Scottish Child Abuse Inquiry

Witness statement of

COLIN MacLEAN

Support person present: No

1. My name is Colin MacLean. My date of birth is [redacted] 1951. My contact details are known to the Inquiry. This witness statement is to give information to the Inquiry regarding some of my responsibilities as an official working for the Scottish Executive, which was later called 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 current Scottish Government.

Educational background

3. I graduated from the University of Edinburgh with an Honours Degree in Pure Mathematics and an MSc in Design and Manufacture of Micro-electronic devices.

Employment history

4. In the 1970s, I was a teacher of mathematics in Edinburgh, and then was on secondment with the University of Edinburgh. In the 1980's and 1990's I was an education adviser for Lothian Region, held various posts in HM Inspectorate of Schools and was Chief Statistician for the Scottish Office.

5. From 2000 until I retired in 2013, I was an official for the Scottish Executive and Scottish Government. From July 2002 until December 2006 and again from May 2007 until July 2008 I was Head of Children and Young People Group (CYPG). By 2008

the Group had become a Directorate and I was the Director. I am not able to comment on events that took place before July 2002 or after July 2008.

6. Since retiring in 2013 I have had a number of voluntary roles, including as a Trustee of Barnardo's.

Children and Young People Group

7. As Head of CYPG, I led a collection of teams. In old Whitehall language I was an Under-Secretary – now called Director. I reported to the Head of Department who was the Secretary in old Whitehall language – now called Director General. The Permanent Secretary is the person above that who is the most senior official in the Scottish Government. My responsibilities included overall strategy on Children and Young People and directing the work of teams leading on specific policy areas within that broad area, such as child protection and looked after children in residential care. The general aim was to improve outcomes for all children, focusing on the rights and needs of the individual child, wherever that child was. This strategy became known as *Getting It Right For Every Child* (GIRFEC).

8. During my time as Head of CYPG, I had a number of other responsibilities. These included line management of the Division providing Analytic Services (Statistics, Research and Economic Advice) and IT support to the Education Department (until 2003), leading the preparations for the 15th Conference of Commonwealth Education Ministers (2003), policy responsibility for Social Work and Social Care staffing (from spring 2004) and leading on budget issues for the Department.

9. From June 2004, a great deal of my time was absorbed leading the Scottish response to the Bichard Inquiry (into the Soham murders), which lead to coordinated action across the UK to ensure unsuitable persons did not work with children.

10. As Head of CYPG, I worked directly with Ministers on policy issues. I had regular, weekly meetings with the Minister for Education and Young People. From November 2001 to May 2003 the Minister was Cathy Jamieson and from May 2003 to May 2006 it was Peter Peacock. When Cathy Jamieson became Minister for Justice in May 2003,

responsibility for Youth Justice transferred with her from Education to Justice. I then reported to Cathy Jamieson on youth justice and to Peter Peacock on everything else to do with children and young people's issues (and on my other responsibilities as noted above).

11. When petition PE535 was lodged in 2002, the official who had responsibility for leading the response was Gerald Byrne who was then Head of Branch with responsibility for Looked After Children (LAC). That Branch sat within the Young People and Looked After Children Division (YPLACD) which also had responsibility for youth work, youth justice, the Children's Hearings system and liaison with the Scottish Children's Reporter Administration (SCRA).

12. Government goes into a different mode of working in the weeks before an election. New policies are not announced by Government during that time. Instead, the political parties propose new policies through their manifestos. In the run up to the election in May 2003, senior officials, including those within CYPG, spent much of their time analysing these manifestos and trying to work out what might happen after the election so as to be ready for all possibilities. (Like most if not all Scottish elections, the outcome was by no means clear, and we had to be prepared for coalition, minority and majority government). This caused a significant reduction in the time available for all other internal activity, including the response to the petition.

13. Following the May 2003 election, and the establishment of the Labour / Liberal Democrat coalition with an extensive agreed programme of work, there was substantial activity on a number of fronts within CYPG and as part of that within YPLACD, to plan and implement delivery of that programme. For YPLACD, the main areas were the review of the children's hearing system, a major initiative on youth justice and comprehensive new legislation on adoption and fostering.

14. Over the course of the next year, as additional senior staff became available and budgets allowed, senior management within the Division was boosted to enable that programme of work to be delivered. YPLACD was split into two Divisions. One Division focused on children's hearings and youth justice, and the other on youth work and looked after children issues (including the response to the Petition). The new

arrangements took time to bed in. An additional Head of Division, Maureen Verrall, was appointed to head the division dealing with youth work and looked after children issues. However, she left on promotion after a few months. She was replaced by Rachel Edgar. Gerald Byrne's team was also split in two. He then led the first team that focused on adoption and fostering, in particular the new legislation. Shirley Laing was brought in to lead the other team, which was responsible for all other looked after children issues, including the response to Chris Daly's petition.

15. Several departments had an interest in relation to adult survivors of childhood abuse. The Health Department supported adults who had been abused as children. The Department of Education and Young People had an interest in where the individuals had been as children. The Justice Department had an interest because there were legal issues, including claims against the state and issues of prescription and limitation. As all three departments had an active interest, Ministers from each department met together and were involved in discussions. In line with standard practice, advice on relevant legal issues was sought from and offered by OSSE (Office of the Solicitor to the Scottish Executive)

Key developments in child protection from 1992

16. At the time Chris Daly's petition was received, a substantial amount of work was already going on to improve child protection, including the protection of children in care. Whatever else was going on, including during the election and post-election period described above, it was important to ensure that work continued, to reduce the risks faced by all children, including those in care.

17. Because the focus was on every child, children in care were automatically included in the scope of all child protection work. Children do not lose their right to care and protection because they are in care. The logic of that universal approach is very powerful. When any agency was looking at care and protection in relation to a particular group of children, the general principles, standards and approaches of child protection came into play, as well as any specific needs of and issues faced by that particular group.

