer is that I do not know; however, we will find out and will give you an indication of the position. There is also an information commissioner who is, rightly, entirely

independent of Government and who would be able to give advice on the point that you raise. Nevertheless, we will establish that for you.

On your question about how open my mind is concerning engagement, I said that it is open and that is what I mean. I have an open mind as to how we do this. My officials have said to me in the past few days that one of the things that we, along with others, might think about is the fact that the short-life working group—for the reasons that you have given, as I acknowledged in my statement—concentrated on the survivors of sexual abuse. The issues that are under consideration here are much broader than simply sexual abuse.

One of the things that we might explore with people is whether we should continue that group but change its membership and allow that new group to take over the task and look at the things

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that people feel have not been covered because of the group's focus on sexual abuse. My mind is open to that idea. However, we need to explore that issue openly with people, as there might be other things that we can do and suggest, and find out where we can go with it. We will let those conversations take place in that spirit and work out the right way of dealing with it.

Notwithstanding the fact that its recommendations were specific to sexual abuse, the short-life working group has come up with some pretty powerful recommendations, some of which would change the way in which public agencies perform and our whole consideration of the recognition of sexual abuse as a contributory factor to other conditions, such as depression and psychiatric illness. We know from what the group is telling us that although different percentages of the female and male population are subject to sexual abuse generally in society, in particular groups in society, such as the homeless, substance abusers and psychiatric in-patients, the proportion of people having suffered sexual abuse is significantly greater.

We also know that there is an under-reporting of sexual abuse in the system. That means that when people go to their doctor with a depressive problem, for example, it is not often recognised that at its root might be sexual abuse, therefore the symptoms, rather than the causes, are treated. In the same way that those issues apply to sexual abuse, we need to apply them more widely to other forms of abuse that people have suffered. We have tried to capture more of an understanding of that and therefore to give proper care to people in those circumstances. Do not diminish what the working group has done, but let us also look at how we extend it.

12:30

John Scott: If the measures that are being put in place are so effective—and we all hope that they will be—why are the survivors of the abuse still seeking an inquiry? Most of them share the same goal as we have, which is

to ensure that abuse does not happen again. Do you accept that the public would be reassured by an independent inquiry that sought not only to uncover the problems of the past, but to evaluate whether the measures that have been put in place over the past 10 years, which you have described, are effective and whether other measures need to be taken? That is the important point. The minister will be aware that the Australian inquiry produced 39 recommendations, some of which go far beyond what you have suggested either needs to be done or will be done. That is why there is a strong case for an independent inquiry.

Col 1062

Peter Peacock: I completely understand that people would prefer a public inquiry for the reasons set out in the petition. I acknowledge where they are coming from. However, I have analysed the position that the Government took and how we examined the issue. We took the matter seriously, considered the issues and concluded that an inquiry would not cause things to happen that are not already happening or that we can make happen now. I have tried to acknowledge today that we completely recognise that people have been wronged in the past and that we need to redouble our efforts, but we do not need an inquiry to do that. That is why we have chosen the route that we have chosen, which is a different route from the one that the petitioner and others would much rather choose.

John Scott: The point is that you are judge and jury in this situation. The public are seeking independent reassurance, not just ministerial reassurance, but I am afraid that they are not getting it from you.

Peter Peacock: That is the privilege but also the burden of Government. That is why we are here. We have to make decisions and we are doing so openly. I have tried honestly to set out what our considerations were.

The kernel of your second point is whether an inquiry is necessary to evaluate the effectiveness of our policies, and I do not believe that it is. Part of what we are doing involves setting up a multi-agency inspection process for children's services, which we have not had before. Its purpose will be to test—independently of Government—whether our policies are working or need to be improved. When the inspectorate says that something needs to be done, it will get done. It is enormously powerful; it was designed to be so because we want people to scrutinise our actions independently.

I have also said that I am more than happy—we are planning to do this—to let the petitioner and his colleagues see all that we are thinking of doing on child protection. We genuinely want to get their feedback and to let them say, "In our experience, you need to add that dimension to your repertoire." If we think that such a suggestion is worth doing—and I have an open mind, because I want to have better child protection—we will do it. We do not need an inquiry to enable that to happen. We want to move forward on a range of issues.

