

## **Scottish Child Abuse Inquiry**

Witness Statement of

**MICHAEL RUSSELL**

Support person present: No

1. My name is Michael William Russell. My date of birth is [REDACTED] 1953. 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 Cabinet Secretary for Education and Lifelong Learning 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 have read the Scottish Government report that deals with the period of 2002 to 2014.

### **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), firstly for the South of Scotland Region for 1999 – 2003 & 2007-2011 and then for Argyll and Bute since 2011. I was appointed Minister for Environment and served from May 2007 to February 2009, was Minister for Culture, External Affairs and the Constitution from February to December 2009, and Cabinet Secretary for Education and Lifelong Learning from December 2009 to November 2014. I returned to government in August 2016 and held the posts of Minister for UK Negotiations on Scotland's Place in Europe from August 2016 to June 2018 and Cabinet Secretary for Government Business and Constitutional Relations from June 2018 to February 2020. I am currently serving as Cabinet Secretary for the Constitution, Europe and External Affairs.

### **Before being an MSP**

4. Before I became an MSP, I have worked in the media and been an author. Originally I trained to be an Episcopal priest at the Episcopal Theological College in Edinburgh. I studied Theology at New College but I was not ordained. I am still a member of the Scottish Episcopal Church in Rothesay and Dunoon. I am a part-time Professor of Culture and Governance at Glasgow University. My contract is currently suspended but I hope to return to teaching in Glasgow.

### **Cabinet Secretary for Education and Lifelong Learning - December 2009 - November 2014**

5. Before I became Cabinet Secretary for Education and Lifelong Learning in December 2009, there had been a cross-Ministerial decision in September 2009 to pilot a private confidential forum called 'Time To Be Heard' (TTBH) which took place in 2010.
6. Between December 2009 and the middle of 2014, I had a tangential involvement with the issues arising from the historical abuse of children in residential care and the responses by the Scottish Government to such issues. I had junior ministers who were responsible for those issues. One was Adam Ingram who was Minister for Children and Early Years between May 2007 and May 2011. He was a very competent minister. My policy as Cabinet Secretary was always not to interfere with the work of the junior ministers unless I needed to. Adam reported to me. We had weekly discussions about what his team were doing.
7. Angela Constance took over from Adam Ingram in May 2011 as Minister for Children and Young People. She too was a very competent minister. She was particularly suited to considering social care issues because she had a social work background. She was only in that job until December 2011 as there was a reshuffle. Aileen

Campbell became Minister for Children and Young People in place of Angela Constance. She was very talented and enthusiastic.

8. Between May 2011 and the middle of 2014, three junior ministers tended to be involved in issues relating to the historical abuse of children in residential care. They were Aileen Campbell, Roseanna Cunningham who was Minister for Community Safety and Legal Affairs between May 2011 and November 2014, and Michael Matheson who was a junior minister in Health between May 2011 and November 2014. It really was seen as a collaborative venture between those three. It was very often Michael Matheson or sometimes Kenny MacAskill, the Cabinet Secretary for Justice, and Roseanna Cunningham's Cabinet Secretary, between May 2007 and November 2014, who was leading.

**Particular issues in 2014 arising from the historical abuse of children in residential care**

**An inquiry**

9. The Minister for Education and Young People, Peter Peacock, announced in December 2004 that an independent expert would carry out a systemic review, but not a full inquiry. The view that an inquiry would be a solid independent look at something that was going to be effective had been somewhat eroded, and not just in this jurisdiction. For example, in Ireland there had been an enormous expenditure of time and effort on inquiries of various sorts with very little result.
10. Very often there was official advice that took a certain line. As far as an inquiry was concerned, it was always a fairly conservative line. Officials do not think public inquiries are a particularly good thing for lots of reasons. Public inquiries tend to take a long time, cost a lot of money and do not satisfy people. I think that is quite a legitimate point of view. That point of view tends to be borne out by much experience of public inquiries. Up until 2014, I think it was quite right to resist the idea that a conventional public inquiry was the solution that would meet the needs of survivors

of childhood abuse. In most circumstances, I would not personally support the establishment of a public inquiry of the kind legislated for in the Inquiries Act 2005.

11. However, a particularly growing concern for me during 2014 was that the issue of an inquiry in the context of historical abuse of children in residential care would not go away and needed to be resolved. I got involved in that issue in the summer of 2014 and very intensely in my last six weeks in office to November 2014. That was the primary focus of my time during that period. I wanted to resolve the issue. My view by that stage was that there had to be an inquiry, no matter how devalued they had become.
  
12. One of the ideas I considered and talked to officials about in 2014 was to put in place a "university model". Time was against me. The idea was to set up a university department which had psychologists, historians, literature experts, doctors and lawyers. The cost of that model would have been no more than the cost of an inquiry like the Inquiry. The idea would be to use that as a model by which we allowed the stories to be told and recorded those stories. In designing such a model, I think we could have learnt from New Zealand and from what happened in Northern Ireland. It was so difficult to get to where we got to in November 2014 that I did not have the chance to take that idea any further. In the end, we had an inquiry set up that was not the type of inquiry I has envisaged.

### **Prescription and limitation**

13. In 2013, I had been involved in the proposed reform of the law of prescription and limitation in Scotland. I had some concerns about effective access to justice and the problem of the time bar. As I began to know more about this, I realised that there were a number of blockages to making progress. The legal side within the Scottish Government took the view that it would be completely impossible to change the law on time bar. At that stage, I had been in government for seven or eight years. I was aware that if you saw where the blockages were, you could sometimes work your way through them or find a way around the side.

14. I raised some points about prescription and limitation and received a response which explained the thinking behind the Scottish Law Commission's (SLC) recommendations. The SLC's position broadly was that there should be no radical change in the law and no special exemption for or treatment of historical child abuse claims. The explanation said that there would be difficulties with any other route. It would create an unusual exception. It might have wider implications. Even if we overcame those difficulties and created an exception there were still evidential problems. The only olive branch that was being offered to me was that attempts might be made to make the discretionary provision (to allow claims to proceed out of time) easier to apply in favour of claimants.
15. I was in some sense an agnostic at that stage. I listened to the advice but, as time went on and I actually met survivors, it seemed to me that this was pretty fundamental. You could not actually live with a position that did not resolve difficulties arising from time bar.
16. My view was that time bar difficulties were something that could be resolved. As regards prescription, I could not see how that injustice, because it was an injustice, could be got round by those who wished to bring legal claims for pre-1964 abuse. From an early stage, I think it was recognised that reform could do nothing to remedy prescribed claims. My view was "Why can't we just get this sorted out? Why are we still talking about this?".

***A financial redress scheme***

17. One alternative that other jurisdictions have found is some form of financial redress scheme. We considered it and I supported it. I have always supported it.
18. Redress was a notable omission during my period as Education Secretary and before then. The longer you postpone redress, the stronger the demand for it becomes. People become fixated on redress, and quite rightly. Some people want financial redress. Some want prosecution and some do not. You need to try to cater

for a range of choices. You will not satisfy everybody, however. It is impossible to do so.

### ***Reparation fund***

19. A reparation fund is not the same as a redress scheme or financial redress of the type which was introduced in the Republic of Ireland. A reparation fund would provide resources to victims, but would not necessarily be a compensation award measured by a tariff. It could however be wide enough to embrace a compensation award but might be some monetary assistance to individuals. My view was that what we did had to be wider in scope than what had been done in Ireland.

