

## **Scottish Child Abuse Inquiry**

Witness Statement of

**PETER JAMES PEACOCK**

Support person present: No

### **Introduction**

1. My name is Peter James Peacock. My contact details are known to the Inquiry. I am 68 years of age. This witness statement is to give information to the Scottish Child Abuse Inquiry ("the Inquiry") regarding some of my portfolio responsibilities as the Minister for Education and Young People when I was a member of the Scottish Executive. In particular, I address issues resulting from the Petition lodged by Chris Daly calling for an inquiry into past institutional child abuse in Scotland and for an apology by the Scottish Executive and the religious orders who ran institutions that looked after children. I will comment on the ministerial decisions and actions following parliamentary discussion of this petition, which in turn gave rise to changes in policy to develop support services for survivors, an apology from the Scottish Executive and appointment of an independent expert to investigate aspects of policy and practise relating to historic institutional child abuse in Scotland.
2. This statement is based on my recollection aided by documents which were provided to me by the Inquiry and the Scottish Government.

### **Term of office as a Member of the Scottish Parliament**

3. I am a member of the Scottish Labour Party. I was a member of the Scottish Parliament (MSP) for Highlands and Islands from 1999 until 2011. I was appointed Deputy Minister for Children and Education from 1999 to 2000, Deputy Minister for Finance and Local Government from 2000 – 2003, and Minister for Education and Young People, and Minister for Gaelic, from 20 May 2003 to 14 November 2006. It is

the latter period of time which is covered by this statement. I stepped back from Ministerial duties in November 2006 during a period of ill-health and stayed as a back-bench MSP until I retired from parliament at the 2011 election.

**Before being elected to the Scottish Parliament**

4. Before I became an MSP, I was a councillor in Highland Regional and then Highland Council for Culloden and Ardersier from 1982 to 1999. I was also the first Convener/Leader of Highland Council and was Vice President of the Convention of Scottish Local Authorities (COSLA). I have also been a member of the Council of Europe's Congress of Local and Regional Authorities, and of the European Committee of the Regions and served on a number of Scottish public bodies.
5. My work experience includes being in business, working in youth work and community education, and twelve years in a managerial role as area officer with the then Scottish Association of Citizens Advice Bureaux, supporting local CABx in their development and with responsibility for membership standards.
6. I have one specific recollection regarding abuse of a child in care from when I first joined the CABx in 1975. As part of my training, I spent a two-week placement in South Shields. I can vividly remember the occasion of sitting in on an interview when a middle-aged woman unburdened herself for the first time about having been abused in a children's home. I could feel the torment, the pain, the anguish and the trauma; it was palpable. I believe it was the first time this woman had taken the courage to share what had happened to her. We were really quite limited in what we could practically do beyond being supportive, listening and empathising. She was advised on how to report the matters to the police and seek legal advice about potential damages. The advisor offered to arrange and accompany her to those meetings, which was then standard practice in CABx. I have a clear recollection of the occasion because I had not heard directly an experience of that kind before. At that time, that was regarded as an unprecedented case in the life of that Bureau.

7. I had further experience as Council Leader of being briefed on one occasion about an allegation of abuse concerning a former Council official who had worked in residential child-care and which was the subject of a police investigation at that time. There were potential legal implications for the Council from the complaint. No charges were subsequently made.
8. I have no recollection of any mention of institutional child abuse during my time as Deputy Minister for Children and Education. My recollection is that this matter would have been within the portfolio in which Social Work at that time lay. My portfolio as Minister for Education and Young People did include children in care. We were dealing during that time with a very wide range of significant reform issues including a very extensive programme of child protection improvement measures, not linked specifically to residential care settings.

#### **Ministerial Private Office**

9. When appointed as a Minister, each Minister has a private office to support and co-ordinate their work. A private office generally comprises a private secretary, often a couple of assistant private secretaries and a diary secretary. The private office for each Minister controls the flow of information to Ministers generally and in their evening and weekend 'boxes' of papers, organises meetings and events, pursues follow-up actions, prioritises the information and material received and ensures that each Minister has sight of everything necessary. Essentially, the private office is there to keep a Minister right administratively and ensure the Ministerial work was being overtaken as it should be and offer advice as appropriate. My private office was connected with all the other ministerial private offices which worked closely together and were supported centrally. The First Minister's private secretary would have an overview of and good connections with the other private secretaries.