I have read up on the Australian situation. You will appreciate that it is a Senate inquiry, not a Government inquiry. My understanding is that the Government has yet to reach a conclusion on the outcome of the inquiry. I happened to be in Australia earlier this year, partly because I wanted to compare our child protection policies with those of New South Wales, which had major problems

Col 1063

with child protection. I met the New South Wales commissioner for children and young people when I was there. From the conversations that we had, I know that while New South Wales has been making important policy changes, our policy approaches are regarded as significantly in advance of what is happening in Australia.

I am not in any way saying that I am complacent. I have also said that if I find anything anywhere in the world that will help us to add to our thinking on how we can better protect children, I will try to adopt it, because that is my job—I want to protect children better. Again, neither I nor any of my colleagues need an inquiry to tell us to do that. Child protection is at the top of our agenda and we will do whatever is necessary in that regard. If anybody wants to tell me about anything that they think that we should be doing, my ears are open. If we think that we can reasonably follow their suggestions, we will do so.

Ms White: No one is in any doubt about the fact that the survivors of the abuse do not want what happened to them to happen to anyone else. However, that is only one of the main issues. Another is that the victims want the fact that they went through those experiences to be recognised. They want to be believed. You have not mentioned that much today.

You have said that the Government is issuing an apology, but that the institutions can decide whether they do likewise. That is not good enough. There should be a Government recommendation that they say sorry and admit that the abuse happened. Without an inquiry, I doubt that that will happen.

You give three reasons why an inquiry would not be in the best interests of the public, the first one being that it would not bring about changes in current practice. However, in answer to Jackie Baillie's question, you said that the children's commissioner could examine local government agencies and so on, which means that you are admitting that abuse could happen again. That admission came out of this small inquiry that we have held today.

You also mention the fact that an inquiry would open up old wounds. That may be true, but it would also do something to rectify some of the suffering that the victims have gone through because, half the time, people have not believed that the abuse was happening. For example, the police were told of children's allegations about a particular person in a Quarrier's home, but the person was allowed to continue working in that home. I

would hope that an inquiry would stop those bad practices happening again.

You talk about an unfair and damaging loss of confidence in institutions. I have to say that there

Col 1064

will be a damaging loss of confidence in you, the Scottish Executive and the Scottish Parliament if there is no public inquiry because, as you said, people will think that the issue is being swept under the carpet because you have something to hide.

You mentioned the fact that, in Australia, the inquiry is being run by the Senate. To me, that is just hiding behind pieces of legislation. I am sure that the Australians will come up with appropriate recommendations as a result of the inquiry.

You say that you are setting up helplines and counselling services for people. Recommendation 6 of the Australian inquiry says that churches and institutions that were involved in the abuse should pay some form of compensation. That is close to what we are looking for in Scotland.

In the interests of the victims and to stop abuse happening to anybody else, we must have an inquiry.

Peter Peacock: My point about the Australian inquiry was simply a statement of fact: it was a Senate inquiry not a Government inquiry. The Australian Government is still to give its verdict on the recommendations and we will need to wait and see what its verdict will be.

I completely reject any allegation that the Executive is trying to sweep this matter under the carpet. I have gone out of my way today—

Ms White: In your opening statement, you said that, if you do not hold an inquiry, people might think that you are trying to sweep the matter under the carpet. I was just repeating what you had said.

Peter Peacock: That is the point that I was going to make. I acknowledge the fact that people might come to that conclusion if we do not hold an inquiry, which is why I have gone to the lengths that I have gone to today to try to make it clear that it is not in the Executive's interest to have the matter covered up. In fact, it is in our interest to have as much exposure of the issue as possible as that will ensure that we get our policies sorted out and are able to provide the protection that will ensure that such abuse does not happen again.