### **Truth and reconciliation**

20. The other way to get around difficulties arising from the law of prescription and limitation is to not regard the legal process as the main means by which redress for victims is found. Rather, the act of narration and recording can be regarded as the main means by which redress is found. This is really about “truth and reconciliation” and not primarily about law and prosecution of wrongdoers. That became in my mind the biggest issue for the last month that I was Ministerially involved with this matter. I strongly believed that this whole matter should have been handled in an imaginative narrative process.
21. After the Shaw Review was published in November 2007, there was a statement in the Scottish Parliament by Adam Ingram on behalf of the Scottish Government in February 2008 in response to the Shaw Review and also to the SLC’s report on prescription and limitation which had been published in December 2007. The statement said the Scottish Government would look at a truth and reconciliation model.

22. In September 2009, the discussions and work that was subsequently done on that type of model were abandoned in favour of a confidential forum model. The confidential forum model had no element of accountability built into it or opportunity to reconcile and find solutions to issues such as redress and accountability. I wish that I had been more actively involved with responses to those issues but I was not Education Secretary at that time.

### ***Time To Be Heard (TTBH)***

23. The TTBH pilot forum took place in 2010 and the TTBH report was published in February 2011. Tom Shaw thought that it was a successful model in operation. He recommended that it be rolled out nationally. The thinking behind the confidential forum model was that it was a health or therapeutic process, rather than a process of acknowledgement, justice, and accountability. That was one of the key problems with the whole thing.
24. I do not think we were, or are, a silo-driven government but in this case things kept falling into silos. People in government kept trying to say this was a health issue or this was a justice issue. They said, but then stopped saying, it was a holistic issue. I was trying to get them to go back to the position where we said this was a holistic issue for the whole of government and we needed to address it in that way.

### **Scottish Human Rights Commission and the Human Rights Framework**

25. The Scottish Human Rights Commission (SHRC) got involved in March 2009 and was asked to develop a human rights framework. Before the SHRC had completed its work, junior ministers in the Scottish Government decided in September 2009 on a private confidential forum that removed any truth and reconciliation or accountability element from the equation. That was progressed during 2010 as Time To Be Heard and as that was about to happen the Human Rights Framework was published in February 2010. That framework led subsequently to what was known as the InterAction process that took place between 2012 and 2014.

#### **InterAction process between 2012 and 2014**

26. The InterAction process was a very valuable contribution. I think that Alan Miller's contribution to this process was a remarkable one. He did a fantastic thing in making it happen. The SHRC's InterAction process was a very significant factor in taking matters forward.

#### ***My engagement with survivors during the InterAction process***

27. My personal involvement and engagement with survivors through the InterAction process was influential in persuading me more needed to be done. I was more directly involved with survivors towards the end of the InterAction process in 2014. I intervened in 2014 because I was afraid that the whole issue was not going towards resolution fast enough.

#### ***Attitude of the churches during the period of the InterAction process***

28. There had been a Cabinet discussion in the middle of 2013 about abuse of children at Fort Augustus. The discussion recognised that historical child abuse was not isolated to that institution and was not an isolated problem. I do not think anyone could have imagined before then that it was an isolated problem but it was always presented by the churches as a problem which had been resolved, either because the institution no longer provided educational services or because those who were the perpetrators of it had been discovered and were no longer there. Now we know that is not true.
29. There was an inclination at that time to listen uncritically to the churches and to the people who were telling us very sincerely to accept what they were saying. We did not doubt their sincerity or that they were telling the truth. I am now much more critical of the churches than I would have been in the past.
30. In the past there has been an unwillingness, particularly within the Catholic Church, to engage and respond to matters that were being raised in relation to the historical



abuse of children in care and the impact of such abuse. Following the public apology by the First Minister on behalf of the people of Scotland on 1 December 2004, there was a hope that the Catholic Church would follow suit. There was a sense of disappointment when it did not do so.

31. When I became Cabinet Secretary for Education and Lifelong Learning in December 2009, there was no change in the attitude of the Catholic Church. I was very surprised by that. I thought that they would be more than willing at that stage to say "We have got this wrong". They took part in the InterAction process but were pretty stand-offish about it. I found my conversations with them to be much more difficult than I had imagined they would be. I still get letters from survivors that contain all sorts of invective against priests, naming priests and staff. I cannot play any role in that but I do think that given the way that the Catholic Church has reacted over the years their continuing inability to address these issues is a real problem for them and it is causing unnecessary suffering.

#### **The InterAction Action Plan and an inquiry**

32. The product of the InterAction process was an Action Plan in about December 2013. The Scottish Government was a participant in the process but was not necessarily signing up to everything that was contained in the Action Plan.
33. The Action Plan reflected the fact that there were many different views and interests. It was trying to reflect what had been the product of discussions at InterAction meetings and events
34. Opinions of participants in the InterAction process were divided on the value of an inquiry. Some doubted the value of another inquiry and questioned whether there would be any possible benefits beyond what had been achieved as a result of previous inquiries and reviews. There were people who were opposed to an inquiry on the grounds that it would be incredibly expensive and given the nature of any inquiry could last for a very long time.

35. In the Action Plan, what was said about an inquiry was this: *“There was a very balanced view on the value of an inquiry. Discussions were well-grounded and articulated doubts regarding the value and possible benefits beyond what we have achieved as a result of previous processes. It was felt that we shouldn’t rule out the possible benefits of a national inquiry at this stage but that research was required to determine what we have learned from previous Inquiries and what the deficits might be”*. It was clearly thought that there should be a review of lessons learned from previous inquiries and that consideration should be given as part of that review to the added value of having a further inquiry.
36. In subsequent discussions within the Scottish Government, people said the Action Plan made clear that the arguments for and against a further inquiry were finely balanced. The attitude from officials and politicians was that if the debate about an inquiry was finely balanced then they were not persuaded to do it, and quite rightly.
37. For me, there were two issues in relation to having an inquiry. Firstly, at what point is the granting of an inquiry into the historical abuse of children in residential care something that had to be done? Secondly, if there should be an inquiry, what type of inquiry should it be?
38. In 2014, I thought that the time was right for an inquiry. There were survivors and campaigners who thought that there was value in having an inquiry. That for me was an extremely important consideration. It is also the job of government to take a considered judgement as to the expenditure of time and resources and whether such expenditure would produce a result or benefit. One very strong argument against an inquiry was that it would take an enormous amount of time, it would be vastly expensive and the very people who wanted it to be set up would continue to be dissatisfied. Their voices at the end of the process would be as loud as they were at the beginning. All that would have happened is that they would feel failed. Some of my ministerial colleagues thought an inquiry would simply be yet another judge-led inquiry that would take a very long time and cost a lot of money. It would just look at past events and serve no other purpose and would leave people feeling dissatisfied. I must really stress that point.

39. The Action Plan said that the purpose of an investigation or inquiry would be to establish what happened and why. It would be to learn systemic lessons and to help prevent repetition. That did not have to mean a legal inquiry over a long period of time according to the relevant legislation. It could mean other things and that increasingly influenced my thinking in 2014. What type of inquiry would do the job that people wanted it to do?
40. One thing people wanted was to tell their stories. The inquiry people wanted was more than just some form of investigation to establish the facts and learn lessons. People were wanting a public forum in order to serve a wider purpose than maybe a traditional inquiry. They wanted a forum that would give a voice to the people who were involved in the events. A private forum was okay for some people, but it was not a public forum and it was not a public acknowledgement of the experiences they had been through.
41. What the Action Plan said to me was that we needed to do something different to what had been done before in response to the issues raised by historical abuse of children in residential care. There had to be an element of acknowledgement built in to the process along with the opportunity for survivors to speak about their experiences and the impact of those experiences as well as an investigation into what happened and why. It was also a matter of writing down what had happened in the past. I am a great believer in writing things down and having available to us an actual record of the past. If there was an inquiry, my thinking was that it should not be just another investigation that looked back. Other features had to be built in to the process.
42. I do not know whether everyone understood the need of survivors for a public forum for acknowledgement and an opportunity to recount experiences in a public way. Many did not grasp what the InterAction process was all about. They did not grasp the fact that this was not just another event. This was a very difficult emotional engagement between people which had resulted in something pretty special. It is quite a subtle and nuanced thing to understand. It is not about seeing things in stark

terms. It is always difficult to come outside the walls of any established profession and see things happening which are different and which challenge your assumptions. The InterAction process challenged assumptions about how government and people with different views and interests should take things forward.