18. There had been significant developments in child care and protection before Chris Daly brought his petition. Angus Skinner's *Another Kind of Home* was published in 1992. The Children (Scotland) Act was passed in 1995. There were programmes of work by government to improve services for children and which placed greater emphasis on children's rights and child protection. An example was *For Scotland's Children,* published in 2001, which provided the Scottish Executive's detailed plan for children's services.

19. There had been a number of reports from Inquiries in the period from 1992 to 2001. There was the Warner Report in 1992 on the selection, development and management of staff in children's homes (in England), the Inquiry into Child Care Policies in Fife (also 1992), the Report by Roger Kent in 1997 on risks faced by children living away from home in Scotland (one of a series of reports prepared at that time covering the whole of the UK), the Edinburgh Inquiry on the Abuse and Protection of Children in Care in 1999, the Waterhouse Report in 2000 following abuse in North Wales and the Hammond Inquiry into the death of Kennedy McFarlane (2001). With the exception of the Hammond Inquiry, every one of these Inquiries focused on risks faced by, and abuse suffered by, children who were being looked after (either under supervision at home or in care homes).

20. Following the Hammond Inquiry, and in the context of that series of recent Inquiry reports, the Scottish Executive commissioned an audit and review of child protection, and a report *It's Everyone's Job to Make Sure I'm Alright* was published in November 2002. The First Minister, Jack McConnell, announced a programme of work to address issues identified in the review. There was to be a three year reform programme for child protection. An expert team was to be appointed to oversee the reform and tackle poor performance, and there was to be a tough inspection system to ensure that reform was delivered. There was to be a children's charter and new national standards. In preparing for the publication of that Charter in 2004, organisations who worked with and were trusted by children were commissioned by the Scottish Executive to speak to children and find out what they thought children wanted and needed.

21. In 2001, the Regulation of Care Act set up the Care Commission and the Scottish Social Services Council to regulate care provision and care staff, including staff working in residential establishments for children.

22. In 2004, two key documents were published. The first was the Charter and Standards (for Child Protection) that described what children expect and need when they have difficulties or problems and how organisations are required to respond. The second was the report of the Short Life Working Group (SLWG) on action required to support adults who had been the victims of sexual abuse. These two reports led to a substantial volume of work in subsequent years. While they were published after the petition was received, that was coincidental. Neither had been triggered by the petition.

23. Following the publication of the Child Protection Review in 2002, Her Majesty's Inspectorate of Education (HMIE) was commissioned to lead work with other Inspectorates to develop a set of standards, specifically around child protection, to be used by inspectors when inspecting child protection in local authorities. This effectively forced local authorities and other agencies to apply these standards to their local child protection work. A team of multi-disciplinary experts had worked with local authorities and other agencies to think through with them what it meant to improve child protection. The standards raised awareness amongst those involved in the child protection committees. This ultimately led to the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 which provided a basis for joint inspections.

24. It was clear to me that for all the Ministers who were involved, child protection was core to what they believed in. It was unusual for a First Minister to take a leading role in a particular policy area. It was, therefore, seen to be very significant that it was Jack McConnell who stood up and launched the original review in 2002 and the Charter and Standards in 2004. It was clear that he was taking child protection very seriously and that he expected rapid change and significant improvement.

Chris Daly's petition and the Scottish Executive's response

November 2002 – May 2003

Initial briefing to the Minister for Education and Young People

25. I was copied into the initial briefing on Chris Daly's petition to the Public Petitions Committee (PPC) by Gerald Byrne to Cathy Jamieson on 13 November 2002. It gave advice to Ministers on the response to Chris Daly's petition that had been agreed by officials across the Executive.

26. It was copied to the First Minister whose office said they would like some advice from a Special Advisor (Jeane Freeman) on the issue. On 30 January 2003, the First Minister's office indicated that the First Minister was content to proceed as agreed by Cathy Jamieson and Jeane Freeman. There was further advice to Ministers and Ms Jamieson was content with the redraft.

27. As is often the case when an important document is being prepared, there were several versions of the draft initial response to the Petition. The version that was finally agreed and sent to the Committee on 17 February 2003 reflected Ms Jamieson's wishes at that time (as noted in Gerald Byrne's minute to her on 17 November 2002) that (a) Ministers should not close down the option of an Inquiry at some point and (b) she wanted to make a statement that abuse was and is wrong. It also took into account legal advice on the precise wording.

Compensation for cases of abuse pre-1964

28. The issue of compensation for victims of abuse who had no redress through the courts because the alleged abuse happened pre-1964 was an issue which Ministers considered on a number of occasions. It was a complex issue and, while Ministers wanted to support abuse survivors, it was not easy to decide the best approach.

29. During my time in post, the issue was considered a number of times. The first reference I can find is a submission from Peter Beaton in 2002. The fullest advice was

given by Rachel Edgar to Peter Peacock in late 2004 where she identified factors and challenges that would need to be considered if a compensation scheme were to be set up.

30. However, there were two unresolved legal issues and it was decided to delay detailed consideration of compensation until these issues had been resolved. The first was whether the law governing pre-1964 cases should be amended to allow these cases to be brought to court, which was referred to the Scottish Law Commission for consideration following the *Kelly* appeal. The second was whether Ministers were found to have any liability for the abuse that had been suffered, which was being considered as part of the *McEwan v Hendron* test case. Once it was clear on what basis compensation could be sought from liable parties (both in terms of the time the abuse took place, and in terms of who had been found legally liable) then victims would be in a better place to decide whether and how they might wish to engage with any compensation scheme – or pursue liable parties through the legal system.