#### **Ministerial Special Advisers**

10. Ministers are also assisted in their role by Special Political Advisers (known as SPADs). These are political appointments and their role is to help Ministers co-

ordinate and deliver on political commitments and progress their business through to officials. They would be tasked with emphasising to the policy officials exactly what a Minister wants and explore possible options for the Minister to consider. They would work with policy officials on occasion to seek to ensure the developed policy delivered on political priorities for Ministers. They would be involved in troubleshooting and management of the political concerns of the Ministers. They require to have an eye on the political and public environment and pressures and ensure the policy officials understand the pressures and dynamics arising for decision making from that environment. They would liaise and take soundings, as appropriate, with external interests. In my role, I would have had access to two SPADs, though they did not necessarily work full-time for me, having wider responsibilities to other Ministers as well.

### **Senior and Main Grade Civil Servants**

11. Ministers are also assisted by senior and main grade civil servants who are key advisers perhaps best described as policy officials. There would be such civil servants dealing with a host of different policy areas in policy formulation and implementation, and there would be many, many things going on at the one time that they were advising Ministers on. There would usually be different officials for different policy areas. As an example, there would be a team who dealt with all issues associated with looked after children, child protection etc. Those policy officials would all be reporting to a more senior colleague who co-ordinated their work and also worked closely with the Minister. When working on policy or legislation relating to the school curriculum for example, I would be assisted by a different team of policy officials.

### **Legal Advisers**

12. The other set of advisers available to Ministers were legal advisers. During my time as a minister, there was a dedicated legal unit known as I recall as the Office of the Solicitor to the Scottish Executive ("OSSE"). It is my understanding that there would

be dedicated OSSE personnel advising on children and education services and helping with the preparation of new legislation in that sphere.

### **Press Office**

13. In addition, each Minister had a press office dealing with all media enquiries across their portfolio and preparing media statements for Ministers.

### **Dynamics of decision making**

14. Decision making as a Minister is a formal process and records, such as those available to the Inquiry exist around advice received by Ministers and decisions taken. Proper process in decision making is a foundation of good governance.
15. It is also important to understand that alongside and inter-woven with the formal decision-making process there are constant political and policy discussions taking place between Ministers, with party back-bench MSPs and with SPADS. Very often such discussions precede formal work being commissioned from policy officials or feed in to inform adjustments in thinking.
16. Post devolution and with many more Ministers and significantly more parliamentary scrutiny and interaction than previously, there were many more opportunities for informal consideration of issues. For example, when the Scottish Parliament building was constructed, an area within the new building was set aside for Ministerial offices. This meant that the whole team of Ministers were working in adjacent offices to other Ministerial colleagues most of every day and were readily available to discuss any plans or policies. This made it easier for informal soundings to be made between Ministerial colleagues.
17. In addition, there were weekly Labour Group meetings; Ministers met informally before Cabinet for breakfast with a lot of informal business transacted "in the margins of Cabinet"; Ministers interacted with colleagues at lunch in the parliamentary canteen; met regularly in the chamber around votes; and so on.



Through such informal contact a great many issues were progressed in terms of informally clearing lines between colleagues and ensuring colleagues were alert to and comfortable with matters in which they may have a portfolio or personal interest.

18. SPADS would frequently be involved in such discussions between colleagues. Thereafter discussions between Ministers and policy officials on direction, pace, emphasis and detail within policy formulation would be informed by such collegiate discussions. None of this however was an alternative to the formal decision-making process that is a clear and very important foundation for final decisions made by Ministers.
19. Such informal contacts would include discussions with the First Minister to share challenges I may be having in pursuing something, or illustrating what I wanted to do, to ensure he was broadly content with the direction of travel on key issues. Sometimes it would be as simple and informal as me asking the First Minister if he was comfortable with a particular approach on a matter before I moved it forward. I would then instruct policy officials on what I wanted done and seek their formal advice on all the issues arising.
20. This advice may be supportive of a proposal or set out reasons for and against why it might be challenging to proceed or illustrate a way forward with particular recommendations, or provide alternatives, relying on legal advice where appropriate. Sometimes policy officials would actively suggest different ways of proceeding, run it past a Minister in discussion and then proceed to put together the advice. Policy officials through their interactions with stakeholders within their area of responsibility or purely of their own volition would be suggesting policy initiatives to consider advancing service delivery.
21. Ministers have substantial personal discretion to make decisions which are within an agreed programme for government and to initiate new policy considerations, consulting colleagues formally, and sometimes through the agreement of the First Minister and Deputy First Minister, or of the whole Cabinet. A Minister will generally be aware of the extent of his or her own decision-making powers, but there was the