43. The Inquiry gives the opportunity to survivors of a public forum. It gives people the opportunity to come forward and speak. However, I thought in 2014 that there was another way to do things. Saying that does not mean that I am in any way criticising what the Inquiry is doing or the way they are doing the work entrusted to them.

### ***Ideas about an inquiry***

44. The inquiry I wanted did not happen. I would have established a “narrative inquiry”. It would have had a number of experts and specialists working with survivors to assist and support them to tell their story in public or in private. The inquiry would have recorded those stories and supported those victims and survivors in a number of different ways. Using appropriate experts, including psychologists and other health professionals, it would have talked about the way in which people can work through their particular problems and difficulties within the context of the inquiry process and not, for example, separately as a health issue. The telling of stories in our psyche is also about healing and changing the world in which we live. So all of those things I would have put together in one place and I would have funded that over a substantial period of time, over ten or fifteen years. I would have used the excellence of the inquiry not just to create a Scottish record but I would have used it as an exemplar for others to see and to use, learning also from similar sorts of initiatives in other places. That is what I was working towards in my mind.
45. A confidential forum would have been just one component of the inquiry I had in mind. It would have contributed to it. It would have been one door that you could have gone through but there would have been other doors. It would have built upon the success of the InterAction process. It would have accepted that the way forward was shown so clearly by the InterAction process. It would have gone on with that kind of process. It would have attempted to bring in and to engage with the Catholic Church and the other institutions as part of the process. There would have been a

theological component to it. One of the questions that churches needed to ask themselves was: how did this arise within the organisation? Another was: what in their understanding of themselves requires to be changed? You can do that in a supportive way, rather than in a confrontational way. That is what was great about the InterAction process. People sat in the same room and did it.

46. The model that I had in my head was not something that the SHRC had developed or recommended. Alan Miller of the SHRC and I had a discussion about this idea and I talked to officials about it. I do not think we went to the extent of getting my idea on paper, although we did some research about what happened elsewhere at my urging. I wanted to see who else had done things and how. We were just at that early stage.
47. The next stage after my last ministerial statement in November 2014 would have been to formulate something for an announcement of some sort. A lot of work would have been needed to transform my idea into a concrete proposal. An announcement would not have been until sometime in 2015 at the earliest. The issue of funding of the proposal would have had to be considered before any announcement could have been made. My argument was however that if you were to anticipate the likely costs of a judge-led inquiry, my alternative would cost about the same over the timescale envisaged by me for its operation.
48. I still see my model as being a form of inquiry. I would have called it that because an inquiry involves an investigation into what has happened and why and learning systemic lessons to prevent repetition. Under my preferred model that would have happened.

### **Cabinet discussions – July and August 2014**

#### **Background**

49. In May 2014, the Home Secretary, Theresa May, announced that there were to be two inquiries in England and Wales into allegations of child sexual abuse. This announcement was made against a background of allegations of systematic abuse involving people in positions of power, of institutional paedophilia in government and cover-up at a high level (the 'Magic Circle' allegations'). The Home Secretary's announcement was the subject of consideration at Scottish Cabinet level.
50. Around the same time, mandatory reporting was the subject of public discussion as a way in which you may prevent abuse taking place or deal earlier with abuse that has taken place. Charities did not appear at that time to support the introduction of mandatory reporting as they felt that mandatory reporting would create more difficulty for them in circumstances where they were trying to support survivors. They said they had to get the confidence of survivors and victims. If there were mandatory reporting, the situation would become a legal process that would not allow that to happen. The survivors might want to disclose but not feel comfortable because if they disclosed it would automatically become a police matter.
51. In some jurisdictions (Ireland being one of them), there were mandatory reporting laws already. It was an issue that divided views. If we were going to legislate, my view was that we should do so thoughtfully, rather than in a knee-jerk fashion. I needed to understand why we would legislate and if it would have a positive effect.
52. I was probably more against than in favour of mandatory reporting in light of the discussions I had had with charities. I did not want circumstances in which people did not come forward. I was entirely in favour of reporting and I would say that there is a duty to report. Anybody has a duty to report a crime but if you make it mandatory within a timescale then you may stop other things happening. That was my worry in 2014.

**Advice from officials prior to Cabinet meeting on 14 July 2014**

53. The advice to Cabinet was that it was important that "*we are seen both not to be reactive in responding to the Home Secretary announcement or seen to be*

*complacent of the position here in Scotland". Officials told Ministers: "We are not aware of allegations of this scale or nature in Scotland and some at least relate to Westminster itself. That leads to the conclusion that we would not have a rational basis for following the Home Office".*

54. While that was the advice from officials - that Scotland did not have the basis for following suit - my position at the subsequent Cabinet meeting at which this matter was discussed was that we needed to know a bit more before we took a final position on the matter.

#### **Cabinet meeting on 14 July 2014**

55. There was a Cabinet discussion in Wick on 14 July 2014 at the Pulteney Centre, chaired by the then Deputy First Minister, Nicola Sturgeon. I said at the meeting that it was possible that the Scottish Government might face calls to legislate to introduce a new offence relating to the mandatory reporting of information concerning the sexual abuse of children. That statement was made against the background of the Theresa May announcement.
56. This was one of the best Cabinet discussions that I remember. The discussion started with the issue of mandatory reporting but then widened to discuss other issues including whether there was any evidence to support the 'Magic Circle' allegations which were receiving publicity around that time.
57. With publicity concerning the 'Magic Circle' allegations and Theresa May's announcement of two inquiries into child sexual abuse, the last thing that the Scottish Government wanted was to be seen not to be considering the implications for Scotland. If there was any whiff of a suggestion that these things were happening in Scotland, it had to be investigated. We told the most senior official in the Scottish Government to find out if this was true.
58. The reason that Cabinet took action on this matter, but had not done so in relation to the Fort Augustus case which was discussed in 2013, was because there was a

different focus. There was also a difference in the timeframe. The Fort Augustus discussion was quite understandable in terms of it being in the past and not recurring. We know now that was probably not true but that was where it was. The 'Magic Circle' allegations were about allegations of institutional paedophilia in government. These were allegations that were without substance. They could often be made anonymously with no evidence to support them. There was nothing to them and they were in part based on rumour but they were reported and so we needed to investigate. That was exactly what was done and there was no evidence found to substantiate them.

59. We were told by officials that there was no evidence or allegations that suggested there was a Scottish dimension to the particular concerns that had resulted in the Home Secretary's announcement in May 2014, nor evidence of a parallel situation in Scotland. If such evidence or concerns had come forward, we would have instituted the necessary actions without delay.
60. At the Cabinet meeting on 14 July 2014, there was also discussion about what was coming out of the confidential forum and out of the InterAction process. We discussed what to do next. I recall one of my colleagues saying that it was clear that I was not satisfied with that and that we needed to think more about things. It was in my view the first really open discussion at Cabinet that clearly said that we had more to do. There was now a focus on the issue of whether we were doing enough in relation to the wider issue of historical abuse of children in residential care.
61. Everybody around that table knew that this had been an issue that had been ongoing in Scotland since the start of the Scottish Parliament. We had had the First Minister's apology in December 2004 and we had had a range of responses by the Scottish Government to the issue but the issue was still there. We had not got to the stage where those who were most deeply affected, the survivors, believed that the issue had been adequately dealt with. There was also the question whether we too were convinced that this had been adequately dealt with.
62. On 14 July 2014, the Cabinet concluded that a clear statement of the range of current children protection measures should be drawn up to reassure the public that



there were appropriate systems in place and to make clear ministers' willingness to respond positively to ways in which the current child protection framework might be enhanced.

