

## **Scottish Child Abuse Inquiry**

Witness Statement of

**JACK MCCONNELL**

Support person present: No

### **Introduction**

1. My name is Jack Wilson McConnell, The Rt. Hon. Lord McConnell of Glenscorrodale.
2. I grew up on the Isle of Arran; lived in Stirling for most of the period 1977-2000; lived in Wishaw, Lanarkshire from 2000 – 2010; and have lived in Stirling again since 2010. I was a Mathematics teacher between March 1983 and September 1992; General Secretary of the Scottish Labour Party between September 1992 and March 1998; and I was elected to the Scottish Parliament on 6<sup>th</sup> May 1999.
3. I was First Minister of Scotland from 22 November 2001 to 16 May 2007 and since 20 June 2010 I have been a Member of the UK House of Lords. I am a member of Her Majesty's Privy Council.
4. I have been asked to provide my recollections of the work of the Scottish Government in respect of allegations of child abuse having occurred over a lengthy period of time, spanning decades before the creation of the Scottish Parliament, in many institutions where children were being cared for. This statement is based on my recollection aided by documents which have been provided to me by the Inquiry and the current Scottish Government. I am particularly grateful to the current Scottish Government for their assistance in

providing such a volume of material to the Inquiry and for the assistance I have been afforded in establishing some key dates.

5. In this statement I describe the way in which the government I led worked, the actions we were taking to improve child protection and children's services, details of my involvement with Petition PE535 and my recollection of my discussions with individual Ministers and our collective decision-making while I was First Minister. I have included observations on the period afterwards. I have left others to narrate their own involvement and actions.
6. One of the primary motivations for my involvement in politics has consistently been to provide a voice for those who felt disadvantaged and disempowered. I was not directly engaged in policy decisions or support services for children in care until I became Education Minister in October 2000, but I first became concerned about the circumstances of children living in care as a result of my experience as a teacher in the 1980's.
7. That experience was not directly related to abuse in the care system, but instead to the educational challenges and the overall safety of children in care. It did however make me alert to the growing crescendo of evidence on cases of abuse in care homes and attuned to the ongoing issues of child protection that were highlighted in public debate more often through the 1990's. Well in advance of becoming an MSP, I resolved that I would take action on those issues if ever in a position to do so.
8. As Education Minister between October 2000 and November 2001, I had the opportunity to make decisions that could improve child protection systems and the educational opportunities available to children and young people in the care system in Scotland. I saw evidence for myself, initiated a number of reviews and took action, both to improve the work of public services in child protection and to improve the educational experience available in care homes run by the public and voluntary sectors. We legislated for the Care Commission and the

Scottish Social Services Council and a new inspection system for children in care.

9. Following my election as First Minister, our Cabinet continued with this work and I led our vision for improvements across the board. For the 2003 Scottish Parliament General Election, our Scottish Labour Party Manifesto included several commitments including a new Children's Charter and a Children's Commissioner, and these were agreed as priorities for the coalition Government negotiated after the election.
10. The specific issue of historical cases of sexual and physical abuse in children's homes was developing a particular significance around this time. In Ireland and elsewhere, enquiries by churches and governments, legal prosecutions and other actions were giving confidence to those who had survived abuse but perhaps stayed silent for decades. Increasingly survivors were speaking out, taking legal action and forcing institutions to confront past neglect. In Scotland, a group of individual survivors of abuse raised a petition to the Scottish Parliament in August 2002.
11. From 2002 onwards, in response to the petition, there was a view amongst the professional civil servants advising Scottish Ministers that the number of cases might not be significant. I was aware of this at the time, but it was my view that these individuals were the tip of an iceberg; that there would have been any more and the number of cases was never likely to be accurately reflected due to the passage of time. I was also aware of a wider public debate where some believed that 'standards were different then' and therefore perpetrators should not be pursued so vigorously. I believed the so-called "standards" in society in the 1950's and 60's were not an excuse for physical or sexual abuse, and that the state had a duty to support those who had suffered the trauma of abuse and the additional trauma of being ignored after reporting it.
12. In dealing with the issues raised in the Petition submitted to Parliament in 2002, my objective was to ensure that the survivors – and those who were not around

to tell their stories – were treated with respect and dignity and taken seriously after all these years. Reflecting on the files that have been retained from that time, I have been reminded of my frustration with the delays that occurred in mid-2003 and again in early 2004. While there were sometimes good reasons for taking time to consult, involve all relevant Ministers in decisions and to prepare actions properly, these periods when the survivors and the Petitions Committee of the Parliament were let down were unacceptable to me then and lessons should have been learnt.

