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pages 267-284,
KNC 1156, p. 8From: Gerald Byrne
ED-LACYD
20 May 2004**Minister for Education and Young People****ALLEGATIONS OF ABUSE AT RESIDENTIAL SCHOOLS****Purpose and recommendation**

1. We recommend that we continue with our policy of releasing Executive files and looking at services for survivors as our response to allegations of historical claims of abuse at List D schools and that we reply in these terms to outstanding GFs and a public petition.

Priority

2. **Urgent.** The GFs have been outstanding since last year.

Background

3. In autumn last year Ministers considered various options for dealing with allegations of historical abuse at List D schools. Ministers agreed that a full inquiry or truth and reconciliation commission was not justified but that the Executive should examine ways of releasing as much information held by the Executive as possible. It was also agreed that the emphasis should be on services for survivors, starting with existing HD work on survivors of childhood sex abuse. Officials would also consider how other organisations and jurisdictions had handled similar claims. In December the First Minister asked that a further option – appointing an expert (without a working group or committee) to review the position, recent developments and recommend any procedural changes – be considered.

Discussion

4. Annex A considers the First Minister's proposal. Our conclusion is that an independent expert raises the similar disadvantages as an inquiry or commission, and that its advantages do not outweigh these.

5. Recent developments and next steps are described at Annex B. We have now redacted files for release under the Data Protection Act, which has shown that each file takes an average of two working days. We estimate there are a total of 300-400 files that would need to be redacted for public release making a total of 600-800 staff days of effort. We have also met Barnardo's and Quarriers, whose experience shows that files cannot be released to people who were in these establishments without counselling and support being available. The HD short life working group on services for survivors of childhood sex abuse has now completed its initial report. The next step will be a conference on its emerging conclusions on 28 April, after which the group will finalise its report for presentation to Ministers in June.

Next steps

6. We recommend that we continue with our previous strategy of releasing all the information on List D schools and other residential establishments held by the Executive, suitably redacted. The next steps will be to consult further with OSSE to ensure that the

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redacted files meet our Data Protection Act requirements, and to consider what support arrangements we should offer to those who wish to see the files. We plan to consult Barnado's further on this, and, possibly, representatives of survivors.



Presentation

6. There are four outstanding GFs, to Fiona Hyslop, Jim Wallace, Andy Kerr and Linda Fabiani, as well as a reply to the Petitions Committee. Draft replies to each of these, reflecting the latest position, and in the case of the GFs, offering a meeting with officials, are attached.

7. As we are still establishing the next steps, and there is no particular media interest at them moment, we would not propose any further presentational initiatives.

Conclusion

8. The option of investigation by an independent expert has some advantages, but it retains the fundamental problem of not having a clear purpose that would satisfy those involved. We therefore conclude that we should continue with our focus on releasing Executive material, with suitable support, and looking at services for survivors.


Gerald Byrne
ED-LACYD
VQ
Ext 

20 May 2004

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interests	Constituent Interests	General Awareness
First Minister					X
Deputy First Minister					X
Minister for Justice			X		
Minister for Health and Community Care			X		
Minister for Finance and Public Services			X		
Deputy Minister for Justice			X		
Deputy Minister for Education and Young People			X		
Deputy Minister for Health and Community Care			X		
Deputy Minister for Finance and Public Services			X		
Lord Advocate			X		

- PS/Perm Sec
- PS/ED
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- PS/HD
- PS/LPS
- PS/CSD
- Colin MacLean, ED-CYP
- Susan Neilands, ED-LACYD
- Catherine Rainey, ED-C&F
- John Galilee, ED-ISU
- Jinny Hutchison, HD-CCD
- Dave McLeod, HD-CCD
- Elizabeth Carmichael, JD-CJS
- Fiona Robertson, OSSE
- Gillian Nelson, OSSE
- Neil Ross, OSSE
- John St Clair, OSSE
- Gordon McNicoll, OSSE
- Stuart Foubister, LSLA
- Tim Ellis, FOI Unit
- Mike Neale, FOI Unit
- Paul Cackette, Civil Justice & International Division
- Jane MacKenzie, Records Management
- Ian Taylor, Records Management
- Laura Mitchell, NAS
- Hugh Hagan, NAS
- Press First Minister
- Press Education
- Press Justice
- Press Finance and Public Services
- Press Health
- Bill Gilchrist, Crown Office
- Adrian Colwell
- Sam Ghibaldan
- Jeane Freeman