63. On the issue of historical abuse of children in care, I perceived the Cabinet meeting discussion as concluding that we should go away and think about how we were doing. It was a very positive discussion because there was concern in my mind as to where we were. I cannot recall whether the discussion explicitly discussed the possibility of an inquiry. I would be surprised if I had not said at some stage that the question of an inquiry was still unresolved.
64. In July 2014, the Scottish Government asked Jackie Brock, then in charge of 'Children First', to have a look at child protection systems across Scotland. Her review reported in November 2014. For me this was beginning to be part of the final push towards an inquiry of some kind.

#### **Cabinet meeting on 5 August 2014**

65. There is a record that I did not want a substantive discussion in Cabinet on 5 August 2014. I wanted to see some more work done on the issue of historical child abuse including whether there needed to be an inquiry. I felt that a further paper was required.

#### **Meeting of ministers with survivors on 13 August 2014**

66. There was a meeting on 13 August 2014 between junior ministers and survivors. The ministers were Michael Matheson from Health, Roseanna Cunningham from Justice and Aileen Campbell, the Minister for Children & Young People. I thought there was a weakness in the process when I discovered that there had not up until then been much interaction between survivors and government ministers. I thought that it was a good idea to heal that.

67. The InterAction Action Plan had been published in December 2013. By July/August 2014, the Scottish Government was yet to make its official response to the plan. Its response was still under consideration. There was more work we needed to do before we could give a measured response.
68. The record of the meeting between the junior ministers and survivors seems to confirm that there was an expectation that ministers would provide agreement in principle to the commitments which the Action Plan said were required, including the commitment to have a review and to consider the added value of an inquiry. At that stage, if one was being technical, the Scottish Government's official position remained the same which was not to hold an inquiry. That would have been the official position. I think I would have said to my ministers not to emphasise that at this stage. Quite clearly the Action Plan had raised important issues and we needed to think about them.

***“Historic Child Sexual Abuse” paper for Cabinet on 12 August 2014***

69. I prepared a paper entitled *“Historic Child Sexual Abuse”* for the Cabinet meeting on 12 August 2014. In it I addressed two separate matters. One was making a response to the Theresa May announcement and the implications for Scotland. The other was how the Scottish Government should respond to the Action Plan.
70. What I was asking Cabinet to do at that stage was to note where we were. We were moving towards the culmination of the InterAction process and we had the Action Plan in front of us. There was to be an inquiry in England and there was pressure for an inquiry in Scotland. I was saying that this issue was going to go into the Chamber so we needed to work out what our position was and take it forward.
71. In the paper, I mentioned the differences between England and Scotland in terms of what had been the background to the inquiries announced in England. I said I did not believe that there was a basis for a separate inquiry into accusations in Scotland at that time although the position would be reviewed if credible new information came to light. In England there were allegations of specific abuse and allegations of cover-

up. The UK inquiries announced by the Home Secretary in May 2014 were in response to that. What the InterAction process was talking about in relation to an inquiry was something different

72. In my paper, there was a discussion of mandatory reporting. It was something that I wanted included and wanted to cover in my presentation to Cabinet. Advice on mandatory reporting had been provided by the Scottish Government Legal Directorate on 4 August 2014. This noted that there were as yet no calls for legislation in Scotland. It advised that should such calls be made in relation to a requirement to report child abuse or the criminalisation of failing to report abuse, then specific legislation would be needed. The position as at August 2014 was that there was no suggestion that we were going to propose to consult on the issue of mandatory reporting. We were not taking that forward. I had raised it, considered it and decided against it. I supported the view that the charities, in particular Barnardo's and Aberlour Child Care Trust, had taken which was that they did not want to see it happening.
73. I also made reference to the petitions for a public inquiry into historical child abuse. Once people saw that there was to be an inquiry down south they said "Why not have one here?" even though the circumstances in Scotland were different. It was the natural reaction for survivors and those who had campaigned for an inquiry in Scotland to question whether this was an opportune moment to revisit the issue.

### **Opposing views on having an inquiry**

#### **The First Minister's view in 2014**

74. I think it is fair to say that in 2014 the First Minister's view was that an inquiry was likely to take a lot of time, cost a lot of money and not provide satisfaction. He was not greatly attracted to the idea of discussing whether there should be an inquiry even as part of discussing the Scottish Government's response to the InterAction process and Action Plan. Alex Salmond's view was consistently that inquiries were

likely to take a lot of time, cost a lot of money and not produce a result. He liked the effective use of resources. I know Alex well and I think that was the issue for him.

### **My view**

75. My view in 2014 was “How do we get an inquiry that meets the Action Plan’s requirements which is also the telling of the story?”

### **Other views**

76. There was opposition to an inquiry coming from a number of people, not just the First Minister. Those opposed to an inquiry believed, and had believed consistently during the previous decade, that an inquiry would be a process which would not lead to any satisfactory outcome for the victims. That position was supported by some survivors who believed an inquiry would not satisfy survivors, no matter what form it took.

### **Obtaining external advice from Lord Gill**

77. The First Minister’s view carried weight within Cabinet. There was a robust discussion between myself and the First Minister. He is an old friend of mine. We talked about it and there were others who were drafted in to give me advice. One person I spoke to was Lord Gill.
78. Lord Gill’s view was that there should not be an inquiry because it would take too long. His experience of inquiries was that an inquiry was not the right way to proceed with an issue such as historical abuse of children in care because it would not satisfy people. I went to see him and talked to him in his office in Parliament House. He was one of the people who felt that if we went down that route we would be sucked into a swamp.

### **InterAction Survivors' Event on 27 August 2014**

79. There was an InterAction survivors' event on 27th August 2014. I was not at that event. At that time, there was particular focus on the question of an inquiry and what survivors were thinking at that stage on that matter. Those who attended this event were pressing for an inquiry.
  
80. CELCIS prepared a paper which was a synthesis of the discussion at the event. I found the paper compelling. The paper set out the case for having an inquiry and all the benefits of an inquiry. I cannot remember when I first saw it but I have to say that I thought the arguments were well made. The last sentence in the paper is just devastating. If you bring together a group of survivors and you say to them "what do you think of this?" and they all say "this is what should happen" you have got to treat that very seriously. The paper had a significant influence on me. It made a well-reasoned case for an inquiry.

### **Letter dated 27 October 2014 to SHRC from me giving Scottish Government's formal response to the Action Plan**

81. In a letter dated 27 October 2014 to the SHRC I gave the Scottish Government's official response to the Action Plan. The intention was to publish the letter after I had spoken at an InterAction Group meeting on 27 October 2014.
  
82. In this letter, the Scottish Government was not agreeing to an inquiry. I think I had been hoping to go to the InterAction Group meeting on 27 October 2014 and say that there would be an inquiry, but I could not. I also wanted to say that to the Scottish Parliament. I had hoped that I would be able to say that we had to stop this now and have an inquiry. My own view at that time was pretty definite. We needed to have an inquiry and if I was almost there I was tipped over the edge by the events of that day. I was absolutely certain that we had to do it.
  
83. I wanted to talk about the type of inquiry we envisioned. I did not want to get pinned down to a type of inquiry which people feared, that is, the type of inquiry that the First

Minister Alex Salmond and Lord Gill and a whole range of other people feared. I could not even get to that stage.

84. The letter to the SHRC simply said: *'the Scottish Government Ministers will continue to be open to the possibility of a review in relation to any specific concerns which would benefit from such an approach'*. I was not prepared to close the door.

