

From: Colin MacLean
CYPSC Group
16 June 2004

1. Minister for Education and Young People
2. First Minister

LIST D SCHOOLS

Issue and recommendation

1. The Public Petitions Committee has written to you about PE535 which asks for an inquiry into allegations of past abuse in residential schools; they have also written to the First Minister to complain about delay in answering their letters on this petition. There are four further pieces of outstanding correspondence on this issue.
2. I apologise for the time taken to resolve this matter and provide you with draft responses. The issues are complex, but it has taken too long to reach a conclusion. We will consider how to improve internal processes to prevent this recurring.
3. This submission proposes a draft reply to the Committee and the other outstanding correspondence. We will provide separate advice on the letter to the First Minister. **You are invited to agree the wording of the attached draft responses.**

Background

4. The key question to be addressed is whether to hold an Inquiry into allegations of historic abuse in residential children's homes. In order to answer that question, we have considered four related issues:
 - i. **whether we have taken sufficient steps to prevent future abuse in residential care settings:** things have changed beyond recognition since the alleged events in question. We have a more rigorous programme of institutional inspections, are taking forward the Child Protection Reform Programme, and – as part of that – are establishing rigorous standards and inspection regime. Given the wealth of research, inspection and inquiry evidence available to us, we do not believe an inquiry would lead to significant further improvements in provision or practice.
 - ii. **whether we are providing sufficient, high quality services for individual survivors:** HD is leading on work for survivors of childhood sex abuse; a conference was recently held and the independent group will report to Ministers soon. This work will form the basis for deciding whether we need to provide enhanced or different services for these survivors. We do not believe an Inquiry would add usefully to that exercise.
 - iii. **whether we are providing sufficient support to meeting the legal interests of individual survivors:** the lead civil cases are due in Court on 8 June to consider whether they are time barred. The judgement is likely to be at least a couple of months after the hearing. We have postponed considering compensation from the Executive until this is decided. We have already provided files and papers to the pursuers under court order. We are planning to put all our relevant papers in the

public domain suitably redacted (anonymised to prevent the identification of individuals) to help claimants and to build public confidence. We do not think an Inquiry would lead to enhanced support for those taking legal action.

- iv. **whether an Inquiry would lead to enhanced public confidence in the system:** The public has an interest in whether we have taken action to prevent further abuse, to meet the needs of individuals, and to support due legal process. The changes in residential care since the events complained of should reassure the public that widespread abuse could not now happen. We will be taking action once the HD working group reports to provide any further support needed by survivors. That would include any action required to support anyone who wished counselling or other support which might lead to a new legal case being raised. We are actively taking steps to put the relevant information held by the Executive into the public domain both to help survivors and demonstrate we are not withholding knowledge of widespread abuse. We considered whether the public might be reassured by the existence of an Inquiry. We think the public reaction would be unpredictable. It might be perceived as a means of ensuring there were no residual issues, but it might be perceived, mistakenly, as an admission that there were issues still to be resolved, and lead to an unfair and damaging loss of confidence in existing provision.
5. Finally, we considered what form an Inquiry might take, and whether it might lead to positive outcomes that outweighed the above.
- An Inquiry could be held in public. That raises difficult questions about how to safeguard the rights of those who might be named or otherwise identified (including staff and other residents, and any survivors who might find it distressing to have the issue raised again in such a high profile way). It is hard to see how such an Inquiry could be held while any court cases were still active without potentially contaminating that legal process. We believe that it would be better to support due legal process and address the needs of individual survivors than to hold a public Inquiry.
 - An Inquiry could be held in private. Typically, such inquiries allow survivors to tell their stories to help them achieve closure, and to enable the system to identify any unidentified and unresolved cases or issues.
 - We believe it is in the interests of survivors to provide more targeted support to meet their individual needs, rather than subject them to the rigours of an Inquiry.
 - We recognise that new cases might emerge from a study of the evidence base. However, we are aware that individuals who were the victims in such cases might not welcome the case being raised by someone else. Our judgement is that, on balance, it is better to support individuals who ask if we hold evidence, rather than proactively invite them to consider whether they wish to raise a case.
 - We considered whether an Inquiry might unearth issues not yet identified and tackled. Our judgement is that this is unlikely, and that the opportunity cost of doing so would be the diversion of experts from the work they are doing to take forward the Child Protection Reform Programme. We recognise that this is a matter of judgement, since the only way of testing this assertion would be to conduct an Inquiry.

- An Inquiry could be conducted less formally by a single individual, who would examine the evidence and consider whether or not there were lessons to be learned or further cases that might need to be investigated.
 - It would make sense to announce the existence of such an exercise, since one of the key objectives would be to reassure the public that we had carried out the investigation. In any case, if we carried out the exercise in secret, we would – understandably – be assumed to have something to hide.
 - Once the exercise was known about, it would assume the status of the private inquiry described above, since it would be difficult to refuse to take evidence from survivors (and that evidence would have to be taken in private).
 - The arguments for and against this option then become broadly the same as for the private inquiry.

6. On balance, it would not be helpful to hold an Inquiry into this matter, although there are strong arguments in favour. **This is the conclusion that the Ministers for Education, Finance, Justice, the Deputy Minister for Education and the Solicitor General reached unanimously when they considered this matter last year.** Ministers also concluded that it is important to ensure we provide high quality support to survivors, learning from the good practice developed by Barnardos and others. (We have already had detailed discussions with Barnardos about the approaches they have used – although there might be negative reactions from survivors if they were directly involved in providing that service). It is also important that - in any public statement – we stress that we are being open with information, and are acting in what we regard as the best interests of the survivors, and current residents. It will also be important to stress the work we have done, and are doing, to ensure the protection of children living in residential homes.

Letters

7. The attached draft replies to the outstanding GFs and PE535 have been restructured from the drafts attached to the submission of 20 May to make the above points more clearly. Two of the GFs were to the First Minister. One reply, to Andy Kerr, is drafted for the First Minister's signature. This submission asks for clearance from both Ministers to the replies. When these letters have been cleared for issue, we will inform Who Cares? Scotland, Barnardos, Quarriers and survivors groups of our proposed way forward.

Conclusion

8. We remain of the view that, given the other work that is being done, an inquiry would not reduce the risk of future abuse, or help to meet the needs of survivors of past abuse. We recognise that this is a finely balanced judgement, and that correspondents may wish to have further exchanges with the Minister, or with officials.

9. We **recommend** that you write to those concerned in the attached terms, explaining the arguments against holding an Inquiry, but offering further discussions.

Colin MacLean

CYPSC Group

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16th June 2004