31. The view that Ministers took until 2007 was that they would wait until these issues had been determined before any a decision was taken on whether to establish a compensation scheme, because the nature of any compensation scheme that might have been introduced would have been significantly influenced by the outcome of these two issues. These issues had both been resolved by 2007 and at the beginning of 2008 Adam Ingram made a statement to say he was open to persuasion on compensation.

32. I think the issue of compensation is unique in that it was an issue on which decisions were deferred and not taken. For other issues, clear decisions were taken at the time, although in some cases the decision was subsequently changed.

Whether an Inquiry would lead to better child protection for children in care

33. As officials, we considered whether the abuse of children in care was sufficiently widespread and systematic to justify a general inquiry.

34. The first point to note is that public expectations of what was acceptable in terms of disciplining children had changed over time and some of what might be regarded in 2002 as abuse might not have been at the time it had happened. However, I had no doubt that what we were hearing about went well beyond what should have been acceptable at any time.

35. We did not see any evidence of co-ordinated abuse, although clearly there were a significant number of individual cases. This was in line with the findings of many of the pre-2002 Inquiry reports. On reflection, when we referred to 'the lack of widespread systematic abuse' I think we may have conveyed the wrong impression. We should have distinguished more clearly between 'the lack of evidence that there was any systematically organised abuse' (which is what we meant) and 'the failure of the system to prevent, detect and deal with abuse' (which is a systemic failure that we did recognise and were already dealing with through the Child Protection Programme). I think we should have drawn that distinction more clearly in this and subsequent submissions on the Petition.

36. I think we should have said more explicitly that there had been a considerable number of cases, but that we had no reason to suppose they were anything other than individual cases. There was no evidence that it had been systematically co-ordinated. However, it was clear, and well recognised at the time, that there had been a major failure of supervision, monitoring and control. The abuse was not prevented, not detected and not dealt with. The actions that we were already taking on standards, registration and inspection were designed to address that failure.

37. Because the abuse we were hearing about was in line with what we had heard about through the various recent Inquiries, and because action was being taken in response to these Inquiries, the collective view was that an Inquiry would not shed new light on the nature of, causes of and possible actions in response to in care abuse. We were concerned to focus expert resources on action, rather than further investigations whose outcomes we believed we could predict. That view is, of course, challengeable, but it was the view we took at the time.

38. Issues of culpability were being addressed through the *McEwan v Hendron* test case, and we did not feel that an Inquiry would add usefully to that aspect. Again, that view is challengeable, but it was our view at the time. The issue of whether pre-1964 culpability could be addressed through the court system was being addressed through the *Kelly* case and subsequent referral to the Scottish Law Commission.

39. I have looked at the evidence given to this Inquiry by Susan Elsley. She very helpfully identified four different types of abuse. I think that, without realising it, we were aware of all of these at the time, but the language we used did not actually reflect these different categories. We were certainly not denying that abuse had occurred, or that it had been widespread, but we had not properly teased out that distinction between systematic in terms of the nature of the abuse and systemic in terms of the failure to deal with it. I think we should have been clearer about that, although I am not sure that would have led to different decisions being made about whether or not to have an Inquiry. I recall Cathy Jamieson at one point said that she did not like the tone, and I think that is part of what she might have been referring to.

40. The other issue about tone is that Gerald Byrne, in his early submissions, was trying to capture the key issues knowing that the wording was going to be dealt with later. He wanted to capture the key things and get us to talk about them, and then we could think about how we actually expressed these issues and conclusions to the Petitions Committee.

41. At that time we had just had a number of inquiries into abuse of children including children in care. Those inquiries had identified the types of abuse that there were, that it was far too prevalent, and that there was a whole series of actions that had to be taken. We thought that we did not need another investigation to identify the problems as we had all these reports that came through from 1992 onwards. We already had a list of reforms. The experts in dealing with the protection of children in care needed to devote their energy to implementing that set of recommendations and investigating current failures of care and protection.

42. There were not, at that time, statistics or a collation of data that would give a ready picture of the situation of allegations of abuse in institutional care. Information was not

centralised in any one place or coming from just one source. The nearest that we got to it was when Cathy Jamieson asked in 2003 for information from police forces about criminal investigations into abuse. She asked individual police forces for statistics on criminal investigations but the numerical answer was very much less than the number of civil cases which were live at that time, so this information was not particularly useful in helping build a national picture of the prevalence of abuse. (This lack of statistical evidence is in line with the findings of Tom Shaw, see below, about the lack of a secure and well organised evidence base).

43. When I was in the Inspectorate (1985–96 and 1999-2000), we used our inspection evidence base to write reports on general themes and issues. I do not remember any request for us to collate information about possible abuse in care. While I cannot speak for the time before 1985, if we had suspected abuse during my time in the Inspectorate, we would certainly have reported it. I think it is very unlikely that an Inspectorate aspect report on in-care abuse would have added to the existing knowledge base.

44. As policy officials, we knew of cases of abuse that had come to light because of cases going through the courts. If these cases had suggested something that was fundamentally new and different about the nature of what had been happening and might still be happening, we would have responded differently. However, the cases we heard about were in line with what we had seen and heard before.

45. In summary, we did not think at the time that we could have done something that would have given better quality information about the nature and extent of the abuse than we had from the inquiries that had already taken place and the information coming from court cases. We might have obtained a greater volume of information, but the view was that we would not find out very much that might have changed what we would do in the future.

46. We were keen to ensure that any information held by Scottish Executive that could possibly be relevant to those pursuing individual cases was made available to them. We identified around 400 files that were potentially of value and these were reviewed in detail. We found that there was information about individuals, but it was incidental: the files were mainly about the institutions rather than about individual people in them.