I have tried to say that I recognise that things happened to people in the system that were completely wrong. People can read the *Official Report* of today's meeting to see what I have said about that. However, I must stress that it is not clear that any inquiry, whatever its findings, could cause a third-party institution to make an apology. It might encourage that to happen, but it could not cause that to happen.

Ms White: Are you saying that, under existing Scottish legislation, if there were a public inquiry, the institutions concerned in the matter, such as churches and the Quarrier's homes, would not

Col 1065

have to give evidence or apologise? Surely that would make it worse for them.

Peter Peacock: That is what I am saying. Those agencies have to make decisions about what they do. They are autonomous, independent agencies; they are not part of the apparatus of the state. The state, or an inquiry, could not, in my view, require them to make an apology. Depending on the rules of engagement, the bodies concerned could potentially be required to give evidence to a parliamentary or other inquiry, but they could not necessarily be required to give an apology.

Ms White: We know that lots of these places—

Peter Peacock: But we have a situation in which—

The Convener: I do not want this to get into an argument. You have made your point, Sandra, and the minister has answered it. There are other members who wish to participate. The petitioner's constituency member, Janis Hughes, is with us; I invite her to ask some questions.

Janis Hughes (Glasgow Rutherglen) (Lab): I thank the committee for this opportunity to participate in the scrutiny of the petition. As the convener said, the petitioner, Chris Daly, is my constituent. I am aware of the large amount of support that he has attracted, both from the INCAS group and from further afield, in bringing the petition to our attention. He has asked me to mention letters of support from ChildLine Scotland, Children 1st, the Moira Anderson Foundation and the cross-party group on survivors of childhood sexual abuse. The INCAS group has collected 1,100 signatures from members of the public who support its aims.

You commented, minister, on the Irish inquiry, and also referred to the Australian inquiry. I believe that there was also an inquiry in Canada. Some fairly good inquiries into institutional childhood abuse have been taking place across the world. I am disappointed that you do not wish to hold an inquiry at this stage. You said that you understand and empathise with the survivors whom we are discussing and I am sure that you would understand that, notwithstanding your comments about the possible use of methods that have been proactively helping to stop institutional abuse occurring, the people concerned are seeking some sort of closure in relation to what has happened in the past. An inquiry is one way of aiding that process. You said that some survivors might not welcome an inquiry. Can you give us any evidence for that?

Peter Peacock: On your last point, we are aware from some correspondence that we have received that not everybody is seeking an inquiry. Some people would

rather than the resources that an inquiry would eat up went into providing

Col 1066

services. However, I do not wish to overstate that. I completely recognise that there are strong views from others who want an inquiry. I was simply recording the fact that not everybody wishes one.

Janis Hughes: You mentioned the number of legal cases that are pending. One problem relates to the files and records that were not previously available. I will ask you two things about that. First, you talked about the timescale concerning the files that you are in the process of redacting. Could you be more specific as to when we might expect those files? What is the extent of the information that they will contain?

Secondly, comment has been made this morning about other organisations, including the Catholic church and other religious orders. Have you met those organisations to ask them to make available information about the files that they hold? Although you can provide the files over which you have control, it may well be that other institutions are not coming forward so readily. Would you be prepared to meet representatives of those organisations and to encourage them to do as you are doing and release information?

Peter Peacock: I will start with the point about timescales. We want the files to be ready, and expect that to be the case, before Christmas. In practical terms, that probably means that the files will be physically available immediately after the new year holiday. I am not sure whether this has happened yet, but my officials are planning to show the petitioner the process of redacting the files, so that the petitioner, the INCAS organisation and others understand what that means. Redacting is quite a technical process. People should be reassured that it is being done in a thorough way.

I asked my officials about the extent of the information in the files the other day; there is the danger that we raise people's expectations too high. There is some personal information in the files, but there is also a huge amount of routine information about the institution as a place—about the building and its systems. There are inspection reports and a whole ragbag of other things in the files, including personal information.