13. In relation to the apology, I was determined from the outset to ensure that a proper apology was delivered in Parliament by me as First Minister and was not minimised by an announcement in any other form.
14. In relation to a public inquiry and the issue of any compensation scheme, I wanted to ensure that these options were not ruled out but that decisions on them followed the due legal process of cases before the courts and the review of the application of time bars. I also wanted to engage others beyond government who had to take responsibility for their inaction over these decades.
15. Between December 2004 and May 2007, Cabinet Ministers were engaged in delivering the commitments we had given to survivors and Parliament in health support, legal and administrative reform, and engagement with survivors to review systemic issues.
16. My formal involvement ended when my term of office as First Minister ended in May 2007.
17. It was my consistent view as First Minister that if the outcome of *M v Hendron* [2007] CSIH 27 was to deny the survivors an opportunity through the Courts for a hearing and possible redress, and the Law Commission did not propose reforms that would lead to historic cases being heard before the courts, there should then be a full inquiry to provide that opportunity, including consideration of compensation. I was therefore very disappointed when the Minister for



Children and Early Years announced on 7 February 2008 that this would not be the outcome. I made this view clear publicly at the time.

18. I therefore welcomed the decision of the Scottish Cabinet in December 2014 to initiate this public inquiry. I want to be as helpful to the Inquiry as possible and I hope that your recommendations can add to the public record, the analysis of why action was not taken through the decades to support the survivors and provide some redress to survivors or their families after all these years.

### **Governing Scotland 2001-2007**

19. Before moving on to consider the topics which are relevant to the work of the Inquiry, and in order to assist the Inquiry in understanding the various roles and responsibilities, I will set out the structure and workings of the Scottish Government during my time in office.
20. As First Minister, I was supported by my own (official) Private Office and Communications team, the Permanent Secretary and central overarching departments and a team of Special Advisors.
21. The Private Office is not in fact private, it is an official creation that is at the core of the way Ministers work in both the UK government and the devolved governments in Scotland, Wales and Northern Ireland. It was led by my Principal Private Secretary, a career civil servant, and populated by several other career civil servants responsible for keeping my diary, arranging advice and briefings, and processing decisions.
22. The Permanent Secretary, who reported to the First Minister, was the Head of the Civil Service in Scotland, responsible for managing the whole Civil Service and in particular, the relationship between the Civil Service and Cabinet. Closely linked to the Office of the Permanent Secretary were the central overarching departments including the Policy Unit and the Cabinet Secretariat, which covered the whole of Government rather than one ministerial team. The Permanent Secretary and these Departments were responsible for preparing

and following up Cabinet meetings, communicating decisions, responding to inquiries, processing correspondence and developing research and policy for the future.

23. The Special Advisers (which numbered up to 12), were appointed directly by the First Minister in consultation with the Deputy First Minister, as agreed by the coalition. They did operate as a collective team but also had individual roles supporting individual ministers. During my time as First Minister, 9 were Special Advisers working with Labour Ministers, while the others worked primarily with Liberal Democrat Ministers.
24. Ministerial decision-making largely involved preparing, deliberating on and then enacting legislation, reporting to Parliament, responding to correspondence and proposals, and launching new initiatives. Much of this was governed by a partnership agreement between the Scottish Labour Party and the Scottish Liberal Democrats but there were always new issues, for example those raised by a petition to the Scottish Parliament.
25. In the circumstances where a proposal or correspondence required a decision by Ministers (including when it directly related to the First Minister), the Minister's Private Office would be responsible for processing the decision-making. They would involve Special Advisers if the matter was deemed to be politically sensitive, either internally within the coalition or externally in Parliament or beyond, and they would involve the Communications Office if the matter required professional communications. The Private Office would liaise with Departmental officials (civil servants) who would normally be responsible for preparing briefings, enacting decisions and record-keeping.
26. Ministers would involve the First Minister, and vice versa, if there were particularly important reasons to do so. I set out clearly to new Ministers that they had an obligation to colleagues to work together as a team; to check sensitive issues with other Ministers who might be affected and to check politically sensitive issues with my office. However, when decisions had been taken, with the approval of the First Minister, or by Cabinet or a sub-committee

of Cabinet, I expected the Minister responsible to implement that decision with the full authority of their office.

27. The day to day decision-making process was a mixture of formal minutes to and from Ministers and their Private Offices, accompanied by informal discussions where opportunities arose.
28. Those informal conversations could take place easily given that we would meet in the Parliament at least twice a week for votes, we shared a suite of offices in the Holyrood building, and we met weekly in Bute House for Cabinet. In and around Holyrood in particular, Ministers would also regularly meet MSPs in corridors or the canteen, or vice versa, and issues could be highlighted or information relayed.
29. All of this was normal, and part of the way Parliaments everywhere work. None of this, however, removed the obligation on Ministers and their offices to minute decisions and respond properly to correspondence.
30. Our coalition government had a system of decision making that ensured the voices of both parties were heard and both leaderships had signed off major decisions. It was therefore important for sensitive or significant issues to involve both the First Minister and the Deputy First Minister. Sometimes this would happen formally, or through the process of a Cabinet discussion, or other times I would check informally with the Deputy First Minister that my proposed course of action had his support.
31. In relation to the petition on historic child abuse allegations, our coalition partners were involved in the Cabinet discussions around the apology and the other decisions announced in December 2004. They were supportive of my approach and I was confident that I was speaking on behalf of the whole coalition when I addressed Parliament and that Peter Peacock was speaking on behalf of the whole coalition when he conducted his business with the Petitions Committee, the survivors groups and other organisations.