There was no systematic information about individuals because that would have been held by the institutions. However, in order to be as helpful as possible, these files were redacted and made available to individuals as well as being made available publicly on request. Redaction was carried out in two ways. For the version of a file that would be released on request under Freedom of Information, information about all individuals was anonymised. For the version to be seen by an individual survivor and their legal team, the file was amended so they could see the information about them, but not be able to identify any other people mentioned in the report. This would potentially involve multiple redactions if several different people wanted to see a report that mentioned them. The individuals were to be given support by *Who Cares?* when they accessed the files, based on the experience of Barnardos who had carried out a similar exercise.

47. In terms of what the Scottish Executive held, there was actually not very much that turned out to be very helpful to anybody. We went through the exercise, so if we had held anything relevant to an individual, we would have found it. As noted below, Ministers encouraged other organisations to provide information to victims on the same basis.

48. We had a very clear idea from previous Inquiries and investigations why abuse had been allowed to happen, why it had not been detected and why it had not been dealt with. Officials believed at the time that we knew enough about the nature of what was happening and what had to be done to stop it happening again such that we were able to set that policy agenda and manage it through. It was very challenging, and it used all of the expertise that existed in the system to take that forward. We believed that to have diverted some of that scarce expertise to get even more information than we needed would not have been a good use of that expertise. In my view, this was **not** a financial issue: it was that we were concerned that the limited number of people with the expertise to drive forward the agenda would have to split their time between that work and responding to the demands of an Inquiry for expert advice.

49. In summary then, in relation to the development and implementation of policy on the protection of children in care, we took the view that an Inquiry into historic abuse would be unlikely to lead to changes to what was already being done, and would divert resources from protecting children who were in care at that time and in the future. That

view could of course have been challenged, and Ministers were free to reject it, but it was the conclusion officials came to at that time. In retrospect, looking at the Irish report in 2008, every recommendation they made was either something which we were already doing in Scotland by 2004 or was an issue we were addressing. The scale and the nature of the abuse in Ireland appears to have been at least as great as what had been happening in Scotland. The Irish report did not, therefore, suggest that an Inquiry held around 2002-04 would have identified improvements to child protection that were not already under way.

50. There were, of course, other issues to consider, of which the most important was the needs of those who had been abused in care.

Needs of survivors for an inquiry

51. As well as considering whether there was a public policy interest in holding an Inquiry, we also considered how best to meet the needs of those who had been abused.

52. We heard from the petitioners who were brave and stood up and spoke publicly about things that had happened to them. That must have come at a great cost to them personally, and maybe it was what they needed to do, to say things publicly. There was no doubt that they were brave, they were committed, they were persistent and they said that was what they needed.

53. Between the time the petition was received in 2002 and the Apology in December 2004, we spoke to victims, both people in INCAS and others, and we got a wide range of different views. Some wanted an inquiry because of the lack of legal redress, the need to tell their stories and the need to understand why the abuse had been able to happen. Others thought money would be wasted on an inquiry and should be spent on fixing the problems. Some did not want any Inquiry to be held in public as the media coverage would force them to relive things they did not want to have to think about. In the debate on 1 December 2004, MSPs including Lord James Douglas Hamilton, Robert Brown and Nicola Sturgeon reflected that mix of views in their contributions.

54. We had to weigh up these different interests. One of the key challenges for an official when providing advice is to assess and balance the needs of those who are vocal with the unstated, but equally legitimate, needs of people who, for whatever reason, are reluctant or unable to express what they think. Usually that involves balancing the needs of those who have the confidence, skills and knowledge to engage with public services to secure what they want and need for their families, with the needs of those who, for whatever reason, are less confident or articulate. In this case it played into a different split between victims who were brave enough to speak and who wanted an inquiry, and victims who did not want an inquiry but were reluctant to say so publicly. It also played into a split between those who wanted a full-blown public inquiry and those who wanted something less formal. Even if it was about other people, some were worried about what an inquiry might do to their own feelings. We felt we had a duty of care to people that, almost by definition, it was very hard to identify. We had no way of knowing how many victims fell into each category, but we knew the range of views and concerns was wide. That made us cautious.

55. There were also important legal issues to consider. An Inquiry would need to be constructed in a way that did not contaminate the various legal cases that were underway or might be in the future, by prejudicing the interests of victims or their alleged abusers. We did not explore these issues in detail prior to giving advice in 2003, simply noting them (in my submission of 23 September 2003) as issues that would have to be dealt with if an Inquiry was to take place. Ministers were not invited in that submission to consider (as a factor in deciding whether to hold an Inquiry) whether holding an Inquiry might expose the Executive to any legal liability.

56. At the end of the day, we felt the balance to be struck was between the wishes and needs of the petitioner and other victims who wanted an Inquiry, the lack (as it seemed at the time) of a significant public policy interest, and the interests of an unknown number of other victims who would prefer not to have a public inquiry. The potential costs of an Inquiry were mentioned in the September 2003 submission, because we did that routinely, but I did not get the sense that cost was a significant factor in Ministers' decision. On balance, I was happy to go with the collective view that said we did not think an Inquiry should be held. Ministers were, of course, free to take a different view. If Ministers had decided to hold an inquiry, we would have understood

why: there were strong arguments on both sides. Indeed, I submitted later advice to Peter Peacock on 8 June 2004 on whether or not to hold an Inquiry as part of the preparation for the response to the Petitions Committee. It concluded that 'On balance, we conclude that it would not be helpful to hold an Inquiry, although we recognise there are strong arguments in favour. . . . we recognise this is a finely balanced judgement and that correspondents [other Ministers, officials, special advisers and lawyers] may wish to have further exchanges with the [Education] Minister or officials.' Despite that clear invitation in June 2004 to reconsider the position, the advice not to hold an Inquiry was accepted.

