

Scottish Child Abuse Inquiry

Witness Statement of

MICHAEL MCMAHON

Support person present: No.

1. My name is Michael McMahon. My contact details are known to the Inquiry. My date of birth is [REDACTED] 1961. This witness statement is to give information to the Inquiry on some of my experiences as the convener to the Public Petitions Committee ("PPC") when I was a member of the Scottish Parliament ("MSP").

Term of office as an MSP

2. I am a longstanding member of the Scottish Labour Party. I was an MSP for Uddingston and Bellshill (formerly the constituency of Hamilton North and Bellshill) for 17 years from 1999 until 2016. I was part of the first intake to the Scottish Parliament in 1999. I was the convener of the Public Petitions Committee from 11 June 2003 to 2 April 2007. I became the convener again at the last session of the PPC before the election in 2016.
3. Before being elected to Scottish Parliament I was unaware of the scale of abuse of children in care. It was not until individuals came forward and reported it to me that I became more aware. I actually lived across the road from a children's home and there were all sorts of rumours about what might be taking place in there. There were always noises coming from the home and regular fights. The community at large just accepted it as part of what goes on.

The Public Petitions Committee

Role and function

4. The consultative steering group, who had decided how the Scottish Parliament should be shaped, had decided that there should be a PPC. The PPC represents the public. It tries to obtain an outcome for the member of the public who has presented a petition. The first convener was John McCallion. I inherited the position of convener from him.
5. One of the first things that I did as convener was to stop MSPs from petitioning the PPC. A lot of them had been doing that in the first session. MSPs were petitioning the PPC on behalf of people concerned about something in their local area. MSPs were taking ownership of the issue and using the PPC as a campaign platform for local issues.
6. I thought this was wrong as they were taking the issue out of the hands of the public. I do not believe that is what the petition system was supposed to do. It was supposed to give the petitioner the opportunity to be heard. MSPs were always allowed to come along and support a petition though. Any MSP can go to any committee if they have an interest in that subject matter and if they want to get involved in that discussion.

Rules and procedures

7. Although it was decided that the PPC should do certain things, there were no rules or procedures. The convener and the initial committee members had to establish how the committee was going to work. There was a lot of trial and error.
8. When I inherited the position of convener, I initially set out to try and create a structure to the way that petitions were going to be handled. Matters such as what the body of work would be, whether inquiries would be held, what investigations would be carried out, or reports made to the Scottish Parliament were all established for other committees. None of that existed for the PPC. Now the PPC does decide it will do reports, inquiries and all sorts of things, but at the outset it did not do that.

9. We had to do things to streamline the process. The public do not always know what processes they have to go through to resolve an issue before taking the matter to the PPC. Many members of the public were finding an issue and saying 'I'm going to take this to the Scottish Parliament' without first trying to resolve it. So we had to get procedures in place for the petitioner to show what they had done first, to ensure that the PPC were trying to resolve an issue that could not otherwise be resolved.
10. The normal procedure had been, and still essentially is, that there would be correspondence. Organisations and individuals would be contacted. We would try and collate as much information on a subject as we possibly could and then look to see what could be done with that information.

Powers of the PPC

11. To some extent, the PPC, like other committees, could hold the Scottish Executive/ Scottish Government to account. They could do this by scrutinising and exposing any gaps in existing legislation or policy, or by identifying something that was not working or needed further investigation.
12. If we thought the actions by the Scottish Executive/ Scottish Government to address issues surrounding a petition were insufficient, we could conclude a petition by saying, for example, that we needed the Education Committee to look further into it. One of the options that was available to the PPC, and had been used quite extensively, was to identify a gap, a log jam or a failing in the system and then pass this on to the relevant committee and ask them to look into it.
13. The PPC can pass their conclusions and any report to the Scottish Executive/Scottish Government and make recommendations that they take specific action. It is then up to the Scottish Executive/ Scottish Government whether it wants to do that or not. Just as with any recommendation from any other committee, the Scottish Executive/ Scottish Government can decide to take no action.

14. Although issues had been raised by the PCC and then subsequently debated in the Scottish Parliament, the PPC had never before called for a debate in the Scottish Parliament. There was no procedure by which a petition to the PPC would arrive in the chamber of the Scottish Parliament. None of that had happened before.
15. Sometimes, the PPC have to refuse a request in a petition because the situation cannot be resolved. It may be that what is looked for is a good thing but cannot be delivered or it has unintended consequences and therefore would not be a good thing to deliver. It may be that the PPC just does not support what the petition seeks. Sometimes the PPC has to exhaust every potential outcome until it has done all it can and can do nothing more.