32. Petitions to the Parliament could cover a wide range of topics. The Parliament had a procedure for dealing with them and I took the work of the Petitions Committee seriously. I expected individual Ministers and their Departments to deal with responses expeditiously, and only to refer the subject matter to Cabinet if it required new policy making by us as a whole. Ministers would often check that judgment call with me or my office, normally by speaking to a Special Adviser.

**6 May 1999 – 22 November 2001**

33. Having been elected to the Scottish Parliament on 6 May 1999, I was asked by the First Minister of Scotland, Rt Hon Donald Dewar MP MSP to become Minister for Finance in the new Scottish Cabinet on 17 May 1999.
34. In relation to the matters before the Inquiry, I do not recall any decisions that were requested of me as Minister of Finance that would have impacted on the position facing survivors of historic cases of child abuse.
35. On 26 October 2000 following the death of Donald Dewar and the election of Rt Hon Henry McLeish MP MSP as the new First Minister, I was asked to become Minister for Education, Europe and External Affairs in the new Cabinet. In this role, I had policy responsibility for children's services, including social work services and child protection.
36. I do not recall any decisions requested of me in this role that would have directly impacted survivors of historic cases of child abuse. I do not recall meeting any of the petitioners during my time as Minister for Education and External Affairs, Minister for Finance or prior to becoming an MSP. But as events unfolded in Ireland and elsewhere, I was at that time beginning to consider what we would need to do in Scotland, and when.
37. In my initial briefings, I do not recall the department raising with me concerns about the level of care inside institutions. The main focus of the department's

work on care and protection at that time was in establishing the new Care Commission, a social work inspection system and responding to issues around child protection interventions following a number of serious incidents of violence and neglect. I felt that there had been a loss of confidence in children's social work services, so I began reviewing child protection procedures as I felt that the state, social workers and others could do more to protect children through more effective interventions.

38. One of my personal priorities was to consider what we were doing for Looked After Children, and their educational opportunities in particular. I decided to examine the provision for young people in secure and non-secure accommodation, a subject that had been a concern for me as a school teacher in the past. I wanted to be sure we were doing all we could to help these children in the care of the state to maximise their potential through educational and other opportunities.
39. I visited several residential homes for young people during 2000-2001. In one, I was dismayed to discover that young offenders were sharing corridors with young people who had been placed there due to neglect. There were violent and disturbed children living in close proximity to children who simply had nobody else to look after them. I was shocked by the fact that boys and girls were sharing corridors and had relatively easy access to each other's rooms. I recall thinking that the management of the facility was not assertive enough, it seemed noisy and chaotic with a sense of tension in the air and I was worried about the potential for peer abuse and the lack of privacy and personal space for these children.
40. In other homes I had a more positive experience, particular in those run by the voluntary sector where I found the staff to be more respectful of the children, but also more willing to impose standards. Some very innovative work was going on providing education for children who were, again, a mix of those who had offended and others who were there because of family difficulties.

41. We targeted this group in a comprehensive way with a number of new initiatives in order to improve their education provision, separate boys and girls, improve preventative interventions and to use secure units only for children who were quite serious offenders rather than for children who had nowhere else to go. This programme of reforms continued into my time as First Minister and we were constantly looking to try and improve the system.
42. One of the most significant reforms at this time was the Regulation of Care (Scotland) Act 2001. The main aim of that Act (which received Royal Assent on 5 July 2001) was to improve standards in social care services across the board and establish the Care Commission and the Scottish Social Services Council. These were independent regulators, set up to oversee the delivery of care services including care homes for children and young people. The principles of the Commission were to keep people safe, promote dignity and choice and to support independent living, while the Council would regulate and improve the social work profession.
43. The regulation of the services involved registration and inspection of the services, the investigation of complaints and enforcement action where required. Inspections were designed to monitor the quality of the service in such facilities and were generally unannounced. The reports were available publicly. This was a major step forward in the looking after of children in care amongst others.

#### **First Minister of Scotland 2001-2007**

44. I became First Minister of Scotland on 22 November 2001.
45. After my election as First Minister I created a Cabinet Minister for Education and Young People as I wanted to signal internally and externally that the work of the Department with young people outside of schools must be given a higher priority than it had in the past. The main job of the Education Minister would continue to be the standards achieved in our formal education system, but their

other responsibilities for children's services and child protection were never again going to be the Cinderella service in the department.

