

Scottish Child Abuse Inquiry

Witness Statement of

Fergus Ewing

Support person present: No

1. My name is Fergus Ewing. My date of birth is [REDACTED] 1957. My contact details are known to the Inquiry. This witness statement is to give information to the Inquiry regarding some of my portfolio responsibilities as Minister for Community Safety as a member of the Scottish Government.
2. This statement is based on my recollection aided by documents. I have seen documents provided to me by the Inquiry and the Scottish Government. I am reliant almost entirely on those papers which I have read through.

Term of office as an MSP

3. I am a member of the Scottish National Party. I have been a member of the Scottish Parliament (MSP) for Inverness East, Nairn and Lochaber (now Inverness and Nairn) since 1999. From 2007 to 2011, I served as Minister for Community Safety. In 2011, I was appointed Minister for Energy, Enterprise and Tourism and in 2014 that portfolio became Business Energy and Tourism. In 2016, I was appointed to the role of Cabinet Secretary for Rural Economy and Connectivity. I was re-appointed Cabinet Secretary for Rural Economy in 2018 and Cabinet Secretary for Rural Economy and Tourism in 2020. I continue in this post today.

Before being an MSP

4. I graduated in law from Glasgow University. After qualifying as a solicitor I ran my own legal practice and a small business for about seventeen years.

Minister for Community Safety – November 2007 - May 2011

Role in response to the historical abuse of children in care

5. My role in the issues arising from the historical abuse of children in care was fairly peripheral. My recollection was that a number of ministers had a role to play in issues connected with the Daly petition PE535, including Shona Robison, who was the Minister for Public Health and Sport, and Adam Ingram, who was Minister for Children and Early Years in that period.
6. The issues arising from the historical abuse of children in care were always taken very seriously by everybody because we were dealing with something that had scarred the lives of those who petitioned the Scottish Parliament and many others who had experienced abuse as children in care.
7. I have described my involvement as peripheral. That is simply meant to be a factual comment and not a value judgement. As far as I can recollect, my sole role was looking at the legal aspect of the law of prescription and limitation. There were two particular parts to that.
8. The first part was the Scottish Law Commission's (SLC) report on prescription and limitation published in December 2007. I was involved, with the advice of officials, in providing a response from the Scottish Government to that report. The second part was later on in 2010 and involved preparing a consultation paper and looking to consider reform of the law of limitation in order to make it a bit more user-friendly for survivors of childhood abuse. I had no other substantial involvement that I can recollect.

9. The lead minister between 2007 and 2011 was Adam Ingram. My view that he was leading was formed because the main policy response to the Shaw Review report (published in November 2007) seemed to be a scoping exercise in relation to a “truth and reconciliation” model. Adam was the one spending a lot of time on it and he took forward the main initiative. As I saw it, the main initiative, at that time, was ‘Time To Be Heard’ (TTBH) as it came to be known.
10. There was cross-ministerial responsibility but Adam Ingram made the statement to the Scottish Parliament in February 2008. I am struggling to remember but I think I was there sitting beside him. That was normal practice where ministers have a shared responsibility but somebody has the lead.
11. In March 2008, I wrote to the Public Petitions Committee (PPC) with an update from the Scottish Government on how it would take forward the issues raised in the Daly petition PE535 and also petition PE888. I wrote in connection with my own portfolio responsibility for the law prescription and limitation and also covering the interests of Shona Robison as Minister for Public Health.
12. There was a significant meeting of ministers in September 2009. I was there along with Adam Ingram and Shona Robison. There was an agreement to go down the route of a pilot forum using a confidential committee model. Various options had been considered and appraised and Shona had been trying to get ministers together to discuss this issue at an early stage.
13. All MSPs were aware that the nature and extent of abuse of children in care had been the subject of quite considerable parliamentary scrutiny. We were aware it was an important issue. I am sure that all of us were aware that this was an issue that needed very careful and sympathetic attention.