As I indicated, we are making the files available to make it clear that we want people to see the information and to use it, if that is appropriate, when they pursue their particular interest. It is entirely in our interests to be open about that. I cannot say whether people will find what they are seeking; individuals will approach the matter from very different points of view. There will be a huge range of information in the files, some of which will be trivial. Some files will contain information about bits of buildings as well as individuals.

Col 1067

We have focused much of our effort on internal procedures for making clear the information that we have, which has taken us a bit of time. We have consulted Barnardo's and Quarrier's homes, which have a number of years' experience of the matter, about the action that they have taken and the sophisticated support systems that they have put in place. I have not yet approached the church or any other institutions—I do not think that my officials have done so, either—to encourage them to take action. I have an open mind and I see no reason why I should not do that. I will think about the point that Janis Hughes raised. As I said, there is no blockage in my mind about explaining to the church what we are doing, and sharing the process that we are going through, to encourage the institution to learn from that and make its files available to people. I would be more than happy to do that, but I will think about the best way of doing so.

12:45

Janis Hughes: That would be welcome. I am pleased that you have said on a number of occasions that you have an open mind and that the matter is not a closed book. I have a final question—I will be brief because other members want to ask questions. You said that you want to work closely with INCAS and that your officials have met the group. Will you meet the group to discuss how to progress that work?

Peter Peacock: I would have no difficulty with that. I would be happy to meet the group.

Mike Watson: When we started discussing the petition an hour and a half ago I was concerned, but now I am quite angry. The minister has not dealt with the issues. The Public Petitions Committee must try to deal with the petitions that come before it. I take it that you have seen PE535.

Peter Peacock: Yes.

Mike Watson: The petition explicitly calls for "an inquiry into past institutional child abuse"

and seeks an apology for that abuse. Although the information that the minister provided in his letter of 13 June and in his opening statement is important and refers to essential work that any Government should be doing—a Government that was not taking such action should be moving quickly to do so—the minister has not dealt with the petition. The petition is about what happened in the past. For one reason or another, people are locked into that past and cannot escape from it. Some of them might never escape from it—*[Interruption.]* Indeed, as a member of the public just said, some people have been driven to suicide. However, people want the opportunity to try to escape from that past.

Col 1068

The petition raises a fairly narrow issue, which you and your officials have widened in a way that is not helpful to the petitioner, although you are obviously dealing with

important issues. For example, one of the headings in your letter asks

"Whether an Inquiry would prevent future abuse".

That is not the issue. You have outlined action that might help to prevent future abuse. Your letter questions whether an inquiry would be in the public interest. There is a huge amount of public interest in the issue. Films have been made about it.

Perhaps the most surprising comment that you made was in response to Janis Hughes's question about the religious orders, when you said that you had not really thought about the matter and that you might look into it. Surely the matter is inextricably linked to the whole issue. I found your remarks worrying.

I am also worried about the great play that is being made of the short-life working group. As Jackie Baillie said, the group has been in existence for a long time and considers the survivors of childhood sexual abuse in general. The group does not consider institutional abuse—physical and psychological—it does not have a great deal to contribute to the issue and, as far as I can see, it does not have anything to contribute to the petition.

What can you say on the subject of the petition? The petitioner calls for an inquiry into past institutional child abuse. I accept that some of those who were subject to that abuse would not want to be part of an inquiry, but they do not need to be part of it. The petitioner also calls for an apology. I am aware that you cannot speak for outside organisations, but surely you could apologise on behalf of the state bodies—the list D schools and so on.

After an hour and more, surely we can have answers to those two questions without the minister needing to say what may or may not be the provision for ensuring that these things do not happen again.

Peter Peacock: Okay. As I acknowledged in my statement, and in my response to Jackie Baillie, I hope that I have recognised the limitations of the short-life working group in this respect. The group is constituted to examine childhood sexual abuse and the subject of PE535 is broader than that. I accept that completely. As I indicated in my response to Jackie Baillie, we are more than happy to look at how to broaden the scope of the group or at how we could continue the group so that the wider issues could be looked into. I have no problem with that whatsoever.