46. I appointed Cathy Jamieson MSP to replace me. She had relevant professional experience and had been closely involved with young people in care before being elected as an MSP. She had also been a member of the Edinburgh Inquiry into Abuse and Protection of Children in Care which had reported in January 1999. Her experience in these areas was a significant factor in her appointment, in addition to her commitment to educational standards.
47. The legislation to establish the Care Commission was implemented, with the new body in place by April 2002. The momentum of our work on the other initiatives continued. In November 2002, we published an extensive reform programme for child prevention and held our first Child Protection Summit. In March 2003, the Protection of Children (Scotland) Act 2003 became law.
48. The Scottish Parliament session ended at midnight on 31 March 2003, with dissolution beginning immediately thereafter. Elections were scheduled for 1 May with the first meeting of the new Parliamentary session scheduled for 7 May 2003. Accordingly, the Scottish Government went into 'purdah'. Purdah is the period of the election campaign when it is not possible for Ministers to use government resources to make new announcements or to launch new initiatives. Ministers remain in place, but their only role is to deal with any routine or emergency decisions that arise during the election campaign.
49. On 1 May 2003 the new Parliament was elected, and I was re-elected Member of the Scottish Parliament for Motherwell and Wishaw. The Scottish Labour Party had won the election; we were the largest party, but we were short of a majority again. I led the Scottish Labour Party into negotiations with the Scottish Liberal Democrats and we signed an agreement to form a second coalition to cover the 2003-2007 Parliament on 15 May 2003.
50. The Scottish Labour Manifesto for that election had promised to build on our reforms for the protection of children and their opportunities while in the care of

the state. The commitments given in the Manifesto were agreed during the coalition negotiations, so the Partnership Agreement for Government 2003-2007 contained the following section:

- *We will introduce a Children's Charter to protect the most vulnerable, setting out children's rights in language children can understand.*
- *We will establish the new Children's Commissioner before the end of 2003.*
- *We will review the Children's Hearings system to develop and improve the current service.*

53. Following that agreement, I was re-elected First Minister on 15 May 2003 and appointed Ministers to the new Cabinet. Peter Peacock MSP became Minister for Education and Young People and Cathy Jamieson MSP moved to become Minister for Justice.
54. Peter Peacock took up the post on 21 May 2003. At that stage any outstanding correspondence with the committees of the Parliament should have been raised with Ministers in the departmental briefing that was prepared.
55. On 22 March 2004 we convened our second Child Protection Summit. This was a collaborative event involving leaders in the police, education and social work services. At this summit I unveiled a Charter for Children, produced with the charity, Save the Children, which set out exactly what each child had the right to expect from the adults who cared for them.
56. The Charter contained pledges from the Government including a new multi-disciplinary inspection system to regularly check the quality of care provided to vulnerable children, money towards training additional social workers, and a framework of standards for protecting children and young people. In particular, the framework for standards was a means for translating the commitments made to children in the Charter into practice and provided a basis for all agencies to develop effective safeguarding measures. The national framework



outlined how professionals and agencies should take timely and effective action, share information and work with the public to help protect children.

57. Working with the Ministers for Education, Health and Justice I then followed up with a letter to national and local leaders in all three services outlining their obligations.

**Petition PE535**

58. A petition was lodged by Chris Daly on 22 August 2002 calling for the Scottish Parliament to urge the Scottish Executive to (a) make an inquiry into past institutional child abuse, in particular for those children who were in the care of the State under the supervision of religious orders and (b) make unreserved apology for said State bodies and to urge the religious orders to apologise unconditionally. The petition was sent to the Public Petitions Committee (PPC) and in turn on 9 October 2002 the PPC asked the Scottish Executive for a response to the Petition.
59. After the submission of the petition I occasionally met with the survivors as they regularly attended Holyrood in order to meet with MSPs and make their case, so we would speak briefly and informally around the Parliamentary complex. On other occasions, I think in 2002 and 2003, survivors attended my weekly constituency surgery to make the case for the petition and to describe the way in which they had been treated through the decades.
60. I have often described these private discussions at my constituency surgery as the most traumatic and difficult conversations I have ever had with another adult. I was struck by the feeling of rejection that was felt deeply as a result of the original abuse, the lack of action or empathy when they reported the abuse and the lack of justice in the decade since. Instinctively I would have been supportive of the survivors without ever meeting any of them, but it was impossible to ignore the depth of injustice they had suffered having heard that face-to-face and seen the way in which their trauma stayed with them decades later.