#### **InterAction Group meeting on 27 October 2014**

85. I was down to attend this meeting and make a speech. There was then going to be other activity, including group discussions. I attended and my slot was early afternoon. A draft speech, cleared by me, had been prepared in advance. I am notorious for not sticking to my speaking notes. This draft speech would reflect what the officials wanted me to say. It would be very unusual for me to stand up and just read it out verbatim. That is not my style.

#### ***Conversations with survivors on 27 October 2014 – “Road to Damascus” moment***

86. I would like to make a point about the event. Ministers' diaries are always extremely full. It would be very unusual for me to go to an event for two hours. It would also be unusual for me to stay for a lot of the round table discussion, which on this occasion I did.
87. When Alan Miller introduced the event on 27 October 2014, he made it clear that his hope would be for a public commitment from Scottish Government and *“a convincing plan of action to realise the outcomes of the plan”*. That included the issue of review and the added value of an inquiry being looked at. He was obviously encouraging the making of some sort of commitment by the Scottish Government.
88. Before I went in to the meeting, I sat and talked to those who were about. Doing so had a very profound effect on me. The survivors that I spoke to were very combative. If you are a politician who is used to dealing with constituency business you take

combative discourse as part of the job. What struck me on this occasion was that the survivors I spoke to were very direct and quite untrusting, deliberately and quite rightly so. I came out of my discussions with them thinking I wanted to get an inquiry, but I wanted to get an inquiry that actually helps. I did not want to get bogged down. I did not say this directly to them, but the discussions influenced my thinking. I did say that my mind was open on an inquiry.

89. After the discussion with survivors I wanted an inquiry to happen, but I was aware of the difficulty that it was going to create in terms of getting it through the Scottish Government. I had been on a journey towards an inquiry, but that discussion got me there. It was the first time that I had met the survivors in that direct way. It sealed it for me because I felt the case for an inquiry was unanswerable. I am pretty certain that day I came away saying to Alan Miller of SHRC "Listen...create an argument".

***Group session at InterAction Group meeting on 27 October 2014***

90. I stayed for some of the group session. I was struck by the resistance of the churches and particularly by Bishop Joe Toal. I have known Joe Toal for a long time. He was a priest in the Western Isles when I lived there. I thought he was pretty dug-in. He did not want to have an inquiry and he did not want to have any interference in the right of the Catholic Church to say what it wanted to say about things. It was quite a difficult discussion with him. Superficially, Bishop Toal was fine, but he was not giving an inch on this issue. His focus was on the inquiry being a never-ending issue, costly, and time-consuming to set up. This was very much the view that was being taken by the Catholic Church at the time. Of course it was being taken by Scottish Government officials and some ministers as well.
91. In the group discussion, while some survivors had hoped for more, they were pleased that an inquiry remained on the table. They wanted to take up the opportunity to discuss with ministers what added value an inquiry could make. They were keen to know the sort of timescales for decisions. I encouraged them to write to me if they were wanting to make the case. I wanted them to persuade me because I needed to make that case to others. The more information I had from people to help

me make a case, the better I could make the case. That was my normal way of operating.

***Alan Miller's closing remarks on 27 October 2014***

92. I am aware that Alan Miller in his closing remarks identified areas where more work needed to be done. One of those areas was to do with the time bar issue which was still a cause for concern to survivors. The second area was on the question of an inquiry into historical abuse of children in care. He said: *"Finally, the Scottish Human Rights Commission has respected the fact that there is a diverse range of views and the inquiry has been presented as part of the InterAction process. As a human rights body it has consistently called for a public inquiry and will continue to do so."*
93. The SHRC's view was quite clear in its support of an inquiry. This was before my official decision was announced. Professor Miller said that *"critically there is a window of opportunity in which to respond to the Scottish Governments statement."* I took that to mean that he understood that I had indicated that there was still a decision I could make and might make.

***Report by CELCIS of the InterAction Group meeting held on 27 October 2014***

94. The report of the meeting, prepared by CELCIS, states:  
*"On the issue of public inquiry Mr Russell made it clear that it had not been ruled out. He highlighted that there had already been a number of investigations and reviews that have led to significant improvements in the care sector. He is committed to listening to both sides of the argument regarding the need for an Inquiry"*.

**Cabinet meeting on 28 October 2014**

95. The following day we had a Cabinet meeting. I advised the Cabinet that I had announced at the InterAction Group meeting on 27 October that we were considering establishing an independent inquiry on historical abuse of children in



care. That was slightly stronger language than I had used at the InterAction Group meeting.

96. The Cabinet minutes note that I said this: *“The inquiry must be designed to have tangible outcomes for survivors. It should also help society gain a better understanding of the issues. It should allow the institutions concerned themselves to give an account of their actions in public”*.
97. I informed Cabinet that I was intending to bring detailed options for an inquiry to the following meeting of Cabinet with a view to announcing proposals as part of my planned ministerial statement in the Scottish Parliament on 11th November 2014.
98. I knew what I wanted to do and how we were going to do it. There is reference in the Cabinet minute to significant pressure from individual survivors and groups for some form of inquiry of record. There was pressure to raise the public profile of the issue. I was wanting to respond positively and this was my positive response. During discussion within Cabinet, the importance of the criminal justice system as part of society’s response to child abuse was stressed, but the minute also records the following: *“In addition to bringing the perpetrators to justice in the criminal courts, a wider response is also necessary allowing the survivors and the families, as well as wider society, to achieve some form of communal resolution and possibly individual closure”*.
99. The Cabinet discussion was the synthesis of two views. There was a strong view from some members, particularly from the First Minister, Alex Salmond, that the full rigour of the law must be applied to those who have committed criminal offences. My own view was that whilst that was important, there was a wider community and communal interest which needed people to be reconciled. So how would we do those two things? There was a very long and detailed discussion. Sir Peter Housden, the Permanent Secretary, said afterwards that he thought that it was one of the best Cabinet sessions that he had heard. Certainly it was very rigorous. There was a full discussion on the issue and an inquiry was not ruled out. The important thing was

that I said that I wanted to do it. Then we agreed that there should be a set of proposals on a cross-portfolio basis.

100. From about August 2014 onwards, I had taken the reins and departed from the previous position rather a lot. I had left the door open and had invited people to make the case. Between August and November 2014, I was moving in the direction of an inquiry. I had been persuaded but I could not reveal that publicly. On 28 October 2014, I got agreement from the Cabinet to bring forward detailed proposals. My position was maintained, albeit the opposite position was also being maintained meantime until my proposals came forward and were further discussed. That became particularly crucial at the next Cabinet meeting.

**Correspondence to me after the InterAction Group meeting held on 27 October 2014**

101. I received a couple of letters after the InterAction Group meeting on 27 October 2014. Both were quite detailed submissions on why we should have an inquiry. At the meeting I had asked survivors to tell me why there should be an inquiry in their own words.

**Letter of 30 October 2014**

102. One letter dated 30th October 2014 was quite powerful and compelling. Having read the letter, I wanted the writer to have the chance to tell his story and put that on record properly. His letter showed that he needed help to do that.
103. I did not agree with every single paragraph of that letter. It said some things that made doing so very difficult. The writer talked about a paedophile network throughout Scotland, within Quarriers and in the wider Scottish community. I did not know whether that was true or not. The point was that it needed to be enquired into.