Col 1069

On the specifics of the petition, I have looked back through my notes but I cannot locate the note on the exchanges between the Public Petitions Committee and the Executive back in February 2003, at which time other issues that were part of what lay behind the petition were brought out and we furthered our knowledge of the concerns of the petitioner.

From the discussions that our officials have had with the petitioner, we know that he is concerned and anxious not only about past events, but about what happens today and in the future as a consequence of people learning the lessons of past experience. Mike Watson rightly pointed that out. I tried to deal with those issues in order to set out the whole picture of why we take the view that we do of the inquiry.

On the subject of an inquiry into past abuse, I have tried again today to set out that, if part of the purpose—and it has to be part of the purpose—of a public inquiry is to cause the Government to acknowledge publicly that there had been past abuse, there is no need for one, given that I have made that acknowledgement today. I said that we acknowledge that there has been abuse; children were wronged—

Mike Watson: With respect, that is not the issue. There is no doubt about that.

Peter Peacock: What I am saying is that that is part of the purpose of a public inquiry. We are not saying in any way that past abuse did not occur. We are saying that we know that it occurred in the system in the past.

I have also tried to go out of my way today to express our association, as an Executive, with the sense of outrage and betrayal that people feel. People carry guilt that they should not have to carry because they were not responsible for what happened to them. Indeed, the situation is quite the opposite: those people were the innocent parties. As members will see from the *Official Report* when they check it, I have tried to express our sorrow that those events occurred. I am trying to do that honestly and openly. I am not seeking to condone, hide or cover anything that happened in the past—it would be wholly wrong of me to do so.

Again, if that was part of the purpose of the inquiry, I am prepared to do that today without the necessity for an inquiry. The Executive came to its conclusions on an inquiry for the reasons that I have tried to set out as honestly as I can.

The Convener: We have six further petitions to deal with today. Two MSPs are visiting the committee to take part in this debate on PE535. I propose that we take their contributions now, after which I will close questions to the minister.

Col 1070

Karen Gillon (Clydesdale) (Lab): I have two questions, minister. First, what is the timescale for the Scottish Law Commission inquiry? My experience of the commission is that it takes rather a long time to come to a conclusion. Obviously, people are struggling with some of these issues and are debarred from taking legal action at this point in time. Secondly, acknowledging something is not apologising for it. Are you formally apologising for the actions of the state in respect of child abuse?

Peter Peacock: On the second point, as I have tried to make clear, we are in the midst of legal proceedings and

particular words have particular connotations in terms of those proceedings. I have tried to go as far as I can today in making it clear where the Executive stands, what we believe and how we empathise with people's feelings and recognise the consequences of what happened. I have expressed our profound sorrow, in concert with others, about the things that happened. That is as far as I can go on the matter today.

I will have to come back to the committee on the timescale of the inquiry. I am not clear about the exact terms of the correspondence with the Scottish Law Commission. Members will appreciate that any inquiry that the Scottish Law Commission carries out on matters of law takes some time, as these are complex matters. The important point is that the Executive has triggered the commission's consideration of the issues, to ensure that they are bottomed out for the future.

Linda Fabiani (Central Scotland) (SNP): I will be fairly brief. I concur absolutely with what Mike Watson said. There is on-going frustration about the failure to address this petition. The matter has been under consideration for an awfully long time. Way back in June 2003, the First Minister said that he had ordered a study of the Irish model. Are you willing to let us see the results of that study and what led you to conclude that there should not be an inquiry?

I understand that you are saying that you do not want an inquiry. You raised three issues. The first was the question of whether an inquiry would prevent further abuse, which has been well covered today. The second was the question of whether it would help to meet the needs of survivors. You said that some people might welcome an inquiry, but that others would prefer the issue not to be raised in public. I put it to you that many more people might come forward if an inquiry was held, as it would indicate to them that their experiences were worth listening to, with a view to improving our society. The shame and guilt that people talk about would be alleviated by an open inquiry.

Col 1071

Thirdly, you say that there is public interest in this matter, which is, of course, correct. In your letter you say that the public

"need to be reassured that such abuse cannot recur"

and

"that lessons have been learned."