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ANNEX A

INVESTIGATION BY OUTSIDE EXPERT

1. An independent expert would be appointed by the Executive to review the files held by the Executive, take other evidence (including interviewing those complaining of abuse and staff and others involved at the time) and review practice to see if there are any lessons to be learnt. We assume that the inquiry would be carried out in private, with no evidential rules or legal representation. Although the expert could come to a conclusion on the existence and extent of abuse, he or she would not name individuals in the report.

Advantages

2. The advantages of this approach are:
- i. it would give survivors an opportunity to be heard by an independent person, in private;
 - ii. the expert could take into account the developments in residential care practice in recent years;
 - iii. it would be comparatively inexpensive given the lack of legal representation;
 - iv. it would avoid complications with current legal actions which could continue at the same time.

Disadvantages

3. The disadvantages would be:
- i. it would not satisfy those who want compensation or findings of guilt against individuals;
 - ii. it could only take place in private, and so would be open to criticism;
 - iii. the personal evidence it hears would be self-selecting, unbalanced and untested;
 - iv. there is a risk it might take a considerable period of time as it is conducted by an individual (with secretariat support from the Executive) and it is not clear how many people might wish to come forward.

Conclusion

4. Our conclusion is that an inquiry by an expert has the same drawback as a commission which is that it is unlikely provide a satisfactory resolution to demands from survivors for a public hearing or compensation, and that it is unlikely to produce recommendations relevant to current practice which has changed considerably. This is not outweighed by the advantage of having an independent person to whom survivors can tell their story.

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ANNEX B

PROGRESS TO DATE

Redacting Files

1. Eleven files identified in response to applications under the Data Protection Act have now been redacted. They will be ready for release shortly. From this exercise it is estimated that each file takes an average of two staff days to redact. A number of other lessons have been learnt from this exercise, primarily that redacting is not a straightforward process. As well as names, a number of titles and other information that might identify individuals has to be redacted. There are many instances where judgement has to be exercised, and a degree of consistency of practice then imposed by review of the files (which needs to be done on the redacted files before they will be ready for release). We will also need to seek further legal advice from OSSE to ensure that we are meeting our Data Protection Act duties before they can be released.

2. We have so far identified 300-400 files relating to residential schools and children's residential institutions from the 1950s-1970s (there might be more in the 1980s that are currently being looked at). Random sampling of 30 of those files identified has shown that the vast majority of these would be of interest to those looking at this area, either because they relate to the running of particular establishments or they relate to wider policy and management questions regarding the schools (we have been asked for such files in the existing civil cases). We have therefore concluded that some 600-800 days of staff time is required to redact all of these files. Experience suggests that a dedicated team building up experience in the judgements required and cross-checking each others' work would be the best way ahead. The staff concerned would have to have a grasp of the subject matter to make the necessary judgements. Ten staff would complete the task in three to four months, five staff in six to eight months. We would expect the time taken to be at the lower end of these estimates as the team built up experience. Assuming staff at B1/B2 level, our estimated cost is around £75,000. Accommodation would also be required.