104. One of the issues the writer wanted investigating was the issue of children's records because that was a big thing for Tom Shaw. It was a hugely important issue. I was very struck by what was said about the Quarriers' records issue. I think I found out about that issue through a constituency case to do with Quarriers' records which was very disturbing. I had not made that connection up until then. Essentially my constituent had had her records destroyed. She was unable to move forward from where she was because there was no record of her existence. She had been told lies and different stories. I remember being very troubled about that.
105. There was reference in the letter to delays and inaction on the part of Scottish Government. I have no criticism of the actions of my predecessors. With hindsight, which is always wonderful to have, much more importance should have been attached to the issue of inquiry at an earlier stage and also the nature of the inquiry. There needed to be some creative thinking about it. When you deal with people who have suffered severe injustice, it becomes for them all consuming. It takes over their lives, quite understandably. Many lives have been ruined by childhood abuse whilst in care. Had an inquiry been granted 10 years earlier, that we might have at least saved those lives from being ruined for another 10 years.
106. There were some broad statements in the letter about the duty of organisations and the state which places children in care or has responsibility for children in care. The writer talks about how they have to provide certain basic things, not just material care but social and educational developmental care. They also need to maintain proper standards within establishments and the state has a role to play there. I absolutely agree with everything that he says in that regard.
107. One comment he made was this: *"Perversely the whole machinery of the Scottish establishment in the form of the Scottish Government, the care organisations, the churches, the police authorities, the legal system, the educational system and the social services has for decades been arrayed against the victims and survivors. The upshot of this imbalance is to render the adult victims and survivors powerless just as they were against the abuse they suffered when they were in care"*. I can understand that that is how it seemed to him - that every way you turn you cannot

get the redress and the justice you are seeking but I do not believe there was, or is, an institutional conspiracy.

108. There were matters that the writer wanted investigating. There were a number of points about establishing facts, investigating management cultures, investigating why care providers had failed to initiate processes to deter abusers and establishing why, if they were aware, they appeared to ignore reports made by children and others of abuse. There were also points on the need for authentication and validation of testimonies. If you take most of these points, I have no arguments with them. They were influencing my thinking. For example, where the writer says "*propose a historical record of the Scottish care system to be comparable with a national confidential forum*", that was absolutely what I thought should have been happening. When he questions why the reports of sexual abuse by forty residents given to Tom Shaw did not trigger a police investigation, that seems to me to pose an issue.
109. The writer thought that the public inquiry process could in part be involved in conducting formal studies on the specific issue of Scottish institutional child abuse. It could take account better than a court of the broadest range of evidence research and capitalise on this greater potential by revealing the various causes and effects in institutional child abuse in Scotland. I agree with that. That is why my thinking was very much going along the lines that we needed a range of academics and experts that could look at that issue.
110. The writer made the point that many former residents of childcare in institutions in Scotland have throughout the years made allegations of various forms of abuse by many perpetrators. He said: "*This clearly indicates that there were wholesale systemic failures in the Scottish Care System which have not been fully investigated, wholly accounted for or sufficiently recorded*". I do not quarrel with that statement. It is not a systematic abuse issue but a systemic problem arising from the fact that allegations come from multiple sources. It is a different issue to say that the Scottish care system was corrupt or badly run. I would quarrel with that. There were lots of good people providing lots of good care but I could not quarrel with the statement about systemic weaknesses and failures.

### **Letter dated 31 October 2014 from Chris Daly**

111. The other letter I received was a letter dated 31 October 2014 from Chris Daly. He thought that an inquiry's terms of reference should be along the lines set out in the petition he had lodged with the Public Petitions Committee in August 2002. He also stated in his letter that *"during the InterAction process I was more concerned that survivors should have something tangible that would meet their everyday needs"*. He then said: *"I am now in favour of a far reaching thorough public inquiry"*. To me his letter was saying "I started off wanting an inquiry, then I focused more on the everyday needs of survivors and how they could be improved, but now I am back to telling you that I still think there is need for an inquiry". That is effectively what the InterAction process also said.

### **CELCIS letter dated 31 October 2014**

112. In its letter to me of 31 October 2014, CELCIS stated that a national inquiry was the appropriate mechanism, alongside other actions, to secure the fulfilment of survivors' human rights. CELCIS indicated the sort of inquiry it thought would meet those requirements. The CELCIS letter made the point that *"through our regular engagement with survivors before and throughout the InterAction process we have witnessed an increasing clarity across survivors' views about the value of a national inquiry and what an inquiry should be equipped to deliver"*. CELCIS seemed to be saying that although there were a lot of discussions and debates and differences, there was an emerging view that an inquiry was one of the actions that ought to be pursued. They were talking about a different type of inquiry to the one which the First Minister and others were opposed, being an inquiry that engaged with survivors and allowed them to influence it.

113. The point was also made by CELCIS at that time that the focus of the inquiry should not simply be on abuse in residential institutional care. It had to look at all forms of care, including foster care. I agreed with that. My view was that it would be foolish to start limiting an inquiry to abuse of children in residential care. If you are going to have an inquiry, do it across the whole range of care settings. You only do it once.

**Cabinet meeting on 4 November 2014**

**Paper by me as Cabinet Secretary for discussion at Cabinet on 4 November 2014**

114. I presented a paper to Cabinet for decision on 4 November 2014. This was effectively the follow-up to the agreement that I would develop proposals and put them before Cabinet for discussion. I had listened to representations from survivors and CELCIS and I knew what the SHRC's position was. I indicated my intention to make a statement to the Scottish Parliament on childhood protection and historical abuse. I made it plain *"my experience of the InterAction process has convinced me of the need for a cathartic process of review to give survivors the opportunity to move on and thrive"*. *"Cathartic process of review"* was synonymous in my mind with some form of inquiry. I had been aware this was going to be a difficult discussion. My wording reflects something that a survivor had said to me. I used it again in my statement to the Scottish Parliament on 11 November 2014.
115. In my paper, I made the point that I was vulnerable to political criticism as Scotland was the only part of the UK that was not currently undertaking an inquiry into historical abuse of children in care. I said: *"While we have made great progress and a positive participation of an InterAction process is testament to that, I now believe that the time is right for us to undertake a positive meaningful inquiry with significant engagement from survivors and relevant organisations which would be very different from that proposed in England and Wales and which would go further than the Shaw Review"*.
116. I made my position clear on the matter. I gave proposed terms of reference as part of the paper. I explained the thought process behind what I had in mind and what it was designed to achieve. I recognised that there had to be protection of the criminal justice process and that there should not be prejudice to that process taking its course. In actual fact the inquiry was not leaning towards a lessening of prosecutions. That was a really important point that the First Minister and the Lord Advocate were particularly focused on.

117. It would not be correct to think that there was a need for an inquiry because the other processes were not working as they should and were not strong enough in 2014. I do not recall anyone saying that. Rather, the argument was that with all the focus on an inquiry, people who were wrongdoers were going to get away with it. If there was an inquiry, it would all become talk rather than action. It was necessary to reassure those people who held this view that that would not happen.
118. We could intensify the prosecution process without damaging the sort of inquiry I had in mind. The two processes could run in parallel. Most survivors were wanting accountability in the sense of criminal justice, as well as other forms of accountability. They wanted somebody to be accountable. In some cases, that meant prosecution but it also meant the state to taking responsibility as well.

#### **Cabinet meeting on 4 November 2014**

119. I invited the Cabinet to agree the need for an inquiry. My recollection of this meeting is that there was a very strong and lengthy discussion. The view from the First Minister, Alex Salmond, was he did not want an inquiry to happen. He thought it was spending an enormous amount of money and an enormous amount of time without any proper outcome.
- 120.
121. The Deputy First Minister at that time was Nicola Sturgeon. I have a strong recollection that Nicola was very supportive of what I was trying to do. She wanted this to happen and Alex Salmond did not want it to happen. That is where we were.
122. In essence there were two points of view. One point of view said that we had to do this and it was the right thing to do. I would have then gone on to pursue a different type of inquiry, but it would have been an inquiry. The other point of view was that of the First Minister who did not think it was the right thing to do. He was supported by the Lord Advocate (Frank Mulholland). I do not think Kenny MacAskill, then Cabinet Secretary for Justice, was keen on an inquiry either. Certainly, the Cabinet in its entirety did not support my position.