September 2003 – December 2004

Meeting of Ministers – 25 September 2003

57. I prepared a briefing paper in advance of a meeting of Ministers on 25 September 2003 to consider the response of the Scottish Executive to Chris Daly's petition. Peter Peacock was now the Minister for Education and Young People. There were four options put on the table for consideration. The first and second option involved some form of inquiry or other forum, the third was for a package of measures to support victims and the fourth was to do nothing and maintain the current policy. The paper went to Jeane Freeman in the First Minister's office and it was marked for general awareness. The advice given to Ministers was not to set up an inquiry, but to look to improve services and to offer help to access files. Although I signed off the paper, I was not at the meeting on 25 September 2003.

58. After the meeting, there was a briefing document written by Gerald Byrne and sent to the Minister for Education on 20 October 2003. I have been asked why it took until 18 December 2003 for Peter Peacock to send a minute to the First Minister and ask whether he was content with the proposed handling of the issue. I am not surprised as there was a lot going on. This is one of these things that probably should have and could have happened sooner, but Ministers and officials were dealing with a huge agenda, especially in relation to children's issues and it was not possible to deal with everything as quickly as we would have liked. At that time, important issues could have

taken seven or eight weeks to go through that next stage, because there were so many other things that were equally important. If we had given this higher priority, something else would have taken even longer.

59. The First Minister had intervened previously, and clearly it was important to him. It is normal that, after the Ministers have reached a provisional view on an important issue, unless they have simply been told to get on and do it, they would then test that the First Minister was comfortable with what was proposed. They might have done that in conversation, but this was important enough to be done on paper.

60. The First Minister responded on the 22nd December 2003 with a fifth option, which was the appointment of an independent expert. I did not discuss that with him at the time, so I do not know what he was thinking or how widely he had consulted before making the suggestion. This was part of the process of developing thinking and ideas, and this was an idea that eventually took root and happened.

61. The First Minister's comments on 22 December 2003 were not picked up by anyone until March 2004 for some reason. I am not offering any excuses. Even though people were very busy, officials should have responded sooner. The First Minister's fifth option was considered between March and May 2004 and officials recommended against it because it had the same disadvantages as a truth and reconciliation inquiry.

Reasons for the delay in responding to the petition

62. There was an unacceptable delay in responding to the petition between the initial response to the Petitions Committee in February 2003 and the substantive response to the Committee in June 2004. It was important to the petitioner and others who had been abused to be heard, to be respected, to be taken seriously, and to be responded to. I tried to ensure that these happened, but I accept that they needed and deserved a faster response than they got. I am not going to offer any excuses for the length of that delay.

63. However, there were two factors that meant that the response could not be as fast as the Petitioner would have liked. The first is that the issues were complex and required

considerable discussion. These were issues that involved extensive debate and required time for thinking, consultation and reflection to allow ideas to develop and emerge.

64. The second factor was that Ministers' agenda for children and young people was ambitious and after the election in 2003 was controversial, extensive and challenging.

65. As noted above, the Division leading on the response to the petition also led on three other major tasks in addition to its normal busy workload: a very different approach to youth justice, reform of the children's hearing system and development of the adoption bill (which Gerald Byrne was leading on). Towards the end of 2003, it became clear to me that the scale of these demands was overwhelming the Division.

66. Accordingly, during the first half of 2004, I took steps to re-structure the Division, recruit additional senior staff and separate responsibilities as described earlier in my statement. Across government people were all desperate to get new senior members of staff because the agenda was huge, and it took a while to get the resources in place and find the right people best able to take forward that specific work.

67. Peter Peacock wrote an apology for the delay to the PPC on 30 June 2004 and I sat beside him when he again apologised for that delay when giving evidence to the PPC on 29 September 2004. Despite the reasons outlined above, I accepted then, and accept today, that the delays in responding to the petition were unacceptable.

Engaging with survivors

68. In May 2004, we gave advice to ministers. There is reference in that advice to officials having met with INCAS and that officials had noted that INCAS members had a variety of views on the best way forward. I do not know when these discussions with INCAS took place, or how many such meetings there were. Specifically, I do not know whether officials first met with INCAS before or after the meeting of Ministers on 25 September 2003.

69. INCAS was an organisation that my team worked with at various times, although at one point it ceased to exist and there was a gap in contact until INCAS was subsequently re-formed. In addition to INCAS, officials were also in contact with other victims and survivors. I do not know the extent to which, before September 2003, my team had had discussions with individuals and groups representing survivors. It was normal best practice to engage with key stakeholders before advice was given and for that engagement to be described to Ministers. I do not know why we did not describe any engagement with survivors to Ministers in the submission on 23 September and I do not know why Ministers did not ask us about it.

Access to files

70. Files held by the Scottish Executive were made available to provide background for litigants who were pursuing the Scottish Executive mainly in relation to List D Schools. There were certain files that were open at the National Archives, but they contained personal information and so Gerald Byrne pulled those back. The media were confronted with a situation where, on the face of it, these were available and then suddenly they were not available. They were asking questions about them and printed a story about a cover up and concealment. In fact, all we were doing was protecting the legal rights of people whose personal information had been inadvertently made public. The initial action (to open files at the National Archives) was a mistake. In September 2003 officials confirmed to Ministers that we would search our files and make available whatever we could, while protecting the privacy of individuals in line with Data Protection legislation.

71. In early 2004, officials commissioned Who Cares? Scotland to provide support to individuals who were accessing files. We had by that time identified over 400 relevant files. Work was then done to redact them to ensure that it complied with the Data Protection Act while releasing material to comply with Freedom of Information legislation. Then information was given to the individuals on request, once the redaction had been done.

72. On 18 November 2004, the Minister wrote to churches, local authorities, Barnardo's and Quarriers asking them to give access on the same basis as the Scottish Executive

had. He reported to Cabinet on 24 November 2004 that all these organisations had agreed that the Scottish Executive could publish a single point of contact for access to files, and that he was not aware of any organisation refusing access.