Meeting Barnardo's, Quarriers and survivors

3. We have met both Barnardo's and Quarriers and representatives of the group In Care Abuse Survivors (INCAS).

4. Barnardo's have extensive experience in this field, including allowing former Barnardo's children to see their files. This clearly shows that sensitive support must be put in place when giving access to papers from the childhood of these people. Even if the person did not suffer direct abuse, the memories of this period of their lives can be extremely traumatic. We intend to pursue further with Barnardo's this issue to see how we should support those wishing access to our files

5. Quarriers have also made available personal information to former residents in a supported way. Where the individuals have been reluctant to visit Quarriers headquarters, due to their associations with Quarriers Village where some abuse took place, arrangements have been made to provide the information at an alternative place. One of the applicants to the Executive is resident in Australia and we will have to consider how to make this information available to applicants outwith Scotland.

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6. We have also met INCAS, the only organised group of in care abuse survivors. It is clear that this organisation is small and a very early stage of its development. It is also clear that they do not speak for all, or possibly many, survivors. However, the others are difficult to access. It is dominated by one or two personalities and needs to formalise its structure and broaden its membership before it can be a useful body for us to work with. There are a number of different agendas within its current leadership. Some want prosecutions and compensation, and are prepared to pursue this through the media. Others prefer to work more quietly and are looking at services to allow survivors to recover. Our first meeting with them useful to establish contact and allow them to know the Executive is taking this matter seriously, but we will want to see how the organisation evolves before building stronger links.

Health services for adult survivors

7. The HD short life working group on services for survivors of childhood sexual abuse has produced its initial draft report. Its main recommendations are:

- an awareness campaign;
- a training strategy for professionals;
- self help tools for survivors;
- development of local services in line with best practice, including support for non-statutory services, improving mainstream provision and more specialist services for the most severe cases;
- better data collection; and
- a network of researchers and practitioners.

8. The next step was a conference on 28 April with professionals from a wide range of interested parties to discuss the group's emerging conclusions. The Group will consider the feedback received, finalise the Report, and submit this to Ministers for consideration by June.

Civil cases

9. The lead civil case – *McEwan v Hendron* – is due in court in June for legal argument on whether the Pursuer has a legally relevant case against the Executive, and whether the case is barred by the passage of time. The Executive has been served with further, extensive requests for documents by the pursuers, including files on the policy, management and inspection of List D schools. This indicates that the pursuers are keen to keep the Executive as a defender in the action.

10. As the requests for further documentation are extensive, the pursuers have asked for a Commissioner to be appointed to consider which papers are relevant and should be released to the pursuers, possibly redacted. This will reduce considerably the burden on Executive staff in meeting these requests, and can proceed in parallel with our own redacting.

Ministerial Correspondence & Briefing by Officials

11. Four GF replies remain due: to Fiona Hyslop MSP to her letter of 24 July 2003; to Adrian Sanders MP and the Deputy First Minister to their letter of 27 August 2003; to Linda Fabiani MSP to her letter of 3 October 2003; and to Andy Kerr MSP to his letter of 12 January 2004. You will want to note that Mr Kerr is writing on behalf of his constituent

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Frank Docherty, who is the Chair of INCAS. We also owe the Petitions Committee of the Parliament a reply on PE535. We initially replied to this in January 2003, but the Committee have been looking for further details of our actions and timetable. Draft replies are attached. These aim to be as open as possible in describing the actions the Executive has taken and our thinking. In the case of the GFs we also offer a further briefing from officials.



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Our ref: 2003/0016697

May 2004

ST NINIAN'S SCHOOL

Thank you for your letter of 24 July regarding St Ninian's School, in particular about access to files. I must start by apologising for the delay in replying to your letter but you will appreciate this is a difficult subject and we have been examining the way ahead very carefully.

We have considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At this stage we have concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place. Public inquiries tend to be used in cases where there are important lessons that can be learnt for future public policy, or where there is evidence of a widespread or systemic failure. As the abuse in these cases happened some years ago, we do not consider that a public inquiry could produce recommendations relevant to the current system of residential child care. Neither does the number of allegations made indicate a failure of the system of residential care. We do not believe that any other form of inquiry by the Executive is likely to meet the needs of survivors. There are also a number of civil claims currently before the courts, and we have to ensure that any action taken by the Executive does not jeopardise these actions.