123. There were strong figures within the Cabinet who were opposed to the inquiry. However, this was not about some sort of political battle. This is simply how Cabinet works. You have contention about ideas and issues. This was a particularly sharply focused area of contention.
124. I do recognise that from the perspective of the Lord Advocate in his role as an independent prosecutor that he may have felt there were real risks of running a major inquiry in parallel to the criminal justice processes. I recognise the reservations from the Justice portfolio too.
125. The Cabinet did not agree my paper and I was to prepare a further paper on the matter. The issue was not closed. No decision had been reached. There was a bit of an impasse. It is important to remember the political setting of this. Alex Salmond was in the last fortnight of being First Minister. The Cabinet meeting was held on 4th November 2014, so it was Alex Salmond's third last Cabinet meeting before he stepped down. There was going to be a change in the Cabinet anyway. I knew that it was all going to resolve itself in the new Cabinet because the Deputy First Minister supported an inquiry and wanted it to happen.
126. I would never have pressed for a vote in Cabinet on the issue. I cannot remember any occasion when a Cabinet has voted. The Cabinet does not vote by and large. Ultimately, there would be a consensus one way or the other. At the very worst, it would simply say we are not deciding this. It was unspoken that if I took it back in three weeks' time I would likely get it through.

**Statement in the Scottish Parliament on 11 November 2014**

127. I made a parliamentary statement on 11 November 2014. A statement such as this is very much a product of "working-on" between the minister and the officials. Statements have to be provided to opposition spokespeople a couple of hours in advance of the statement being made. I would take particular care over a parliamentary statement, particularly a statement like this. I would have seen a draft



statement three or four days beforehand. I would work on it. It would be distributed and go to the First Minister and Lord Advocate to look at. The First Minister could change it sometimes. Every official would want to alter it at some stage. You have to stop that from happening and draw a line eventually.

128. The finalised statement said this:

*"I believe and undertake to consider whether the conditions and other commitments or further inquiries are needed and what form that might take ... to create a better national understanding, place the facts on record and bring the opportunity to move on for many survivors. I also maintain I must listen closely to views on all sides of the debate to ensure that whatever decision is taken is well thought out and meaningful rather than purely raising expectations of what an inquiry may or may not deliver for survivors. As such I expect the Government to complete its observations shortly, at which point I will advise survivors of abuse".* In one sense my statement was a holding position because my hands were still tied.

129. Alan Miller of SHRC issued a press release on 11 November 2014. In it he said that I had asked SHRC to hold an urgent recall meeting of the InterAction Group to address a range of questions around holding a national inquiry. I had asked Alan to discuss an inquiry again, particularly in the light of my recommendation that this should involve survivors influencing the nature of the inquiry. I think he interpreted what I said as addressing a range of questions around holding a national inquiry. What I was actually thinking was once I had permission to proceed with an inquiry, I was going ask to survivors what sort of an inquiry it should be. I was moving ahead on it in a sort of way. I was putting in the groundwork. Alan Miller would have sensed that was where I was heading.

130. I said in my statement: *"I have ... asked the Scottish Human Rights Commission to reconvene an urgent meeting of the InterAction Group to focus on those matters with a view to allow Government to reach a final decision".* It goes on: *"I have heard from some survivors outside the InterAction process about this issue who strongly support an inquiry and I will continue to seek such other views as well".* I was giving as heavy a hint as I possibly could that this was going to happen.

131. It was vital to get an early decision and I undertook to return before Christmas. I made the point about good examples elsewhere. I was opening up the idea about the type of inquiry it should be. That is where my mind was at that stage. I was thinking about what type of an inquiry we were going to have. We were going to have an inquiry, I had no doubt about that. The question was the type of inquiry and I was beginning to press the issue of the type of inquiry we were going to have.
132. A lot of my statement was taken up with explaining the actions that were going on in relation to child protection, the current position and various reports that I had asked for and received. That would be quite important because I was pressed by Graeme Pearson MSP on the specific issue of an inquiry.
133. I remember that there were survivors in the gallery. They would have been there not in expectation of the announcement of an inquiry but in support of where we were. I think I told them where we were. I told Graeme Pearson. I remember being quite blunt because I had told him not to press the issue of an inquiry too hard. I had told him that it would not help if he pressed it too hard. A bit of patience was needed. He did not show any patience on that occasion.

**Attempt to set up a further InterAction Group meeting after 11 November 2014**

134. There was then an attempt to set up a further InterAction meeting. I was hoping that the junior ministers could attend that InterAction meeting. I wanted the survivors to be integrated into it and there were others that I wanted to see. I wanted to work out where the National Confidential Forum fitted into my ideas. I wanted to know how the type of inquiry I was thinking about would fit in. I was going to get it all sorted out by Christmas. It was 12 November at that stage, so we had 6 weeks to get it all resolved.
135. An inquiry was a process that was going to happen and happen soon. Alex Salmond was still in office at that stage. His last Cabinet was on Tuesday 18 November 2014. On Wednesday 19 November 2014, Nicola Sturgeon became the new First Minister.

My officials and I were powering towards getting a paper through the Cabinet before Christmas. I would have expected to get it through on 25 November.

### **After leaving government**

136. I actually left government on the 20 November 2014. I do not remember the paper being ready then.
137. I wrote a letter dated 20 November 2014 to Jennifer Davidson at CELCIS in response to her support for a national inquiry. I wrote of the sense of privilege that I had attending the event on 27 October 2014 and meeting survivors. I was humbled and moved by their stories and their courage. I had listened to the survivors who had called for an inquiry and I told her that I *“remain open to such an inquiry taking place and will carry out a proper review with added value and will also listen closely to all sides of the debate”*. I was echoing the statements that we saw in the previous documents. Essentially this was a holding letter. So far as I was concerned, everybody knew that the inquiry was happening. The unexpected twist was that I was no longer the Education Secretary by the end of that day, a change that none of us could have anticipated

### **Reshuffle and my departure from Cabinet**

138. My departure from Cabinet could be seen as rather unfortunate timing. It could have been misconstrued. There must have been a reason for my departure. I had spent five years in Education and perhaps it was time for a change. There is never a present time to leave, but these things happen without warning. Suffice to say, I did not know when I signed that letter to Jennifer Davidson of CELCIS that I would not be Education Secretary in twelve hours' time.
139. There was a reshuffle when Nicola Sturgeon became First Minister. Kenny MacAskill and I were the first two Ministers asked to go and see her. Both of us agreed that we would leave the Scottish Government and that was it. You leave government

immediately. There are no if's, no but's. You are entitled to a car to take you home and that is the end of the story. Two Cabinet Secretaries left government and other people were promoted into those roles.

140. I knew that Nicola Sturgeon supported an inquiry and would take it forward. It can at least be inferred that she did not make the decision to remove me from Cabinet because she was unhappy with what was happening in relation to the issue of an inquiry. She was supportive of my position. Indeed Angela Constance, my successor, went on to announce the Scottish Government's plans for an inquiry the following month. My regret was that the type of inquiry was not the type of inquiry I would wish to have had.