Cabinet Secretariat to consult if there was any doubt whether a Cabinet discussion was required.

22. The copying of submissions across many interests was widespread to alert colleagues and other departments to potential actions and elicit comment. There was also a formal Cabinet correspondence system for clearing business without it all going to Cabinet.

#### **Status of Decision Making**

23. No Ministerial decision is permanent. Ministers operate on the basis that you make decisions in good faith and act reasonably, having considered the advice and evidence available and weighing the options. In different or changed circumstances, different or changed decisions could be appropriate.

#### **Decisions in a Coalition Government**

24. During my time as a Minister I served in a coalition government and this brought with it a further layer of process when it came to decision making. As a result of the coalition the Minister may consider it wise or necessary to specifically consult with the Deputy Minister from the other party on a matter sensitive to that party, and the First Minister would consult with the Deputy First Minister on key issues.

#### **Legal Advice to Ministers**

25. Ministers can receive legal advice on any planned projects or decisions in several ways. The first way is when they or their officials specifically seek legal advice. A second way is when policy advice is informed by legal advice – the policy officials seeking legal advice on their emerging thinking. Legal advice might be received during the currency of meetings where there is a lawyer in attendance. Lastly, we were sometimes given legal advice even when it was not sought, and the intentions of Ministers had become known to the lawyers. During my involvement in the

circumstances described in this statement, the legal advice I received was received in one or other of the first three ways I have described.

26. Legal advice very seldom sets out in terms what a Minister can and cannot do, unless the advice relates to a question of powers and duties. More often, it sets out a series of potential legal consequences and possible implications of proposed actions. Some advice, while perfectly proper in its content, may convey a clear sense of discouragement by the legal advisers in taking particular courses of action, but generally the advice would not say action could not be taken unless to do so would result in a Minister and the government exceeding powers or failing to meet a duty. The legal advisers have a responsibility to seek to protect Ministers from potential future difficulties. During my time in public service I found it most helpful when the potential risks were balanced with an assessment of the likelihood of the potential risks being realised and within the context of helping you achieve your objectives, always within the law.
27. In my experience, there is a strong caution that characterises legal advice given and at the time of the events I will go on to discuss, there was a display of significant nervousness among legal advisers about the suggestion of any form of inquiry due to the potential impact on the ability to defend damages actions brought against the Scottish Executive as well as the potential to encourage, assist or enable future court cases against the Scottish Executive.
28. In the final analysis, it is for Ministers to take the decisions having considered and balanced all the considerations.

#### **Petitions to the Scottish Parliament**

29. A petition is made to the Scottish Parliament, not to the government. On receipt of a petition it is sent to the Public Petitions Committee ("the PPC"). It is the PPC which decides how deal with it. One of the ways to take it forward will be for the PPC to ask the (then) Scottish Executive for a response to the matters raised in a petition. The Scottish Executive then interacts with the PPC on the matters until the PPC come to



a conclusion on their dealings with the petition. The petitioner deals with the PPC and the Scottish Executive would not as a rule have sought to come between the PPC and the petitioner by seeking to deal directly with the petitioner on the matters raised with the PPC in the petition. At the stage in a petition when the PPC was seeking a response from the Scottish Executive it was the PPC that was formally engaging with the Scottish Executive on the matters in the petition on behalf of the petitioner and as part of an established parliamentary process.