Instead we propose two responses to these cases. First, to make public information held by the Executive on List D schools and other residential establishments. Second, to look at the services available for adult survivors of abuse.

As you say, the Executive holds a number of files relating to List D schools and other children's institutions. Access to these files has been sought in the civil cases that are underway, and it is clear that they can be of help in these cases or that access to them can help survivors understand the background to the schools and their management. The Executive also wants to be open about the information we hold in relation to these cases.

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 Version 1.1

However, the files contain personal details about pupils and teachers. We have a duty to protect the personal privacy of these individuals and 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 they contained such information, which you refer to in your letter. We are now in the process of redacting relevant files, that is blocking out names and other sensitive information. This is a time consuming process and there are practical issues in carrying this process out, but this should allow us to make the information we hold publicly available.

We are also aware, having consulted organisations that have carried out similar exercises, 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. We are therefore examining what sort of support should be available to individuals who come forward seeking access to files. When these arrangements are in place and the files are redacted we will make them available, but that is not likely to be before the end of this year.

We are also looking at ways to improve service responses for adult survivors of sexual abuse. A short life working group, established by Malcolm Chisholm, is looking at services for adult survivors of childhood sex abuse, has produced its first draft report and has held a conference in Edinburgh on 28 April to discuss its emerging conclusions. It hopes to report to Ministers by the summer. Its scope is broad, and goes beyond those who were abused in the setting of a residential institution. It is considering the best ways for designing and delivering services for survivors, the need for improved awareness and training of the traumatic impact of such abuse, and where further research may be needed. While focused on survivors of sexual abuse, it is acknowledged that more can be done to improve the links with child protection, domestic abuse, and victims' strategies. We will need to consider the application of recommendations for those alleging other forms of abuse.

In considering the issue of abuse at residential institutions more generally, I think it is worth recognising the improvements that have been made generally in systems and services to protect children. Since 1995, HM Inspectorate of Education has carried out inspections of boarding schools and hostels. From April 2002 the Scottish Commission for the Regulation of Care has regulated and inspected care homes for children. In November 2002 we published the report of the inter-agency audit and review of child protection in Scotland - *It's everyone's job to make sure I'm alright* - and a three year child protection reform programme is now being taken forward. In March 2004 we issued *Protecting Children and Young People - The Charter* and a Framework for Standards to help translate the Charter into practice. These set out what children, their parents and members of communities can expect from agencies tasked with the protection of children.

I am aware that we have taken some time to answer your initial enquiry. This has partly been due to a period of consideration in the Executive while we arrived at the course of action we are taking. If you would find it helpful my officials could brief you further. Your office should contact Gerald Byrne () to make the necessary arrangements.

PETER PEACOCK

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SE 1996/07
Form 27



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Your ref: AMS/ACS/ss/pending
 Our ref: 2003/0018721

May 2004

Jim Wallace has sent on to me your letter of 11 August, on behalf of your constituent, Mr [REDACTED] of [REDACTED], regarding accessibility to files about residential institutions in Scotland. I must start by apologising for the delay in replying to your letter but you will appreciate this is a difficult subject and we have been examining the way ahead very carefully.

We have considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At this stage we have concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place. Public inquiries tend to be used in cases where there are important lessons that can be learnt for future public policy, or where there is evidence of a widespread or systemic failure. As the abuse in these cases happened some years ago, we do not consider that a public inquiry could produce recommendations relevant to the current system of residential child care. Neither does the number of allegations made indicate a failure of the system of residential care. We do not believe that any other form of inquiry by the Executive is likely to meet the needs of survivors. There are also a number of civil claims currently before the courts, and we have to ensure that any action taken by the Executive does not jeopardise these actions.

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SCOTTISH EXECUTIVE
 2004/05/11

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We are also aware, having consulted organisations that have carried out similar exercises, 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. We are therefore examining what sort of support should be available to individuals who come forward seeking access to files. When these arrangements are in place and the files are redacted we will make them available, but that is not likely to be before the end of this year.