**Letter dated 24 November 2014 by a survivor to new First Minister**

141. I was unaware of this letter until recently. He is very complimentary of my ideas and it is a very nice letter. He writes: *"The very person with whom we believed that we could go forward on the issue of past institutional abuse within Scotland has been removed. Both myself and colleagues were promised a ministerial meeting with him personally in the next week or so to take this forward. Michael was the first minister from the Executive whom I met who actually listened and was proactive regarding abuse. He certainly didn't pass the ball, he played it"*.
142. In the final page of his letter he makes a point about mandatory reporting. He says "mandatory reporting if in place decades ago would have stopped my being raped or beaten whilst at school". I respect his opinion on this and that may well be true. I think there may be other circumstances in which mandatory reporting would be damaging. My view was that the charities were probably right about it. But he may be right.
143. In a sense my removal from Cabinet might have been perceived to be another example of survivors being let down at the last minute or the eleventh hour. They had an expectation and were worried by my removal that an inquiry would not

happen. That may have been how it looked, but it was absolutely not part of it. There is never a good time for a re-shuffle to take place.

### **Commitment of new First Minister to having an inquiry**

144. Nicola Sturgeon was committed to having an inquiry. Once I had left office, the matter was taken forward and an announcement was made by Angela Constance in December 2014 as my successor as Cabinet Secretary for Education. I made a very conscious decision when I left office to give Angela all the space she needed as my successor. The oldest cliché in the book is an ex-minister hovering in the background. I did not do that at all. It would have been crazy to do that because I would end up criticising my own decisions.
145. I was no longer able to get deeply involved in the survivors' case with them. I met with survivors on a couple of occasions. I spoke in a members' committee and I supported Margaret Mitchell's Apology Bill. I indicated my support for the survivors where I could.

### **The inquiry announced on 17 December 2014 by Angela Constance**

146. John Swinney and Angela Constance both spoke to me about the issues involved and sought my advice on certain matters. The precise terms of reference and the type of inquiry were matters that they determined and I left them to that exercise. Certain things were done and terms were agreed in May 2015. I had no involvement in that.

### **Other matters**

### **Engagement with survivors between 2002 and 2014**

147. It has been put to me that at the early stage in the petition process that followed the lodging of Chris Daly's petition with the Public Petitions Committee (PPC) in August 2002 there was a distinct lack of engagement with survivors before key decisions were taken. It has been suggested that sometimes there was a failure to listen and take seriously what survivors were saying.

148. There is almost a self-fulfilling prophecy. The more people are ignored, the more agitated they become. The more difficult to deal with they become, the more reluctant people are to engage with them. It is a vicious circle. I have met many of the survivors and campaigners involved in this. One or two of them have rung my office every day for ten days. These are not easy people to deal with and sometimes that becomes part of the issue. If you are a constituency MSP, you are very familiar with the fact that sometimes you are the person that people want to shout at in the absence of anybody else to shout at. You have to accept it. It does make it harder for people to get what they want. It is a very difficult balance to strike.

#### **A range of views amongst survivors**

149. What particular survivors wanted was not always identical in terms of whether they were in favour of an inquiry or in favour of another approach. There were lots of different views. That was understandable. Those people against an inquiry had a point. You might have an inquiry which will satisfy group A but not satisfy group B. There was a difficulty in dealing with that. It was not just “them” (the Establishment) and “us” (the survivors) because “us” was not a group with a single view on what survivors wanted and needed.

#### **Research**

150. Regarding research in relation to the Scottish position, Professor Kendrick and others mentioned in 2004 noted that there was a gap in the literature in relation to the abuse of children in residential care. The research we had was not particularly good. We needed multi-disciplinary and interdisciplinary studies.

#### **Quality of records held by Scottish Government and state of knowledge about abuse in residential care**

151. Had it been necessary in my time as Cabinet Secretary for Education to conduct a comprehensive search of records held by or on behalf of Scottish Government, that would have been a very difficult exercise. The way the records were put together was a weakness in the system.
152. We inherited a really chaotic records system. I hope it is a little bit less chaotic now. Quality of records was a real issue. The documentary material that went to the National Records office was not very good. Historically, no government and no business employed professional archivists to keep their files and records. By and large, everybody kept them in different ways.
153. In any organisation, there is always the possibility there is something of evidential value within the organisation's records. Most government departments do not keep enormous records. It is not for desired secrecy. The question is "why are you keeping them?" This is a serious point. It is the Richard Nixon's tape conundrum. If you tape every single conversation, it will take you the same length of time to listen to every single conversation. So if you keep a vast amounts of records you are only keeping things that will absorb a vast amount of time. You simply cannot afford to do it.
154. If I had asked my officials to tell me what the state of knowledge within the Scottish Government is about abuse in residential childcare establishments, there would be a substantial record of Cabinet discussions and papers that could be referred to. The question is whether you keep every piece of anonymous correspondence such as "so and so is a paedophile". I would think you would certainly want to investigate that allegation when you get it, but if you find it to be untrue or cannot substantiate it, I think there is a question of what you keep. There are good records in certain areas, for example Cabinet papers and minutes and records of material shown to ministers. There needs to be. The access to those records is also regulated. I can ask to see material relating to things that I have done as a minister but I cannot ask to see things outwith my areas of ministerial responsibility except material that is in the public domain.

155. In my view, in order to assess a child care system to see how far it is operating effectively without systemic weaknesses and to monitor the system over time, you must ask questions, see people, ask for material files and look at relevant statistics. Doing all that allows you to make a judgement.

### **Nature and extent of abuse of children in care in Scotland**

156. The Scottish Government would not be asking the Inquiry to consider the nature and extent of the abuse of children in care in Scotland if it already knew the answer. If that question had been asked forty years ago, the answer would have been that it did not happen or, if it did happen, it is a tiny issue. Therefore, historically the system itself could not comprehend that was what was happening to children in care. That has changed and of course this is a scandal of our time. Nobody would doubt that. We now know that abuse of children in care was much more widespread and prolific and terrible things happened. How can we stop that happening? Maybe one answer is to have better records but we need a more open mindset. We need to be able to look at things in a different way and be open to new ways of examining our systems.

### **Systematic or systemic abuse**

157. The inquiries announced by the Home Secretary in May 2014 used the word “systematic” and that adjective has been used in other documents and by officials. If the abuse is “systematic”, it is associated with organised abuse. The other way of looking at things is that abuse that appears to be a number of isolated occurrences but is happening throughout the system is potentially indicative of a “systemic” problem that has to be addressed. That abuse is systemic, not systematic.
158. The focus in the past has been that, if there is no evidence of systematic abuse, then it does not give rise to the same level of public or political concern. Institutional racism was not something that we could have considered as an institutional issue until we confronted it and discovered it. I think it was regrettably the same with historical child abuse. We discovered these things and we had to deal with them. At



least now there is more of a recognition that it is not just about systematic abuse. It is about systemic failings that might lead to abuse happening across the board.

### **Closing thoughts**

159. Inevitably in a Cabinet system of government there will be disagreements about things. I am not criticising any of my ex-colleagues in any way. They had a firmly held view and I would not want to represent that their way of doing things was wrong and should not have been followed. They were all people that I worked with very closely and people I respected. On this occasion we had opposing views and we operated as a Cabinet should by discussing things and moving forward. That is what I would want to see reflected in anything I have said to the Inquiry.
160. The way the Cabinet discussed things was healthy. You do not want a Cabinet of people who simply defer to one position or one person. I have held six ministerial jobs and remarkably I am still at it. There are issues which require very substantial and sometimes very good discussion by the Cabinet. I was fortunate to be involved with such discussions and how they have, in the end, produced a result.
161. In the end, two decisions were wrong in my view. The first was not to have an inquiry in the early parts of this century. The second was to end up having an inquiry which was purely a legal inquiry. I believe that both of those decisions were wrong, but I can understand why they happened. I am not criticising the people who made those decisions. I think it is a legal inquiry that we now have. That is my personal view. It is not the type of inquiry I wanted to see and that is a personal disappointment to me.
162. 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.....  
DocuSigned by:  
[Redacted Signature]  
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Dated..... 03 August 2020