### **Chris Daly's Petition PE535**

30. My immediate predecessor as Minister for Education and Young People was Cathy Jamieson. She was in office when Chris Daly's petition PE535 was lodged with the PPC in August 2002. The petition called for an inquiry into past institutional child abuse, and for an apology by the Scottish Executive and the religious orders who ran institutions that looked after children.
31. I understand from documents available to the Inquiry that the PPC wrote to the Scottish Executive in October 2002 asking for their comments on the issues raised in the petition. Cathy Jamieson wrote back to the PPC before their planned meeting at the end of March 2003 stating that the Scottish Executive was considering the matter and that the matter remained open. It is a matter of public record that the PPC decided to ask the Scottish Executive for an Executive for an update by the middle of June 2003. That was just weeks after I had taken up my appointment as Minister for Education and Young People and when the PPC would itself have re-formed following the election. Those first weeks of a new administration are busy with Ministers being briefed on their new roles and responsibilities and issues requiring their immediate attention.
32. It is now apparent that correspondence from the PPC in respect of the petition was being sent to the Health Department. One piece of correspondence dated 26 March 2003 was not passed on to the Education Department, the department with responsibility to respond to the PPC on the petition. A second piece of correspondence sent to the Health Department, dated 19 August 2003, was passed

on within a week and arrived in the Education Department on 26 August 2003. I do not recall the detail, but from review of the material which the Inquiry has made available to me I suspect that it was around this time when I first had the matter of Chris Daly's petition brought to my attention. I do not remember being told at any initial briefings, when taking up my new responsibilities, that we had a petition on past abuse in institutional care to deal with. I do recall briefings on the significant child protection reform programme quite clearly. I find it difficult to accept that there was a lack of awareness in the department about this petition, as the policy official who had advised Cathy Jamieson was also advising me. This official was Gerald Byrne. It may be the case that as a result of the correspondence from the PPC being sent to the Health Department it had fallen off the radar. It seems there was an unacceptable internal breakdown in communication in so far as correspondence which should have been forwarded internally and dealt with was not.

33. As a result of the PPC August correspondence being forwarded to my department, it was recognised we had to respond to the petition which had been left languishing. It was an important matter to deal with. We involved senior Scottish Executive officials within my department and across other interests within the Scottish Executive; clear advice was being given by those officials to Ministers on how to respond to the petition; there were meetings to give consideration to the issues and recommendations of officials in relation to the petition.

#### **Meeting on 25 September 2003**

34. On 25 September 2003, there was a meeting chaired by me of relevant Ministers to consider the issues. Those in attendance included the Minister for Justice Cathy Jamieson, the Minister for Finance and Public Services Andy Kerr, my Deputy Minister Euan Robson, the Solicitor General Elish Angiolini, the Deputy Crown Agent Bill Gilchrist, and other relevant officials.
35. In the lead up to the meeting, a very detailed submission, dated 23 September 2003, was provided to Ministers from a senior civil servant and policy adviser, Colin MacLean. The submission set out a detailed discussion as to how we might handle

the matter. Colin MacLean was an official who was seen as measured, competent and level-headed. He was held in high regard by Ministers. The advice to Ministers had been cleared by officials and other departments across the Scottish Executive and would have been informed by legal advice in a thorough process. Ministers were advised against granting a public inquiry or a truth and reconciliation commission. They were advised to accept a third option, namely, to provide a package of support for survivors.

36. At the meeting of Ministers, we discussed four issues arising from the Chris Daly petition and the response to the petition being sought by the PPC. These were whether:

- (i) to grant a public inquiry;
- (ii) to hold a truth and reconciliation commission as an alternative to a public inquiry;
- (iii) to put together a package of services for survivors based on the work of the short-life working group on childhood sexual abuse; and
- (iv) to do nothing more than hold the extant policy position of successive administrations, which was to advise survivors who presented themselves to the former Scottish Office and now the Scottish Executive to report matters to the police or seek legal advice.

### **The Ministers' Decision**

37. Although one of the options open to us was to simply adhere to the then current policy which was to advise survivors to report matters to the police and to resort to the courts, the view of Ministers and officials at that meeting was that would be inappropriate and we needed to do more.