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In considering the issue of abuse at residential institutions more generally, I think it is worth recognising the improvements that have been made generally in systems and services to protect children. Since 1995, HM Inspectorate of Education has carried out inspections of boarding schools and hostels. From April 2002 the Scottish Commission for the Regulation of Care has regulated and inspected care homes for children. In November 2002 we published the report of the inter-agency audit and review of child protection in Scotland - *It's everyone's job to make sure I'm alright* - and a three year child protection reform programme is now being taken forward. In March 2004 we issued *Protecting Children and Young People - The Charter* and a Framework for Standards to help translate the Charter into practice. These set out what children, their parents and members of communities can expect from agencies tasked with the protection of children.

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I am copying this letter - and extending the invitation to a briefing - to Jim Wallace.

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Page 1 of 1



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Our ref: 2003/0022357

May 2004

INVESTIGATION INTO ABUSE AT CHILDREN'S HOMES AND LIST D SCHOOLS

Thank you for your letter of 3 October 2003 to the First Minister regarding abuse in St Ninian's List D school. I must start by apologising for the delay in replying to your letter but you will appreciate this is a difficult subject and we have been examining the way ahead very carefully.

We have considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At this stage we have concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place. Public inquiries tend to be used in cases where there are important lessons that can be learnt for future public policy, or where there is evidence of a widespread or systemic failure. As the abuse in these cases happened some years ago, we do not consider that a public inquiry could produce recommendations relevant to the current system of residential child care. Neither does the number of allegations made indicate a failure of the system of residential care. We do not believe that any other form of inquiry by the Executive is likely to meet the needs of survivors. There are also a number of civil claims currently before the courts, and we have to ensure that any action taken by the Executive does not jeopardise these actions.

Instead we propose two responses to these cases. First, to make public information held by the Executive on List D schools and other residential establishments. Second, to look at the services available for adult survivors of abuse.

The Executive holds a number of files relating to List D schools and other children's institutions. Access to these files has been sought in the civil cases that are underway, and it is clear that they can be of help in these cases or that access to them can help survivors understand the background to the schools and their management. The Executive also wants to be open about the information we hold in relation to these cases.

However, the files contain personal details about pupils and teachers. We have a duty to protect the personal privacy of these individuals and 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

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discovered they contained such information. We are now in the process of redacting relevant files, that is blocking out names and other sensitive information. This is a time consuming process and there are practical issues in carrying this process out, but this should allow us to make the information we hold publicly available.

We are also aware, having consulted organisations that have carried out similar exercises, 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. We are therefore examining what sort of support should be available to individuals who come forward seeking access to files. When these arrangements are in place and the files are redacted we will make them available, but that is not likely to be before the end of this year.

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You also asked about the experiences of other countries. Each country has its own particular experience and we recognise that no country will provide a direct model that would be appropriate for Scotland. We have considered the way these issues have been dealt with in countries such as Australia, Canada, Ireland, and England and Wales in coming to our preferred way forward. We will continue to look at these in more detail.

In considering the issue of abuse at residential institutions more generally, I think it is worth recognising the improvements that have been made generally in systems and services to protect children. Since 1995, HM Inspectorate of Education has carried out inspections of boarding schools and hostels. From April 2002 the Scottish Commission for the Regulation of Care has regulated and inspected care homes for children. In November 2002 we published the report of the inter-agency audit and review of child protection in Scotland - *It's everyone's job to make sure I'm alright* - and a three year child protection reform programme is now being taken forward. In March 2004 we issued *Protecting Children and Young People - The Charter* and a Framework for Standards to help translate the Charter into practice. These set out what children, their parents and members of communities can expect from agencies tasked with the protection of children.

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Perkins 1/1



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Our ref: 2004/0001707

May 2004

IN CARE ABUSE SUPPORT

Thank you for your letter of 12 January regarding the organisation support for in care abuse survivors.