Public inquiry

14. I just cannot recall whether there was or was not substantive consideration at Cabinet level about a public inquiry during my period as Minister for Community

Safety. The reason I cannot is twofold. Firstly, I was not in Cabinet. Secondly, my role was limited to looking at legal issues arising from the historical abuse of children in care. As Minister for Community Safety, it was not my role, nor was I asked, to consider whether or not there should be a public inquiry. What I was asked to do was to look at issues relating to prescription and limitation. I cannot recall being involved in any formal or major discussions on whether or not there should be a public inquiry.

15. I worked quite closely with Kenny MacAskill, the Cabinet Secretary for Justice, and we did have weekly meetings at the time. I cannot recall us having a substantial discussion about the state's obligation to investigate the abuse of children in care. Such discussions may have taken place but I do not know if they did.

Prescription and limitation

Response to the SLC report

16. Broadly speaking, the Scottish Government accepted the recommendations in the SLC's report on prescription and limitation. The report was considered carefully. The recommendation in relation to prescription of claims arising out of events before September 1964 was that such claims could not be revived. Any attempt to revive those cases in any way would fall foul of the European Convention on Human Rights. I was satisfied that the SLC's view was correct.
17. As regards limitation, there was an element of judicial discretion. Had that not existed, perhaps we may have come to a different conclusion but that is hypothetical as it did exist.
18. From my point of view, looking at the human side of things, people who had suffered the most appalling abuse imaginable when they were children ought to have access to the courts. That was what was on my mind.
19. In accepting the advice of the SLC, we were not barring access to the courts. There was still a way in which the difficulties occasioned by limitation could be overcome.

With hindsight perhaps we should have reached the conclusions then that we reached later, but that is with the benefit of hindsight.

20. As far as criminal proceedings were concerned, if evidence could be collated and gathered by the procurator fiscal and the Crown, then there was no bar whatsoever to criminal proceedings. It was, therefore, very much in my mind that the proper way for the state to deal with these matters was to bring people to justice if there was a sufficiency of evidence.
21. Criminal law is public law whereas civil law is private law. It is the state's primary duty to investigate crime and gather evidence in order to prosecute crime, particularly of this sort. It seemed to me that, from the point of view of the victims, the principal way in which they could obtain justice was through the criminal justice system.
22. Sadly, when the crimes have taken place such a long time ago, the evidential requirement of sufficiency and the requirement of proof beyond reasonable doubt to secure a conviction is a very high bar. Between 2007 and 2011, I was aware that there was a theoretical right of recourse to the criminal law - an individual could go to the police, make a complaint against a named individual and the police would investigate that complaint. I was also aware of the theoretical nature of that course of action because of the evidential difficulties.
23. It seemed to me that it was not an impossible task to get justice through the criminal justice system. However, it was very challenging because of the practical difficulties in getting evidence and the legal difficulties in overcoming the high bar of the onus of proof beyond reasonable doubt.
24. In relation to civil claims, I also thought that there was an explanation as to why the triennium had not been observed and why someone did not pursue a claim in three years. They had been children when they were abused. The appalling nature of the trauma they suffered had blotted it out. I felt that was something for the courts to consider.

25. My view between 2007 and 2011 was that perhaps the Scottish Government should be more radical and look more widely than even the SLC's recommendations in trying to improve the way that judicial discretion might be exercised. I believed that then and I believe that now. A concern I had was no matter how wide the gateway might be, it may still be too narrow for anyone to get through it.

Correspondence with MSPs

26. I sent a letter to an MEP on 16 August 2008 in which I said that the Scottish Government accepted the SLC's recommendations in relation to the review of prescription and limitation but remained committed to identifying the appropriate approaches to assisting and supporting survivors.
27. I said that through working closely with survivors and organisations that represent them we came to understand that, for many survivors, an acknowledgement of the abuse that they had suffered may be of benefit and on that basis the Scottish Government began to explore the use of a truth and reconciliation model.
28. Kenny MacAskill wrote a letter to the same effect, also in August 2008. He added a bit more on the question of compensation and whether the Scottish Government ought to establish a fund to compensate survivors of historical abuse. He also went on to say that Adam Ingram had recently explained to the Scottish Parliament that there were no such plans.
29. That is a confirmation that there was an absence of a particular positive policy. It does not necessarily mean that in the future there might not be plans. These were the lines that we were taking in ministerial correspondence at the time on that matter.