61. I normally had very little direct involvement in Ministerial responses to Parliamentary Petitions, these were dealt with at departmental level. In respect of a Petition like this, which caused the responsible Minister to ask for input from many other departments such as Health, Justice and Finance it was appropriate the First Minister's office and advisers were consulted, and Cathy Jamieson MSP was aware of my personal interest in the topic.
62. Cathy Jamieson received advice from Officials on 13 November 2002 to reject the Petition, but had a response sent on the same day requesting further work to explore a more positive response. She alerted me and engaged my Special Adviser, Jeane Freeman, in her discussions. We agreed that we would work towards an apology at the appropriate time, but that a holding reply would be sent to the Committee to allow more time to consider the question of an Inquiry and related issues.
63. I wanted the apology when it happened to be to all survivors, whether they were involved in the petition or not. I did not want the apology to leak out to the press or the PPC or any other body. It was important to me to give it the status it deserved.
64. An initial response was sent back to the PPC by letter dated 17 February 2003 following approval by relevant Ministers including me. That response to the PPC was intended to keep the subject matter under review and it sets out that:  
  
*"The Scottish Executive is considering whether an inquiry of the sort requested, or to some other forum, should be established to look into cases of abuse in institutions in Scotland, having regard to cases that have come to light in recent years and what other role the Executive might take in addressing these cases. The Scottish Executive will also consider the experiences of institutional child abuse in other countries."*
65. The petition by Mr Daly raised a complex set of issues which merited proper and detailed consideration of this very sensitive subject. The response was intended to reflect that and to indicate that Scottish Ministers wanted to keep all options

open at that time. We wanted to act appropriately and proportionately after due consideration.

66. I am aware that the PPC wrote on 25 March 2003, at the end of the Parliamentary session, requesting more detail and seeking a timetable on how the issues raised in the petition would be taken forward after the election. Apparently, that letter from the PPC was sent to the Health Department, despite the response in February having been sent by the Private Secretary of the Minister for Education and Young People and it appears not to have been passed on as it ought to have been.
67. Following the election and the establishment of the new Petitions Committee in the summer of 2003, the PPC wrote again to the Health Department on 19 August 2003. On this occasion the letter was redirected and officials moved to secure a decision from Ministers. As time had passed, I am sure officials were keen to move quickly at that stage. A meeting of Ministers from 5 different departments was organised for 25 September 2003. A briefing paper dated 23 September 2003 [SGV-000046937] was prepared for this meeting to outline the decisions required, and all relevant Ministers attended.
68. The Ministers who met on 25 September 2003 were considering a variety of issues which covered more than one department. Peter Peacock MSP was in the lead as Minister for Education and Young People as the petition was his department's responsibility. There are few issues which require input from so many Ministers, but this was a complex and important subject matter and this was a significant meeting. The Ministers considered the issues and made a recommendation on how to progress. That recommendation was directed to me as First Minister, to consider in consultation with the Deputy First Minister.
69. Following the meeting of Ministers, my office followed up by email of 6 October 2003 to enquire about the outcome [SGV-000061804]. The response on 8 October [SGV-000061805] set out that the Ministers had agreed that a package

of measures was the appropriate response and work was being carried out on that at that time.

70. I was presented with the recommendations of the September meeting of Ministers in December 2003 by way of a written Minute from Peter Peacock MSP. [SGV-000046936]. The main recommendation was to the effect that Ministers were against holding a public inquiry. The Minute states:-

*"We decided unanimously that there is no case for a full public inquiry, such as a truth and reconciliation commission. Instead we decided we should look at a package of support measures, notably the health services available to survivors of childhood abuse.....and how any relevant information on our files could be released."*

71. My understanding at the time, from both the formal Minute I received and from discussions with the Ministers most involved, was that there were a number of reasons behind these recommendations.
72. As is set out in the briefing paper of 23 September, we had a significant Child Protection Reform Programme under way by this time, in addition to the creation of the Care Commission in 2002 and other developments. Ministers had noted that other Inquiries had recommended changes to current policy and practice but questioned the benefit of an inquiry as there were significant changes happening already.
73. Ministers also questioned whether an inquiry would help survivors come forward and be listened to, or whether it would be too formal and scare people off. The experience of the Edinburgh Inquiry was influential here, as it was felt that the Edinburgh Inquiry had not been a good experience for many survivors.
74. Ministers felt that a package of support services and actions could be more helpful for survivors, and had proposed some specific actions by the Health Department and some changes to the access to historic records that would allow survivors and their families to uncover details where they existed on file.

