

From: Gerald Byrne
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Minister for Education and Young People

Copy to: PS/First Minister
PS/Deputy First Minister
PS/Deputy Minister for Education and Young People
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PE535 – MR CHRISTOPHER DALY

Purpose and Recommendation

1. To seek the Minister's agreement to the draft Memorandum to the Public Petitions Committee on PE535 on past institutional child abuse. The Memorandum states that the Executive has no plans to hold a public inquiry into this matter at present.

Priority

2. **Immediate.** The draft memorandum has to be returned to the Committee Clerk by 15 November.

Background

3. The petitioner, Mr Christopher Daly, asks that the Scottish Parliament urges the Scottish Executive to hold an inquiry into past institutional child abuse, in particular of children who were in the care of the State under the supervision of religious orders. The petitioner also asks the Scottish Parliament to make an unreserved apology for said State bodies and to urge the religious orders to apologise unconditionally. The Public Petitions Committee, through the Committee Clerk, has asked for the Executive's comments on the general issues raised in the petition. In particular the Committee requests details of the Executive's position on the petitioner's calls for both an apology to victims of child abuse in the circumstances described and for the initiation of a related inquiry.

4. The style of inquiry that Mr Daly is seeking would appear to some extent to be based on the example of the 'Commission to Inquire into Child Abuse' in the Republic of Ireland.

The Irish Government established the Commission in 1999 to look into allegations of institutional child abuse. The Commission operates through two committees. A Confidential Committee provides a forum for victims to recount their experiences on a confidential basis. An Investigative Committee undertakes investigations into allegations of abuse. The Irish Prime Minister also issued an apology on behalf of the State to the victims of child abuse. There have also been allegations of institutional abuse in Australia, the United States and other countries.

Evidence of Institutional Abuse in Scotland

5. There have been a number of complaints of child abuse in residential institutions in Scotland in the 1950s, 60s and 70s. Some of these have resulted in criminal convictions. Complaints have also been made directly to the Executive, including requests for action to be taken to amend the law and to provide compensation to victims. The Minister was copied a submission of 23 October from Peter Beaton of Civil Justice and International Division to the Deputy First Minister, on the issues on compensation to victims of abuse and prescription and limitation issues. Solicitors Ross Harper are pursuing a number of cases against the Catholic Church seeking damages for alleged victims of abuse. Many of these cases relate to events that occurred several decades ago. Some complainants have encountered difficulties due to the law on prescription and limitation of actions which, broadly speaking, imposes a cut-off period on the rights of individuals to seek reparation in respect of past harm. There have been requests for the Executive to consider amending the law. As this would have a much wider impact than the cases of institutional abuse officials have suggested the Scottish Law Commission could be approached to consider this issue.

6. The Executive has also been asked to establish a Compensation Fund for victims, partly because victims may be unable to seek compensation through the courts due to passage of time that has elapsed since the alleged abuse took place. Such funds have been established overseas, though not necessarily wholly funded by the State. In the Republic of Ireland, the Roman Catholic religious orders contributed £81m to a fund to compensate the victims of abuse. At present our line is that we have no plans to establish a compensation package at this stage but Ministers' views on this issue have been sought.

7. Scottish Ministers are currently involved in a number of civil actions in connection with alleged abuse at former List D Schools, including St Ninian's Gartmore, in the 1950s, 60s and 70s. The Executive has also been asked to provide documentation, mainly reports from HMI Inspectors, in relation to these cases and also in connection with one criminal prosecution. These cases are currently before the courts and OSSE colleagues have advised that they should not be commented upon in the memorandum.

Discussion

8. Having consulted colleagues in Justice Department and Social Work Inspectorate our advice is that the Executive should not institute an inquiry into institutional child abuse at this time. We see two main reasons for this:

- The nature and scale of the problem appears to have been different in Scotland. There is not currently evidence of systematic widespread abuse throughout the residential establishments in Scotland such as appears to have existed elsewhere.

- The need for improved child protection is already being addressed by the Executive. Most of the cases that have been highlighted relate to events twenty or more years ago. There have been investigations and reports on child abuse and child protection in the intervening years. For example, as the Minister is aware, there was an inquiry into the abuse of children in residential care in Edinburgh, which was published in 1999, and the Scottish Office published the Children's Safeguards Review, along with guidance in 1998. The Executive is already taking forward a number of initiatives to strengthen child protection, such as inter-agency audit and review of child protection due to be published shortly, which are highlighted in the draft memorandum.