However, first the public must know and recognise that the abuse happened on a fairly horrendous scale. That is apparent from the cases of those people who have been brave enough to come forward. Their claims deserve to be validated.

I understand that you may find it difficult to apologise at the moment because of legalities. Let us make the situation clear by holding an inquiry, so that you can

make a full apology and, I hope, strongly encourage the institutions involved to apologise as well.

I would like you to clarify one point. You say that individuals are

"pursuing their legal rights to compensation through the civil courts"

and that

"we would need to be very careful not to jeopardise that process through an inquiry."

Why would an inquiry jeopardise people's legal rights to compensation?

Karen Gillon mentioned the review of time barring. Is it in the Executive's power to say that cases such as this will not be time barred but can be carried through, with or without a review?

When you decided not to hold an inquiry, who informed that decision? Who did you consult about it? Did you receive information and lobbying from some of the institutions that may be involved?

Peter Peacock: To the best of my knowledge, we were not lobbied. I have not been lobbied by any of the agencies involved. If we had been lobbied not to do anything about the case, little regard would have been paid to that. Nothing of that sort has happened.

The time bar is a matter of law. If the Scottish Law Commission suggests that changes could appropriately be made, that will be a matter for primary legislation. I will check the record for the full detail of your question and come back to you on any technical points.

13:00

You mentioned jeopardising individuals' interests. If we held an inquiry, a range of issues would potentially come into play. I mentioned some of those in an earlier answer about the situation that has developed in Ireland and what has had to be done there to create a climate in

Col 1072

which people feel that they can give evidence on their experience not just as victims, but as members of institutions at a particular time. In those circumstances, all sorts of questions arise about protections and immunities that would allow people to feel able to give evidence. I cannot predict what would happen if an inquiry were held; I say only that all these issues would suddenly come into play. A number of individuals might also be advised not to pursue individual claims because of the imminence of an inquiry. Given what we have seen in other areas, we could be talking about many years before a person could make a claim, so potential issues arise in relation to that. There are also questions about burdens of proof and evidence in relation to inquiries. Given the nature of some of the concerns in this case, an inquiry would become a legalistic process because of the

interests of the different parties around the table. The rules of evidence at an inquiry are potentially different from the rules of evidence in court. All that I seek to say is that a range of considerations come into play when there is an inquiry. There is potential for unintended consequences from that process.

In answer to the question whether we know that abuse took place, I have tried to say clearly several times today that, yes, we do know that abuse took place. We are trying to acknowledge that that is entirely unacceptable for the reasons that I have set out. We do not require an inquiry to acknowledge that abuse took place. I understand the point about people coming forward. I encourage people to come forward, whether or not there is an inquiry. It is entirely in the interests of everybody in this situation—*[Interruption.]* I will try to answer the question of "To who?" from the public gallery.

The Convener: If members of the public did not shout out, that would allow—

Peter Peacock: Indeed, but I will take the question in the spirit in which it was intended. One could make representations to a range of people I have mentioned today, such as the police and other institutions and organisations—not least to people around this table—about matters that they believe require to be aired. As part of the work that we plan to do with survivors, I will look with my officials at opportunities for people to say what they feel they have to say to unburden themselves.

I am clear that we have given the petitioner access to a pile of paperwork that informed our decisions and there is no reason why the committee cannot have that as well.

The Convener: Thanks very much, minister. I appreciate your taking the time to answer questions in as much detail as you could. Committee members will now discuss among

Col 1073

themselves the information that you have presented us.

Do members want to take five minutes to collect their thoughts before we discuss our approach to PE535, or shall we just carry on?

John Scott: Carry on.

The Convener: Okay. As I said, we are in a process that is not unusual: we take evidence, we gather information and then we take decisions on what we can do in support of any petition that comes before us.