Compensation scheme

30. A compensation scheme was not an issue with which I was seized of. We had a process in the civil and criminal justice system that we felt should be pursued and

should be pursued in the first instance. I do not recall being asked to consider whether or not we should have a compensation scheme. It was not something that featured.

31. In paying out public money you have to be absolutely clear on what basis you are doing so. You either have a legal liability or you do so on an *ex gratia* basis. There would have to be a very careful process where you look at the nature of *ex gratia* payments and work out under what circumstances these would be appropriate.
32. I acknowledge that the Irish model had very powerful arguments for a compensation scheme, but they were not ones which I can recall being considered at the time. Perhaps that was because we were looking at things sequentially as part of a process that needed to be thought out very carefully and sensitively with regard to the nature of the issues.

Truth and reconciliation model

33. The approach we were taking was to have this truth and reconciliation model and that developed over time. To the best of my recollection, I had no involvement in the formulation of that policy. It was a policy that was formulated by others because it was not my responsibility to do it. I cannot remember what Adam Ingram actually said when he announced the scoping exercise in relation to a truth and reconciliation model in February 2008.
34. It became TTBH and that was the process which provided people with the opportunity to be heard. Looking at this sequentially, perhaps there was an expectation that that would not be the end and that it would be part of the process which could lead to further policy development possibly along the lines of the Irish model or on other lines.
35. What the Scottish central government had been doing since the Daly petition in August 2002 had been a sequential process. First of all, there was an acknowledgement that a big wrong had been committed and there were apologies.

Second, there had to be a process to allow people to be heard because the legal routes were inadequate. The truth and reconciliation forum, which became the TTBH opportunity, was really what we were focused on from 2008.

Confidential forum

36. In September 2009, Shona Robison, Adam Ingram and I said we were going to pilot a confidential private forum with no accountability built in. I was at the meeting. I was not the lead minister. Ministerial life is that you are doing lots of things every day and you do what you have to do. You do not interfere when a lead minister has the lead. You have discussions but I just cannot remember a detailed discussion that day, probably because my focus was really on the bit that involved me.
37. I think Adam Ingram was wanting to indicate to the survivors of abuse that we were keen to take forward a process and that was a justifiable and correct desire. We all wanted to do this and I think, at some point, the decision to conduct a pilot confidential forum must have been taken.
38. I was not involved in that part of the decision that related to human rights issues surrounding the decision reached.

Giving evidence to the PPC – 21 December 2010

39. On 21 December 2010, I gave evidence to the PPC in relation to Petition PE1351 which called for the establishment “for all victims of institutional child abuse a time for all to be heard forum, incorporating a compensation scheme”. Shona Robison, Adam Ingram and Jean MacLellan, who was the lead health official, also gave evidence.

Leaving the post of Minister for Community Safety


40. I acknowledge that the Scottish Human Rights Commission’s (SHRC) Human Rights Framework was published in February 2010 and the TTBH report was

published in early 2011. I cannot remember if I had any involvement in any other substantive action before I finished responsibility for this portfolio in May 2011.

- 41. Shortly before the election in May 2011, there was a response by the Scottish Government to the SHRC to set out what the Scottish Government had done and what they had in mind to do in the future.
- 42. I cannot remember having any further ministerial responsibility as Minister for Community Safety prior to the election in May 2011. I was then moved to another portfolio.

Closing thoughts

- 43. I am pleased the Inquiry is taking place. The events that are believed to have occurred are both horrific and despicable.
- 44. I have no objection to my witness statement being published as part of the evidence to the Inquiry. I believe the facts stated in this witness statement are true.

Signed..... 

Dated..... 10/03/20