Apology

9. The petition asks that the Scottish Parliament makes an unreserved apology for the State bodies and urges the religious orders to apologise unconditionally. The clerk's letter asks for the Executive's view on an apology. The decision on whether the Parliament should apologise is obviously one for it to make itself. Nonetheless we do not think that it would be appropriate for the Parliament or the Executive to issue an apology at present when the extent of the State's responsibility for institutional abuse is unclear.

Presentation


10. The Minister will be aware of recent press coverage of a former care home worker at Quarrier's Village who was convicted of child abuse, and the recent decision of the Lord Advocate not to prosecute a nun accused of abusing children in Kilmarnock. Given the press interest in these issues the petition and the Executive's response may attract attention. A further press line will be prepared in case of press interest.

Conclusion

11. Any cases of abuse that come to light are obviously a matter of concern. However, there is currently no evidence of widespread, systematic abuse of children in institutions in Scotland. There have also been recent developments in child protection that mean that it is unlikely useful lessons could be learnt from cases some time ago. We do not therefore think that there should be a full public inquiry.

Recommendation

12. We invite the Minister to agree the attached draft memorandum to the Public Petitions Committee stating that the Scottish Executive has no plans at present to undertake a public inquiry into institutional child abuse.

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13 November 2002

MEMORANDUM

Response from the Scottish Executive to the Scottish Parliament Public Petitions Committee on the petition submitted by Mr Christopher Daly.

PE535 Petition by Mr Christopher Daly calls for the Scottish Parliament to urge the Scottish Executive to commence an inquiry into past institutional child abuse. The petition makes particular reference to children who were resident in an institution in respect of which State bodies had regulatory or supervisory functions, in particular those in the care of the State under the supervision of religious orders.

The petition requests that the Scottish Parliament makes an unreserved apology for the State bodies and that the Scottish Parliament urges the religious orders to apologise unconditionally.

In particular the petition asks the Scottish Parliament and Scottish Executive:

- To afford victims of institutional child abuse in Scotland an opportunity to tell of the abuse they suffered to a sympathetic experienced forum.
- To establish a picture of causes, nature and extent of physical, sexual and emotional abuse of children in institutions from around 1940 or before until the present, including the antecedents, circumstances, factors and context of such abuse, the perspectives of the victims and motives and perspectives of the persons responsible for committing the abuse.
- To compile a report and make public, on the activities and findings of the inquiry, containing such recommendations as the inquiry considers appropriate including actions which should be taken to address the continuing effects of the abuse examined by the inquiry.
- To appoint specialist advisers [to] supply information or elucidate areas of complexity, to conduct investigations, hold hearings, both private and public and conduct or commission research for the purpose of carrying out these terms of reference.

Scottish Executive Response

1. The Scottish Executive has no plans to hold an inquiry into allegations of institutional child abuse at present. The Scottish Executive is aware of recent court cases and of a number of representations from victims of child abuse which have been made to the Executive.
2. The Scottish Executive has given careful consideration to the request but are not convinced that sufficient evidence of past widespread systematic child abuse in residential institutions exists at present to warrant an inquiry. The Scottish Executive also considers that a general apology on behalf of public institutions to victims of child abuse would not be justified at this time.
3. The Scottish Executive is committed to ensuring that appropriate systems are in place to protect vulnerable children from abuse. Much has been done to improve child protection in recent years and further measures are planned including:

- A review of the safeguards in place to protect children in residential care from abuse and their effectiveness was carried out by Roger Kent, and a report of the review, *Children's Safeguards Review* was published by the Scottish Office in 1998. Many of the report's recommendations have now been implemented.
- Guidance on inter-agency collaboration in child protection was published at the same time.
- The Protection of Children (Scotland) Bill currently at Stage 1 provides for a list of persons unsuitable to work with children in either paid or unpaid employment. Those on the list will commit an offence if they apply to work with children as will organisations which employ a listed individual. The Bill is an important piece of legislation which will close a loophole currently allowing people who have lost a child care position – over clear concerns about their conduct towards children – to then find other positions working with children.
- An inter-agency audit and review of child protection in Scotland was set up in March last year following the Hammond report into the death of Kennedy McFarlane. The Review has looked at ways of reducing child abuse and neglect and ways to strengthen services for those children who have experienced abuse or neglect. The review report, including recommendations, is due to be published shortly.

The Scottish Executive does not consider that an inquiry into the events mentioned in the petition would add to the lessons learnt from this recent work.

Scottish Executive Education Department
November 2002