I want us to stay focused on what we should do now, having heard the minister's response. In the normal course, we would go back to the petitioner to say, "This is the information that we have received. What are your comments on it". In this case, the petitioner has seen the response from the minister and has already submitted a response to it. Members might wish to return to the petitioner in light of the oral evidence that has been

presented this morning. Other options might be available to us and I would be interested to hear if anybody has any suggestion as to what we can do, other than to go back to the petitioner. It is not that I want to sound dismissive in any way of views that the petitioner might have, but the petitioner has clearly expressed his views on the minister's response and I seriously wonder whether, in going back to the petitioner, we would be delaying our decisions unnecessarily. We could conclude here and now that we go back to the petitioner, leave it at that and then await the petitioner's response. However, in light of today's discussion and the strength of views that we have heard, I think that we want to be seen to be acting as positively as we can. It might be worth considering that. It might be a disappointment to the petitioner if we do not go back to him, but equally, it might be of some value to him if we drive on.

I suggest that we decide now about what we positively want to do with the petition. As I have mentioned before, the Conveners Group has discussed the time that is allocated to committees to hold debates on issues that come before them. I have always said that we would not take anything to the Conveners Group unless the committee felt that it should use that nuclear option. I wonder whether this petition might be one such matter and whether we could ask the Conveners Group to find time for us to debate the petition in the Parliament in our committee time. I throw that into the discussion, but I would be more than happy to hear any other suggestions from members.

Ms White: I think that that is a good move forward. The issue has been raised twice before in the Public Petitions Committee and people obviously get frustrated when we just say who we

Col 1074

will send the petition to. My idea was to send the petition to the First Minister with the recommendation that a public inquiry should be held, but I know that the clerk will say that we do not have the power to do that. Is that correct?

The Convener: Once we have considered the petition, we can do that if that is our recommendation, but we would not do it until we had taken all the evidence that we could. If our conclusion is that we should ask the First Minister to hold an inquiry, that is our conclusion, but I would resist doing that until we had concluded our considerations.

Ms White: That is what I wanted to clarify. I think that your idea of discussing the matter in Parliament is an excellent one, as that would give everyone the opportunity to have a say. Perhaps more evidence can be brought forward, and then we can make a decision. I absolutely support that suggestion.

John Scott: I agree. It is a good suggestion that we should debate the whole subject in Parliament. The Public Petitions Committee must do all that it can to represent the petitioner's views and those of others

elsewhere in Scotland who have suffered from such abuse. The minister said more than once today that he will do anything in the world to help, but the one thing that he will not do—and the one thing that the people of Scotland actually want him to do—is hold an inquiry. What is he afraid of? The questioning seemed to me to elicit the feeling that he is almost afraid of what an inquiry might reveal, and that is worrying. Debating the matter in Parliament would be worth while indeed.

Rosie Kane: That is an excellent suggestion. Today's acknowledgment is important, even if there was no apology. It is important to acknowledge that the abuse took place. I was not here when the issue was discussed previously, so what I am going to suggest might have been done, although I doubt it. John Scott is right to ask what people are hiding from. Do we have any way of communicating with the Catholic church and other agencies to see whether they will join in the minister's acknowledgement? Can we speak to them, write to them or communicate with them in some other way?

The Convener: My view is that we could. We write to all sorts of organisations that are mentioned in petitions. In fact, we decided some time ago that, if an organisation was mentioned in a petition, we would contact it to make it aware that it had been mentioned and to give it an opportunity to respond. What Rosie Kane suggests is something that we would have to do, rather than something that we might debate doing or not doing. We obviously want to invite any organisation mentioned in a petition to give its views.

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Rosie Kane: We need to make the church aware of the Parliament's acknowledgement that the abuse has taken place. We need to ask the church to express its acknowledgement and an apology, given that it says that sex education is child abuse. What the petition deals with is child abuse.

Jackie Baillie: I think that you will get unanimous support for your suggestion that the matter should be debated in the chamber. I know that a number of MSPs have been engaged with the issue in the past who would want that opportunity to be exercised.

There are some specific points, although they are not related directly to the terms of the petition, on which I feel we should push forward, simply because the minister invited us to do so. We want from him, from the INCAS group and from Christopher Daly views on the mechanism of engagement that they believe would be helpful in the future. None of that would preclude our having a public inquiry, but we could get specific information about all Government institutions that will be covered by the minister's commitment to the release of Government information. We should also explore whether the freedom-of-information regime applies to religious orders.