73. It led to the point where I think we were in a good place in terms of releasing information. The problem for the individuals was that we did not actually hold very much that was of use to them. We gave access to what we held in government and we asked everybody else to give the same access.

Evidence to the Public Petitions Committee – 29 September 2004

74. Peter Peacock was asked to give evidence to the PPC on 29 September 2004. In addition to his opening address to the Committee, he was given 'question and answer' briefing in case he was asked questions about various matters. In line with normal practice, the speech, Q&A briefing and background briefing material was developed by Education officials in consultation with other Ministers, officials in relevant departments, special advisers and legal teams.

75. A key consideration for the lawyers in OSSE was whether anything that might be said in Committee could be taken as implying that Ministers accepted liability for the abuse that had taken place. Specifically, Peter Peacock was keen to express 'regret' for the abuse that had taken place. OSSE were concerned at how that might be construed in legal terms (as distinct from everyday terms). He accepted their advice and expressed 'profound sorrow' instead of 'regret'. I have seen an internal note from OSSE that implied that Peter Peacock also wished to offer an apology and had been discouraged from doing so for legal reasons, but have not seen any relevant papers that confirm that and cannot remember exactly what happened. As would normally be the case, OSSE also made a number of other suggestions on the wording of the speech and the Q&A briefing. Most of these suggestions were taken on board in the final version.

76. Peter Peacock explained to the Committee the thinking which led to the decision not to agree to an Inquiry. He acknowledged that abuse had taken place and did so using strong language (including 'gross', 'shocking', 'truly appalling'). He said that it was not

necessary to have an inquiry to acknowledge the appalling nature of what had been done and to empathise with the sense of betrayal and anger felt by victims. It was a very strong statement.

77. He was pressed by Karen Gillon MSP on whether or not he would give an apology 'for the actions of the state in respect of child abuse'. In line with the position on an apology that he had agreed with officials and OSSE before the Committee appearance, he repeated his acknowledgement of the abuse and Ministers views of that abuse, without offering an explicit apology on behalf of the state. He said that was as much as he could say 'at this time'. I do not know if that was intended (or heard) as a signal that an apology might be given in due course.

Apology and Debate – 1 December 2004

78. I suspect that by the time Peter Peacock gave evidence to the PPC, there may have been an initial discussion among Ministers on the question of an apology. The question of whether to give an apology was discussed between officials and Ministers in the preparation for the debate on 1 December 2004. It became clear, closer to the time, that the First Minister was not prepared to make a Statement to Parliament unless he was going to apologise.

79. The key events in the timeline between the Committee appearance on 29 September 2004 and the apology and debate on 1 December 2004 were as follows:

80. On 30 September, the outcome of the appeal on the pre-1964 time bar was announced, with the result that the time bar remained in place. This prompted consideration of the question of compensation, and OSSE advised that if the *McEwan v Hendron* test case found against Ministers, then it might make sense to introduce a compensation scheme. Rachel Edgar provided Peter Peacock with preliminary advice on the range of issues to be considered, but it was decided to defer detailed consideration of that complex issue at least until after 1 December (since it was very unlikely that it could be resolved before then).

81. Officials met with INCAS on 18 and 28 October and Peter Peacock met with INCAS on 23 November 2004 to discuss what they wanted and to float a number of ideas. It was clear that INCAS wanted an apology, something that would help them understand why abuse was able to happen, and a package of support for survivors. They wanted a compensation scheme for those who were unable to pursue compensation through the courts. They wanted an Inquiry, although they were less clear about what sort of Inquiry they wanted. They indicated that they did not want a 'Fraser type Inquiry' although I am not sure what they meant by that. Briefing produced on 12 November notes that if a full public inquiry were held, victims would be subject to cross examination, at odds with the express INCAS wish that victims be believed.

82. In his meeting with INCAS on 23 November, Peter Peacock floated the idea that he might appoint a 'rapporteur' to investigate how abuse had been able to happen. This idea had not previously been discussed with officials, although there had been discussion about the possible creation of a reference group.

83. In subsequent internal exchanges, OSSE (from the perspective of potential civil actions against Scottish Ministers) and Crown Office (from the perspective of possible impact on criminal cases) both expressed concern about the possible impact of appointing a rapporteur who might make comment about how abuse had been able to happen (and thereby have an impact on how liability was judged) and who might make comment on individual cases (and thereby risk prejudicing legal process). Crown Office recognised that their concerns could be addressed by careful construction of the remit (which was duly done when Tom Shaw was appointed). Peter Peacock acknowledged the OSSE concerns but, since Ministers were already committed to making all relevant information available, and having discussed the matter with the Lord Advocate, he took the view that a rapporteur would not significantly increase the risk of legal action. He understood and said very clearly that a rapporteur would not make comments about individual cases.

84. On 16 November, officials asked OSSE for advice on the text of a possible apology. It was clear by then that Ministers wished to give an apology and the subsequent exchanges with OSSE were around the precise form of words. On 19 November, a second version of the apology (agreed with OSSE) was circulated along with a draft

of Peter Peacock's speech for the debate on 1 December. These documents then formed the basis for the versions that were used in Parliament. The final version laid the responsibility for the abuse explicitly on those who were 'entrusted with their welfare' (ie entrusted with the welfare of the children in care).

85. OSSE also gave advice on a number of other matters, for example providing reassurance that by stressing how much they were strengthening child protection for children in care, Ministers would not be exposing themselves to an increased risk of liability for previous abuse.

86. On 30 November, Rachel Edgar gave Peter Peacock advice on the formal status of various possible mechanisms, noting that an Inquiry with legal status and powers would have to be established by agreement of the Westminster parliament (a position that was subsequently changed) and noting that a rapporteur would have no legal status or formal powers, although there was no barrier to one being appointed.