75. Finally, there were historic abuse cases going to Court and some felt that an Inquiry might undermine that route for survivors.
76. I understood the rationale behind the recommendations from Ministers. But I had been deeply affected by meeting with the survivors, and my judgement was that to reject an Inquiry and fail to propose another forum for them to be heard would be devastating for them and unjust. So, my response to the recommendation for a package of support was that if a full-scale inquiry was not considered appropriate at that stage then some other investigation ought to be explored and it was decided to keep that option open and look further into the possibilities.
77. On 22 December 2003 an email was sent to Peter Peacock MSP by my Private Secretary [**SGV-000046922**] stating that I had seen the Minute and setting out my reaction. I questioned whether Ministers had contemplated appointing an expert to review the position and give further recommendations. That email was received and processed to the department by Peter Peacock's Private Office.
78. The PPC met on 12 May and noted the lack of a response to the petition [**SGV-000046946**]. As a result, Michael McMahon MSP, Convener of the PPC, wrote to me on 17 May and to Peter Peacock on 18 May 2004. I was angry that the PPC had felt that it was necessary to write to me, and that it became clear that there had been no progress on my proposal.
79. A briefing from officials finalised on 20 May 2004 [**SGV-000046956**] reviewed the options, including consideration of my proposal for the appointment of an expert. Neither that briefing, nor the following one of 8 June 2004 [**SGV-000046929**] recommended my suggestion, but I insisted that the final response to the Committee must keep open the option. My view had not changed.
80. My office was copied to a proposed submission and letters by email dated 17 June 2004 [**SGV-000061806**]. The response sent by my Private Secretary to

the proposed submission is blunt as I was frustrated at the continuing delays in addressing the issues Ministers wanted addressed. The issue of an investigation by an independent person was certainly live behind the scenes and we were clear we wanted that.

81. The response sent by Peter Peacock MSP to the PPC on 30 June 2004 [**SGV-000046961**] was sent on behalf of both of us and was cleared with me beforehand. It is a very full explanation of the judgement made by Ministers, and the many other actions we were taking to support survivors and reform the system. It contained a full apology for the delays.
82. The letter of 30 June 2004 kept open the alternative option but it was carefully worded due to the fact we had made no progress on the detail. The letter states *"we need to find a way of meeting the needs of both sets of survivors and we are already considering what steps we can take."* This sentence points to what eventually transpired. It is indicating that we understood that many survivors were looking for somewhere to go with their histories, but there was an issue about whether that should be in public.
83. That letter [**SGV-000046961**] was sent to the PPC after their next meeting on 29 June. As a result of not having had the response by that time, the members of the PPC invited Peter Peacock as Minister responsible to give oral evidence at the next PPC meeting.
84. Peter Peacock gave evidence on 29 September 2004. His evidence session is summarised in a SCANCE paper for Cabinet Ministers [**SGV-000061807**]. There appears to have been no further advice from his advisers on the question of an independent expert so it appears that the officials and Ministers were still at a stale mate, although he and I continued to discuss the possibilities on a regular basis.

85. At the PPC meeting on 29 September 2004, Peter Peacock detailed measures that were being taken or would be taken specifically for survivors. One such measure included the request by Cathy Jamieson in September 2004, on behalf of Scottish Ministers, to the Scottish Law Commission, to review and report on the law of limitation relating to personal injury claims in Scotland. The remit of the review was, "To examine the operation of sections 17(2)(b), 18(2)(b) and 19A of the Prescription and Limitation (Scotland) Act 1973 and to make any appropriate recommendations for possible reform of the law". This reference arose from concerns expressed by those involved in representing people with claims for compensation, for personal injury that these provisions of the Act were not operating fairly. In particular, they were concerned that the test for establishing the date from which the limitation period starts to run was too restrictive, and that the effect of the test was less favourable to claimants in Scotland than the equivalent statutory test in England and Wales. Although the reference related to concerns surrounding occupational disease cases, the Commission's findings would be far-reaching and equally relevant to childhood abuse cases.
86. After the PPC had heard from Peter Peacock they determined that the appropriate course of action in respect of the petition was to put it up for a Parliamentary debate. This was scheduled for 1 December 2004 and would involve a detailed response from the Minister on the day. It was therefore clear that we had to clarify and strengthen our position on the alternative to an Inquiry and prepare for me to make the apology on behalf of the nation, as that day would be the appropriate moment we had been waiting for.

#### **Cabinet Discussions November and December 2004**

87. The petition was mentioned at Cabinet on an ongoing basis in October and November, [SGV-000061808, SGV-000061809, SGV-000061810]. Our response was discussed in detail at Cabinet on 24 November 2004. There were four outstanding issues of concern around the petition: access to files, the public desire for a public inquiry, the proposal for a *rapporteur* to look at former inspection reports, and the desire for an apology. The final position was held

over until the following week, in advance of the Parliamentary Statement and debate.