We should further write to the minister with a clear view about the timetable for the Scottish Law Commission, not

least because it is not just the commission that takes time to react to things; the Executive often takes time to consider reports from the commission, so time can be of the essence. The minister said that one of the key arguments for not having a public inquiry was that some survivors might not wish it. He suggested that letters were received. Without going into who the individuals are—that would not be appropriate—it would be helpful to know the scale of correspondence: whether it was from individuals and, if so, how many; whether it was from organisations; and whether it represents a significant view or a minority view.

Janis Hughes: Jackie Baillie's comments are helpful. I would welcome the opportunity to debate the issue in Parliament, because it is bigger than to require the involvement of just the Public Petitions Committee, as is shown by the fact that three MSPs who are not members of the committee are present. I know that a number of other MSPs also have an interest. The petitioner has specifically requested to be able to come to the committee because he was unwell when the petition was presented and was therefore unable to attend. I want to confirm that you would seek the petitioner's view on today's proposals. A parliamentary debate would certainly be welcome.

The Convener: We automatically advise petitioners of the outcomes of our discussions and

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the decisions that we have made. I understand that the petitioner wants to come before the committee, but he has had a few opportunities to contribute to our discussions in writing. I wonder whether there would be value in holding up the progress of the petition just to give the petitioner the opportunity to come before the committee. I do not mean to be dismissive; the petitioner will get the opportunity to respond in writing to everything that has been discussed this morning.

Campbell Martin: I support our taking the petition to Parliament for debate. If we were to do that, would we as a committee lodge a motion in the same terms as the petition?

The Convener: We would have to think about the wording, but the motion would be that Parliament debates PE535. The discussion would be around the petition. We would have to get the form of words right, but the purpose of the motion would be to get Parliament to discuss the petition.

Campbell Martin: How quickly is that likely to happen?

The Convener: We would have to go to the Conveners Group and be allotted a slot, just as the political parties are. I would argue that the petition be given priority, but I cannot guarantee a timescale.

John Scott: It would also be a matter for the Parliamentary Bureau and the Minister for Parliamentary Business to slot in a debate if the Conveners Group agreed.

The Convener: The business bureau allocates time to committees; the Conveners Group then allocates the committees the time, if you see what I mean. We have to enter into discussions about priorities and allocation of time, which is why I cannot guarantee when a debate would take place.

Karen Gillon: I welcome the convener's comments and suggestion. It is entirely appropriate that the committee, rather than any one political party, seek a slot to debate the petition. The degree of consensus around the table is important; if we can build on that momentum, we will begin to achieve what the petitioners seek. It is entirely appropriate that the committee rather than any individual or party drive forward the issue.

The Convener: I do not know what slots are available between now and Christmas, but I will go to the Conveners Group and ask for a slot if one is available. I will obviously come back to the committee and tell you what is available and what we have been able to achieve. I give you the commitment that I will go to the Conveners Group seeking the earliest possible slot in the timetable, which I hope will be before Christmas.

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Are members happy to write to all the interested bodies and to pursue the proposed course of action?

Members *indicated agreement.*

13:15

The Convener: Do members want five minutes' break or will we press ahead?

Jackie Baillie: Given that many members have other commitments—

The Convener: We will press on.

Jackie Baillie: I was going to suggest that we hold petitions over for a future meeting. Would that be difficult?

Helen Eadie: Do we have a meeting on Tuesday?

The Convener: We have a meeting on Tuesday, but people have sat all the way through today's meeting.

Jackie Baillie: Fine.

The Convener: I ask members to bear in mind the time. I want to give each petition adequate time. We will choose which petitions to hold over. If members stay focused, we will go through the petitions as quickly as we can.

High Court (Appeals System) (PE617)

The Convener: Petition PE617 is on establishing a system of independent appeals against High Court decisions. The petitioner calls on Parliament to take the necessary steps to establish such a system.