Faith-based providers

87. I recall ministerial disappointment at the lack of reaction from the faith providers to Jack McConnell's statement and I shared that disappointment. I was surprised because the Catholic Church had made apologies elsewhere in other jurisdictions, and so it would not have been a big step for them to have extended that to Scotland. I have not seen any written record of attempts being made to get them to be more engaged in the processes in Scotland, but contacts of this nature would have been through conversations and not necessarily recorded.

88. I know there was official frustration and, I suspect, ministerial frustration at the response of some elements of the Catholic Church to the effect that the Church was not responsible for the behaviour of some of the individual units within it. I felt as a member of the public that it was wrong for the Catholic Church not to take responsibility for the behaviour of organisations that appeared to me to form part of the Church, but that is my personal view. I suspect that Ministers might have shared that but did not discuss that with them.

Short Life Working Group on adult survivors of childhood sexual abuse

89. The Health Department had been concerned about the impact on adults who had been abused sexually as children (whether in the community on in care) and Health Ministers had established a Short Life Working Group for adult survivors of childhood sexual abuse. At the point when this Short Life Working Group was being set up, I am not sure whether officials were aware of the existence of INCAS.

90. Separately, Ministers were committed to developing services for adults had suffered abuse of any kind when they were in care as children. Thus there were two different groups of adult survivors with a relatively small overlap between the groups, and two different streams of work. About the same time as the Short Life Working Group focusing on childhood sexual abuse issues was reporting, we were thinking about the apology, statement in the Scottish Parliament and what action the Education Department would take. Towards the end of 2004, it became clear that while the numerical overlap might be small, these two groups had perhaps more in common than had been realised.

91. There came a point when it was obvious that we had to find a way of bringing these together, because there was a significant overlap in the kind of services that you would need for both groups.

92. At the point when the Short Life Working Group on adult survivors of childhood sexual abuse was reporting and Ministers were considering how they were going to respond to the petition, we then made the decision that we would bring together these two streams of work. We would extend the scope of the survivors' work to include children who had been in care whatever abuse they might have suffered, and set up a sub-group within that mechanism with in-care abuse as its focus.

93. We discussed this with INCAS and they were involved in taking that work forward. There were one or two people from the victims and survivors groups who were on that sub-group. From then on that was seen as the mechanism whereby support would be provided for survivors of in-care abuse.

2005 - 2008

Tom Shaw Historical review

94. There was quite a gap between the statement in December 2004 and Tom Shaw being appointed in June 2005. This was not surprising. Sometimes when Ministers announce an investigation they already know what it is going to do and who is going to do it, so it can start quite quickly. In this case, when the announcement was made on 1 December 2004, we had not yet discussed the remit with Ministers in enough detail to allow scoping work and the identification of a suitable individual.

95. It took a while to identify Tom Shaw as a suitable person, and to get to at least the first stage of working through with Ministers and with him what it was he would be asked to do. That explains that delay of a few months until he started his work.

96. The task, as discussed and agreed between officials, Ministers and Tom Shaw was to look at the systems in place in previous decades and to try and answer the question of why abuse was not prevented, detected and dealt with. Initially, it was not envisaged as a forum that survivors could come to and recount what had happened to them. His task was to be about looking at the systems and processes.

97. This was an exercise which was focused on understanding what happened and why it happened and why it was able to happen. In order to have that perspective, the first thing that Tom Shaw did was to commission very detailed work and look at all of the paper information that there was about legislation and regulations and inspection practices over the period. Then Tom Shaw began to talk to the people who could answer his questions and clearly representatives of people who had been in care had to be part of that process.

98. It was always intended that he would speak to representative groups, including groups representing survivors. For two reasons he felt once he started doing that that he needed more than that. Firstly, the groups themselves did not have a stable existence (eg INCAS ceased to exist for a time) so he could not depend on having somebody to speak to if he only spoke to groups. Secondly, I think he felt that he wanted individual

testimony as much as collective discourse. When he came to us and asked if he could talk to individuals, we said that one of the reasons that we had originally said 'no' was that he had a very small team that had agreed to deliver very quickly. We did not want the risk of Tom Shaw being overwhelmed with people wanting to come and speak to him. However, as he wanted to speak to individuals, we found a way of ensuring that he could.

99. There was no resistance when he came with that question, and other questions about practical support and extending timescales were always responded to positively. I do not think he ever asked for anything that he did not get, but that did mean that the remit changed over time and the final report was broader in coverage than originally envisaged.

100. Tom Shaw was appointed in June 2005, but a lot of his initial work was scoping the task, and then he was engaged in looking at the paperwork. He had research staff to help him on that, for example looking in our legal libraries. It took months before he got to the stage of thinking that he understood all of this well enough to begin to start talking to people. He had to work out what questions he was going to ask based on his understanding of how things had developed over time. I am not surprised that it was a year later that he was then having a serious conversation with us about how to engage with the people he needed to talk to because of all the ground work he had to do first. He reported in November 2007, less than three years from the date of the apology. I do not think the time for the Tom Shaw work to be done could have been speeded up without risk to the quality of what he did.

101. At the launch of Tom Shaw's report some survivors expressed concern that they still had not had an inquiry, but I also got a sense that they were very positive about the work that he had done.

Ministerial response to various issues in 2008

102. The last key event during my time in post was the statement by Adam Ingram (Children's Minister) to the Scottish Parliament on 7 February 2008. In his statement,

he made a number of announcements, some of which were later stated in writing by Fergus Ewing (Justice Minister) in his letter to the PPC.

103. Adam Ingram said that Ministers fully accepted the conclusions and recommendations in Tom Shaw's report, committed three years of funding for work to support survivors, reiterated the Scottish Government's view that there was no need for an Inquiry but stated that the Government was exploring the option of a Truth and Reconciliation approach, and said that he was open to persuasion whether or not to introduce a compensation scheme.