88. At the Cabinet meeting on 1 December 2004, ahead of the debate that afternoon, Peter Peacock stated that all relevant Executive files would be open for public inspection and that we would take all reasonable steps to trace and open these files. He said that we would establish a Short Life Working Group on child sex abuse including the issue of institutional abuse and that we would fund approved counselling services for survivors of child abuse. Lastly, he said he would be appointing an independent expert to examine the issue of systemic abuse. The Cabinet were in agreement.
89. It was noted in the minutes that a statement from the First Minister would address the desire for a public apology, but Ministers could expect to be pressed further to agree to a public inquiry. It states that although we had the greatest sympathy for the victims, it would be important to make it clear why it was felt that a public inquiry was not the best way to proceed at that time, as set out in our letter to the PPC on 30 June 2004.
90. It was agreed that copies of my statement and Peter Peacock's speech for the debate, along with the supporting briefing, should be sent to Ministers as soon as possible. This was normal practice where statements were of such significance to a number of different departments.

### **The Apology**

91. There was no dissent amongst Ministers in relation to an apology; we were agreed. But I wanted to get the tone of it right, to say something meaningful that was about the country as a whole letting people down; everybody from state institutions to churches to individuals who had ignored or downplayed allegations in the past; everybody who should have listened and acted before now. The most important thing to me was to be able to say something that



struck a chord with the survivors on the day. I was speaking as much to them as to the Scottish Parliament.

92. It had been agreed that I would deliver the apology just before the debate. We knew that survivors were planning to be present in the gallery that day so they would have their proper place when it was delivered.
93. Internally, drafts of the apology statement were discussed in November. Even then there was still a debate taking place with officials about whether we should actually use the word 'apology' or not. At one point, my office had to say on my behalf that the First Minister would not make a statement on 1 December prior to the debate that did not include a clear apology and everybody had to accept that.
94. I was not influenced by the potential for creating an issue in terms of compensation. I always felt that we should be open and honest and we should rectify the situation if it had been wrong. I wanted the statement to be as clear as possible.
95. There were two main reasons why I chose the final wording, and it was agreed. As noted above, I wanted to speak on behalf of all of Scotland, to everyone in Scotland. There was also a feeling that if we specifically apologised on behalf of the government of Scotland then we may allow other institutions, such as charities and churches, that had been responsible for abuse 'off the hook'. I took the advice I was given on this seriously.
96. I wanted to put pressure on the churches and charities involved. In other countries, the other institutions had moved ahead of government to admit responsibility. That was not happening in Scotland. I wanted the apology to be the start of a process for others to say the right thing and do the right thing. Then we could get some momentum going, move forwards and recognise what had gone wrong.

## **The Debate and apology – 1 December 2004**

97. During my address to the Scottish Parliament on 1<sup>st</sup> December 2004, I said:

*“...it would be a mistake for us to try and fit all that happened in the past into the framework of our own knowledge and experience but some things are and always have been wrong. Now that we know what has happened it falls to us as representatives of the Scottish people to acknowledge it and it is for this generation of the people of Scotland to say quite clearly that it was unacceptable that young people were abused and it was appalling that they were abused by those entrusted with their welfare and that is why today I offer a sincere and full apology on behalf of the people of Scotland to those who were subject to such abuse and neglect and did not receive the level of love, care and support that they deserved and that have coped with that burden all their lives”.*

98. The official report of that address and the debate is at **SGV-000046999**. It discloses that the apology was followed later that day by Peter Peacock as Minister for Education and Young People outlining the Cabinet’s full response to the petition.

## **Reaction to the apology**

99. I was pleased that the wording of the apology was welcomed by Mr Daly. When he appeared before the PPC in Parliament on 22 December 2004 he said:

*“The full recognition by the First Minister of what happened to many of Scotland’s most vulnerable children, who were placed in institutions for their care and protection, was a huge leap forward. His apology on behalf of the Scottish people was a very emotional moment for me and I believe that his apology was heartfelt and meaningful”*

100. I was aware that the apology was, in the main, a recognition for the victims that they had been heard. Unfortunately, the attempt to kick start a process of apology and recognition by other organisations did not succeed. I had hoped that the apology I made on 1 December 2004 would be a catalyst for change but other organisations did not engage. They continued to be defensive and inward looking. There was an air of self-preservation about the lack of a response from them, and it has taken many years and more scandals for that to change.