Chris Daly's petition PE535

16. Petition PE535 by Chris Daly was lodged on 20 August 2002 ("the Daly Petition"). It had two main aims. One was to get an inquiry into the abuse of children in care. The second was to get an apology from both the state and religious orders who ran institutions that looked after children.
17. I was not the convener when the Daly Petition was lodged. June 2003, I inherited what was already an on-going process. I stepped in just when there had been some correspondence between the PPC and the Minister for Education and Young People. I was also aware that members of INCAS and other organisations were contacting MSPs to make them aware of the subject matter.
18. On 26 March 2003, the PPC had written to the Scottish Executive requesting a firm timetable for the Scottish Executive to make a decision on the issues raised in the Daly Petition. On 19 August 2003 and 26 September 2003, the PPC sent reminder letters to the Scottish Executive requesting a response to the letter of 26 March 2003. Unfortunately, all these letters were sent to the Health Department rather than the Education Department.

19. On 20 April 2004, the PPC again asked when the Scottish Executive would be in a position to respond to the PPC. When the PPC met on 12 May 2004, it agreed to write to both the Minister for Education and Young People, who was then Peter Peacock, and the First Minister.

Decision to call for evidence

20. When the PPC met on 29 June 2004, it was still waiting for a substantive response from the Scottish Executive on the issues raised in the Daly Petition. As no response had been received, the PPC decided to call the Minister for Education and Young People to give evidence to the PPC. After the meeting, a letter of 30 June 2004 was received from Peter Peacock in which an inquiry was ruled out and no apology was made.
21. The Scottish Parliament was in recess in July and August. Peter Peacock was called to give evidence to the PPC on 29 September 2003.
22. I had conversations with Peter Peacock outwith the confines of the PPC room. I was in no doubt how sympathetic the Minister was to the aims of the petitioners, but his explanation to me was that the advice he had received from the legal department and the civil servants was that there were legal implications of giving an apology.
23. Peter Peacock is someone I hold in very high regard. I think he was a terrific Minister. We agreed to disagree on where we were. I think he knew that I was trying to get an outcome and do it with the best of intentions. He wanted me to understand the advice that he was being given. I always ended my conversations with him on the basis that he could tell his civil servants what outcome he wanted to see happening here. He agreed but said that he had to listen to them as they knew what they were doing and would not do something that was wrong.
24. During that time I was also the parliamentary aid to the First Minister. I had conversations with him on the same subject and asked him if he we could break the impasse present at that time. I had respect for Peter Peacock's stance but the PPC

were resolute that they were not going to accept the line that the Scottish Executive were holding. I asked the First Minister if he could use his office to investigate the possibility of doing something. He told me he would do that, but the PPC's procedures had to move forward and the matter was neither in Peter Peacock's nor the First Minister's timetables.

The Minister for Education's evidence to the PPC – 29 September 2004

25. On 29 September 2004, Peter Peacock appeared before the PPC. He apologised for the delay in the response from the Scottish Executive. He explained the reasons for refusing the request for an inquiry. Although he expressed "profound sorrow" for children who had been abused in care, there was no apology. This was despite the PPC recommending both parts of the Daly Petition. The advice that Peter Peacock had been given from the legal department and his civil servants was that if the Daly Petition was successful there may be consequences for the Scottish Executive which would prevent them agreeing to the petition.
26. The PPC were not convinced by the answers from Peter Peacock as to why there was to be no inquiry and no apology. After having met with the petitioner and considered the Scottish Executive's response on the Daly Petition, I knew we had to change the procedures to allow the PPC to take matters further than was previously available. I got the sense from the PPC that we wanted to get what the petitioners were looking for.
27. When I spoke in the PPC, I suggested that we would take what I called "the nuclear option" to achieve a resolution. The PPC decided that the issues raised in the Daly Petition merited being put to the Scottish Parliament and asked for debating time in the Scottish Parliament. It was a unanimous decision. The PPC had not done this before. It was something that was going to either resolve the issue or it was going to blow it up. At this time, there were no rules or procedures where the PPC could take petitions forward and seek a debate in the Scottish Parliament. Such a step was unprecedented.

28. Peter Peacock and Jack McConnell were both sympathetic to the plight of the survivors and they had great empathy towards them, but they were also both accountable where the civil servants were not. I always felt that Peter Peacock was being constrained by his officials and that was what was preventing things moving forward. It was not an unwillingness on his part, but an unwillingness from the civil servants to open things up for scrutiny
29. We were allocated a debating slot in the Scottish Parliament. It was later reported in the BBC that we were defying Ministers. That is a totally inaccurate description and we were not defying anyone. I think the Ministers were pretty sanguine about it.

The debate and the apology – 1 December 2004

30. I had no indication that the stance of the Scottish Executive would change until the day before the debate when I received a call from the First Minister. He asked for fifteen minutes of the PPC's debate time.
31. I did not know the reason for his request. He said that he could not tell but he hoped that I would not be disappointed. Ministers had been pulled up previously for giving advance notice of a ministerial statement. As a matter of courtesy, the opposition spokespeople are given a copy of a ministerial statement an hour before the debate so they can prepare. This process did not involve the PPC.
32. In the Scottish Parliament, there was a statement from Peter Peacock and one from the First Minister, who made an apology. The apology was on behalf of the Scottish people and not on behalf of the Scottish Executive or the state. Some of the people involved in the petition were happy with this, but others were unhappy. The group was made up of many different people with different opinions.
33. The persons who were unhappy thought the apology did not go far enough. Some people wanted an apology along similar lines from Bertie Ahern in Ireland because that apology was not just on behalf of the citizens but on behalf of the state as well.