104. I would have discussed with Adam Ingram, before he made the speech, that this would signal to the Scottish Parliament that the Scottish Government's view had now changed. Ministers were now open minded about things that previously had appeared to have been ruled out. It was intended to be heard as Ministers now giving serious consideration to a change of view on a truth and reconciliation approach and on compensation, although not on an Inquiry. Giving a forum for survivors and a financial fund for survivor support were now on the agenda in a way that they had not been up to that point.

105. Following Adam Ingram's statement to the Scottish Parliament Fergus Ewing wrote formally to the PPC fully accepting the Tom Shaw recommendations. He noted that funding had been provided for SurvivorScotland to take forward the Short Life Working Group including support for in-care abuse survivors as well as childhood sexual abuse survivors.

106. That led to, in 2008, the establishment of the In Care Survivor Support Service. A truth and reconciliation approach was also being considered in discussion with survivors. That was the first time that Ministers had explicitly stated that this was on the agenda.

107. When Ministers were reviewing these various issues in the run up to Adam Ingram's statement and Fergus Ewing's letter, I got the strong sense that there was no party political dimension. This was new Ministers looking at issues afresh and in the light of the work that had been done since the 2004 apology and the publication of the 2007 Shaw report.

Scottish Executive awareness of and response to individual cases of abuse and other failures of in care provision

108. In some cases, the Executive would become aware of a case because it led to a criminal prosecution. The Crown Office would informally ensure that relevant policy divisions were kept aware of high profile prosecutions in their area. I would also have expected the Social Work Inspectorate to be aware of such cases, to be kept well informed by the relevant local authority and to ensure the policy division and Ministers were kept informed.

109. Mainly as a result of advice from Social Work Inspectorate, but also by other means, such as discussions with senior local authority staff and elected members, policy divisions and Ministers (as appropriate), would be reassured or not about the local response to case and, if necessary, would take action through the inspection and investigation route.

110. In addition to criminal cases, through the work of the inspectorates and through contacts with senior officers in local authorities and national agencies, the Scottish Executive would be aware of any major concern about, or investigation into provision being made by, a provider of care to children. Once any legal processes were concluded, officials and Ministers would consider whether it was necessary to take further action. It would depend on particular circumstances what form that took, whether it was an inspection, an investigation, or consideration of de-registration. For example, in serious cases the Care Commission might need to consider whether the establishment was currently fit for purpose. It might take the form of a generic investigation by inspectorates of an issue that was thought to be relevant across the country. It might lead to specific recommendations and requirements for action by a particular provider and/or it might lead to general recommendations to all providers. It might lead to joint work by the local authority and the inspectorates (as in the case of the Kerelaw investigation).

111. I have been asked why the Executive agreed to investigations into specific cases around that time (for example the Colin Evans case in Fife, the abuse of young girls in Western Isles, the provision of care in Kerelaw School and the vulnerable adult case

in the Borders) but did not agree to a more general inquiry into in care abuse. These were very specific cases about individuals, or individual establishments, where things had clearly gone wrong in the very recent past and action was required to deal with current failings in the system.

112. By 2002, we had such a long list of recommendations about protection of children in establishments that we did not need to have another long list of generic recommendations. When we did investigations into Borders and Fife and Western Isles, there were some conclusions that were very particular to the case. There were others that were generic and were things that people had been saying for a while in a series of reports about failures in care. I do not think we got dramatic new insights from any of these inquiries into what should be done. The main value was in being able to identify the particular problems that had still not been addressed.

Some personal reflections

113. As a private individual, I look at the time from 2002 until this Inquiry was established in 2015 and I understand that it appears to have taken a very long time to get to the stage of setting up the Inquiry. With the exception of the unacceptable delay between February 2003 and June 2004, I can understand why each step took as long as it did, but from the perspective of victims the total time from lodging the Petition to the Inquiry starting was very long. I also understand why it is taking the Inquiry a long time to work through its very substantial agenda.

114. There was Ministerial acknowledgement of, and strong response to, evidence of in care abuse before the Petition was lodged. The child protection programme and improved safeguarding of children in care would have happened whether or not the petition the Petition had been lodged. However, I do not think we would have had Tom Shaw's report in the form that it was commissioned without the Petition. I suspect we would have not had an official apology, in the form it was given, without the Petition. Others are better placed to judged what led to the various actions post 2008.

115. The easy response to the petition in 2002 would have been to advise Ministers to agree to the request and say that we would address the details and legal problems later. From the outside, that appears to be what the Irish did once Bertie Ahern gave his apology. They passed legislation and then they had to pass more legislation because the first legislation was inadequate. There were legal problems that we could have ignored on the assumption that a way forward would be found. We could have ignored the wishes and needs of victims who did not want a public inquiry.

116. A large number of Ministers from three different parties were involved at various times in decision making about the response to the Petition and the requests for an Inquiry. When sensitive issues (such as those triggered by the Petition) are put to Ministers, they often agree with advice, but they are always careful to ensure due process is followed and that issues are properly considered and they challenge and disagree with advice when they feel that is appropriate. Ministers who had argued for an Inquiry when in opposition changed their minds when in Government. Ministers agreed advice to reject the request for an Inquiry, but subsequently decided to hold one. On each occasion strong arguments were put for and against an Inquiry. That reassures me that the advice given was reasonable and balanced.

117. I believe that Ministers' decisions were primarily driven by their desire to improve outcomes for children and young people and address the needs and rights of those who had been abused in care, even if their decisions were not always in line with what the Petitioners said they wanted.

118. Working in the area of child protection and addressing issues related to abuse was profoundly moving and difficult. One of the things that gave me the emotional strength to do that work was seeing the courage, persistence and commitment of people like Chris Daly, Helen Holland and others who were abused and who were determined to stop it ever happening to others.

Other information

119. 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 [redacted]

Dated 11 March 2020