**December 2004 – May 2007**

101. Following the Cabinet agreements and the Parliamentary debates, individual Ministers took their responsibilities forward between December 2004 and May 2007. My role was primarily to continue providing leadership for the wider programme of reform. I was involved from time to time as any new issues or disputes arose around the implementation of our decisions. I was updated from time to time on the progress of the court case, including the legal arguments pursued by the Lord Advocate.
102. Tom Shaw was appointed as the independent expert in August 2005. Peter Peacock's statement on 1 December 2004 was capable of being interpreted very broadly but it had to be more than a paper exercise, so I was pleased when we clarified that survivors had access to him and he had access to them. There was a delay in this but it was important that the listening could happen.
103. In 2005 we launched the National Strategy for Survivors of Childhood Sexual Abuse. We ordered a public records review, which was carried out by the Keeper of the Records of Scotland and was published in 2009. And we ensured easier access to records for survivors and their families.
104. On 3 August 2005, before the Scottish Law Commission had reported on the first reference made in September 2004, Cathy Jamieson made a second, related reference, on the issue of long negative prescription of obligations to

pay damages for personal injury prior to 1984. This second reference asked the SLC "To consider the position of claims for damages in respect of personal injury which were extinguished by operation of the long negative prescription prior to 26 September 1984; and to report". Concerns had been raised about people who may have been subject to abuse while in care, but who could not claim for damages as a result of the long negative prescription that existed prior to this date. As the two references were related in the sense that they both involved damages for personal injury, work was undertaken on them as a single project.

105. By March 2007 we were looking ahead to the following 4 years, if we were successful in seeking re-election. Our Manifesto for the 2007 Scottish Parliamentary General Election did not reference any of the specific issues arising from Petition PPC535, but it did commit to taking further steps in our programme of reform. It included commitments to introduce a 'named person' responsible for every child in care, a mandatory reporting duty on professionals in relation to child protection, and changes to Children's Hearings and the Social Work profession. We did not win re-election so did not have that opportunity.

### **Events after 2007**

106. The year following the change in First Minister and government in May 2007 saw a number of developments and it is for others to explain their handling of these and their decisions on the reform programme. The publication of the Shaw Report, the report from the Law Commission and the finalisation of the *M.v.Hendron* case were important moments.
107. The Shaw report was finally published in November 2007, after I left office. On page 161 (hard copy, page 166 of the soft copy) Mr Shaw makes a Final observation which goes to the nub of Chris Daly's question '*why was this allowed to happen?*'. He notes that monitoring and inspection are essential components in the welfare and protection of cared for children. He stated:'

*"I am convinced that monitoring and inspection are essential components in the framework of support and assurance for the welfare and protection of children in residential establishments. They can provide invaluable insights into the effectiveness of provision and the areas needing improvement, including the children's protection and sense of safety and they may contribute to the identification of abuse and abusers."*

108. The Care Commission established in 2002 had produced a great step forward in this which is recognised by this report.
109. I thought his report was fair and well prepared and I was pleased when the Scottish Government accepted his recommendations.
110. The Scottish Law Commission's 'Report on Personal Injury Actions: Limitation and Prescribed Claims' was published on 5 December 2007. Recommendations included that: claims in respect of personal injury which had been extinguished by negative prescription before 1984 should not be revived; personal injury actions should be subject to a five year limitation period; there should be a continuation of non-time-limited judicial discretion for cases out with the limitation period; and section 19A of the 1973 Act should be amended to include a non-exhaustive list of matters to which the court may have regard in determining whether to allow an action to be brought.
111. The Minister for Children and Early Years at the time, Adam Ingram MSP, made a statement to Parliament on 7 February 2008 advising that the Scottish Government accepted the recommendation that prescribed claims should not be revived but believed that a change in the law to give abuse survivors a right to take any case to court would not provide positive outcomes for survivors. He noted that the Scottish Government's focus would instead be on the development of a forum for survivors to speak about their experience.
112. By this stage, the other avenues available to survivors of historic abuse had been closed off. And the Inquiries Act 2005 had been enacted. So I felt the time

was right to revisit the issue of an Inquiry and a forum for creating the historical record, and for considering compensation. I said so in 2008 and on appropriate occasions since.

113. After an Inquiry had been announced in England and Wales, the Scottish Government agreed to this current Inquiry at the end of 2014. I was very pleased with this development. I have no observations on the remit, nor on the evidence heard so far, apart from to say that, however traumatic, the hearing of the evidence and the examination of some of those responsible will I hope be helpful for those survivors and their families, and it should help ensure authorities do not make the same mistakes in the future.

### **Final Thoughts**

114. I am proud of our ongoing programme of reform and improvement in child protection and children's services during my time as a Minister and in particular as First Minister. I was fortunate to have an excellent team of Ministers who worked together and individually to improve children's lives in Scotland. They acted with integrity and tried at all times to make honest decisions that resulted in change rather than manage their way round tricky issues.
115. Our deliberations on Petition 535 tried to balance that programme of reform with sensitive engagement with survivors who had been brave to speak out. I don't think many of us can imagine the pain of the original abuse and the torture of being ignored for so long afterwards. I hope this Inquiry will be another step in the process of ensuring such behaviour in the name of the state and other public institutions never happens again.

**Other information**

116. I have no objection to my witness statement being published as part of the evidence to the Inquiry. I believe the facts stated in this witness statement are true.

Signed..........

Dated.....  
31 August 2020