Engagement with the Catholic Church

34. The Daly petition also asked for an apology from the Catholic Church. As of the date of the debate, there had been no response to the PPC from the Church or any branch or order of it.
35. I spoke to Peter Peacock and the First Minister and then I approached representatives of the Catholic Church. I spoke to Cardinal O'Brien and I spoke to the lay representatives. I am a practising Catholic. I was bitterly disappointed.
36. They were stonewalling. They did not want to engage. Essentially what Cardinal O'Brien and the representatives of the Catholic Church that I spoke to said to me was that they could not become involved in this because orders were answerable to the Pope and not the cardinals. Cardinal O'Brien said that he did not have the authority to approach an order and ask for their records or make them give statements about what happened to a person.
37. What they were saying was not wrong, but I think it was disappointing that they were hiding behind their structures to avoid answering for what they are responsible. We wanted them to take responsibility and to apologise because the evidence was there. At the time, they were not even acknowledging that abuse had happened. All I asked Cardinal O'Brien was to recognise that abuse had happened, but he refused because that would have consequences and it would not be for the cardinal to drop the nuns in it.
38. I think the Church in particular cannot be absolved from this. It was happy to take the children. It was happy to say that it cared for children. Then, when children were not cared for, it did not care. I think that is what you have got to address. They can come up with all the rules and structures of the Church, but the Church must show it cares. This is some of what the survivors were asking for and I do not think the Church showed that it cared

39. Part of the petition was asking for such apologies and the Scottish Executive could say it had done its best and would be able to say despite their efforts the Catholic Church was preventing them progressing it further. I do not think this was an acceptable situation for the Scottish Executive to take either. It should have said we are going to ask you these questions and if the Church did not answer them, then it would at least be answerable to public opinion. The Scottish Executive did not want to fall out with the Church.
40. I even asked a question in the Chamber of the Scottish Parliament that there seemed to be no reference to the Church being asked to respond. The survivors groups were also asking the question. When I asked the question, I was not given an answer.

The Tom Shaw Review

41. The First Minister announced that he would appoint someone to independently analyse the regulatory requirements of the time, to monitor those requirements and to analyse how the function would be carried out. I think this was just a wait and see attitude, to see if it matched what the petitioners wanted. Tom Shaw was given this responsibility and he published his report in 2007.
42. By the time I left the post of convener of the PPC, the Shaw review was already under way, but I knew it fell short as did some of my colleagues. We were not even sure it had met the aims of the First Minister as he too had gone by this time as had Peter Peacock.

Closing the Daly petition


43. The PPC continued with the petition. In our opinion, it could not be closed as the aims of the petition had not been achieved. However, we had created such an environment that the issue of an inquiry was not going away.
44. Despite the apology given, nothing progressed that helped bring an inquiry into existence. The change of administration did make a difference to the Daly petition being carried forward. I am not sure why they did not drive it forward as the PPC was unanimous. The good will was there and the cross-party parliamentary support was there. I was thoroughly disappointed that the new administration did not take it forward. I am sure if Jack McConnell was still leader in a Labour administration there would have been an inquiry much sooner.
45. After the change of administration and a new convenor, the PPC decided to close the Daly petition. There was no one left who was willing to say the aims had not been resolved and to keep the Daly petition open. I think the attitude at that time was there was no one with any passion left to support the petition. I know Chris Daly was very disappointed in this result.

Reflections

46. Some people say they need an inquiry for some closure and they cannot move on with their lives without this process. Others who have come to terms with what happened are fighting to make sure it does not happen to anyone else. Some are in both camps, but the Scottish Executive/Scottish Government has to understand the reasons for people needing an inquiry.
47. Many of the arguments against an inquiry by the civil servants were that they were aware of the problem but had done a lot to make sure it did not happen again. This was never the PPC's point of view and that is why we did not close the petition. The issue had not been resolved for the people that were affected.
48. I think from Chris Daly's point of view, and for many others, a public inquiry is independent and outwith the control of civil servants. I do not think the Inquiry will

satisfy everyone, but just having the Inquiry allows some people to move on with their lives and that to me is an achievement. In the end, if the Inquiry does disappoint a few, it is better to have the Inquiry than not to have it at all.

49. Despite the Shaw report being published and the National Confidential Forum being set up, I still believed this was not enough and the Inquiry was a necessity. If you go back to the Catholic Church issue, there were always rumours and innuendo about what was happening in their circles. It is not until things are opened up that the issues are addressed. It is not just about the Church, it is about institutions, local authorities and the general view of government. Unless it is opened up to proper scrutiny, only then can you say it has been addressed. Sometimes nobody wants to lift the stone because they already know what is underneath it.
50. If it had not been for the petition submitted by Chris Daly, we would not have the full picture we have today.
51. 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..... 08 September 2020