We have now considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At this stage we have concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place. Public inquiries tend to be used in cases where there are important lessons that can be learnt for future public policy, or where there is evidence of a widespread or systemic failure. As the abuse in these cases happened some years ago, we do not consider that a public inquiry could produce recommendations relevant to the current system of residential child care. Neither does the number of allegations made indicate a failure of the system of residential care. We do not believe that any other form of inquiry by the Executive is likely to meet the needs of survivors. There are also a number of civil claims currently before the courts, and we have to ensure that any action taken by the Executive does not jeopardise these actions.

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Ms. [REDACTED]
Kerr, A.

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25 September
1999/07

Officials have recently met representatives from the group In Care Abuse Survivors (INCAS), including Mr Frank Docherty, to hear about their concerns. A useful meeting took place which gave the INCAS representatives had the opportunity to explain about their experiences and to discuss the group's aims and to hear about the Executive's proposed way forward.

I am copying this letter to Cathy Jamieson, the Minister for Justice, and Peter Peacock and Euan Robson, the Minister and Deputy Minister for Education and Young People.

JACK MCCONNELL



SR 49/2001
2001/01/11

DRAFT REPLY FROM PS/ED TO THE PUBLIC PETITIONS COMMITTEE

Thank you for your e-mail of 16 April seeking a reply to the Committee's further questions on petition PE 535. I am sorry about the delay in replying to the Committee.

The Executive has now considered a range of options for looking into these cases, from a full public inquiry to an investigation by an individual expert. At this stage the Executive has concluded that a full public inquiry would not be justified given the changes that have been made to the system since the abuse took place. Public inquiries tend to be used in cases where there are important lessons that can be learnt for future public policy, or where there is evidence of a widespread or systemic failure. As the abuse in these cases happened some years ago, the Executive does not consider that a public inquiry could produce recommendations relevant to the current system of residential child care. Neither does the number of allegations made indicate a failure of the system of residential care. The Executive does not believe that any other form of inquiry is likely to meet the needs of survivors. There are also a number of civil claims currently before the courts, and the Executive has to ensure that any action it takes does not jeopardise these actions.

Instead the Executive proposes two responses to these cases. First, to make public information held by the Executive on List D schools and other residential establishments. Second, to look at the services available for adult survivors of abuse.

The Executive holds a number of files relating to List D schools and other children's institutions. Access to these files has been sought in the civil cases that are underway, and it is clear that they can be of help in these cases or that access to them can help survivors understand the background to the schools and their management. The Executive also wants to be open about the information it holds in relation to these cases.

However, the files contain personal details about pupils and teachers. The Executive has a duty to protect the personal privacy of these individuals and could not open the files for public inspection in their current form. Last year the Executive closed some files that had been open to the public when it was discovered they contained such information. The Executive is now in the process of redacting relevant files, that is blocking out names and other sensitive information. This is a time consuming process and there are practical issues in carrying this process out, but this should allow the Executive to make the information it holds hold publicly available.

The Executive is also aware, having consulted organisations that have carried out similar exercises, 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. The Executive is therefore examining what sort of support should be available to individuals who come forward seeking access to files. When these arrangements are in place and the files are redacted the Executive will make them available, but that is unlikely to be before the end of this year.

We are also looking at ways to improve service responses for adult survivors of sexual abuse. A short life working group, established by Malcolm Chisholm, is looking at services for adult survivors of childhood sex abuse, has produced its first draft report and has held a conference in Edinburgh on 28 April to discuss its emerging conclusions. It hopes to report to Ministers by the summer. Its scope is broad, and goes beyond those who were abused in the setting of a residential institution. It is considering the best ways for designing and delivering services

for survivors, the need for improved awareness and training of the traumatic impact of such abuse, and where further research may be needed. While focused on survivors of sexual abuse, it is acknowledged that more can be done to improve the links with child protection, domestic abuse, and victims' strategies. We will need to consider the application of recommendations for those alleging other forms of abuse.