38. We considered the information and advice of officials and decided not to agree to a public inquiry or a truth and reconciliation commission. I do not recall there being a clear sense of what exactly a truth and reconciliation commission should or would be. In summary, we concluded that:

- (i) the evidence of the extent of abuse did not justify a full public inquiry;
- (ii) remedy through the courts was already being sought in a number of cases;
- (iii) the abuse was not considered to be systemic;
- (iv) there was knowledge of the causes of abuse from previous inquiries;
- (v) since Chris Daly had been in care, child protection measures had been put in place to both prevent abuse in so far as possible, and to allow children to speak out on any matters, and there was an ongoing child protection reform programme;
- (vi) there were no significant concerns that abuse was continuing in institutional settings in 2003 beyond the recognition that inevitably, on occasion, someone may breach all the measures in place to protect children;
- (vii) survivors could seek redress through the criminal and civil courts consistent with their rights at law;
- (viii) it was possible a public inquiry could have the effect of undermining public confidence in the current care system;
- (ix) there may be inadvertent implications for cases before or which may come before the courts.

39. In addition to those considerations, it was not necessary for an inquiry to cause the Scottish Executive to openly acknowledge the abuse. There was no impediment in the minds of Ministers to open acknowledgement that abuse had taken place. It was also felt that an inquiry was unlikely to be able to offer significant or urgent new actions for the immediate better protect children than were now in place or were under active consideration and development at that time. Ministers were actively pursuing improved protections for children and were open to develop or adopt any practices from anywhere that would better protect children. An inquiry would be unable to meet the immediate care and support needs of survivors, and was thus, on balance, unlikely to significantly advance the public interest.

40. The cost of an inquiry was not an active consideration. If we had concluded an inquiry was the appropriate approach, then then we would have made that decision. That would have required us to go to the UK government and obtain a resolution in

both the House of Commons and the House of Lords. That is not something which would have been considered an insurmountable obstacle.

### **The Extent of Abuse**

41. Ministers were informed in the submission of 23 September 2003 that there was little evidence of institutional child abuse being widespread or systemic in nature. To assess the extent of it we were advised officials had looked at a number of sources of information. As a result of the Sunday Mail being active on this subject at the time, they had encouraged survivors of abuse to ask for access to their care files. This resulted in around twenty people approaching the Scottish Executive for their files. We were also told about convictions related to abuse of two members of staff at a List D school.
42. We were also told that there were 78 cases where applications had been made for legal aid. Ross Harper solicitors had estimated that there could be as many as 300 potential cases. Up to that time the policy of successive administrations had been that victims of abuse should report those matters to the police and/or seek acknowledgment and recompense through civil actions in the courts, so it was not surprising that this number of cases, stretching back potentially over many decades, were before the courts. Ministers and officials, given the policy of encouraging court actions, viewed positively the fact that survivors were seeking remedy in the courts.
43. I am now aware from papers available to the Inquiry that in late 2002, following the submission of Chris Daly's petition, there were a number of exchanges between officials seeking to get a handle on the number of cases that various different parts of the Scottish Executive might have been aware of, to gauge the extent of such cases as there was no central record of information around the issue. There was no evidence available to show an extensive or system-wide problem.
44. The advice regarding the numbers of cases was one factor in relation to helping gauge whether there ought to be a public inquiry. Even though it would be right to assume there would be further cases than we were aware of, given there was not a

huge amount of correspondence at the time, or other signs of widespread concern being relayed from MSPs, and given that a number of cases were being addressed through the courts at the time, we had to decide whether it was right to hold a full public inquiry.

#### **Whether Abuse was Continuing**

45. As referenced above, one factor in considering a case for a public inquiry was whether there were real concerns that abuse was continuing in institutions in 2003 and it was an issue that therefore required extensive public examination from which to learn and develop new policy to combat that abuse. The advice we received was that there had been a series of measures taken up to and since the subject of the petition, which meant that it was much less likely that abuse was occurring at that time and, as a result of those measures, there was not a belief this was a continuing problem. Also, if abuse did occur, there were new avenues for children to talk about this in ways not previously available, for example, through the independent advocacy services "Who Cares? Scotland" were providing. There were also more robust and ever-evolving inspection regimes. The reasoning around these matters was set out fully in reply correspondence to four MSPs in late June 2004 and in response to the PPC.

#### **Measures to Protect Children in the Community, Including Children in Care**

46. At the time, I had substantial concern about child abuse in our communities and the ability of the social work profession and other professionals to cope and interact appropriately together in the interests of children. My concerns were shared among officials in my department. My predecessor, Cathy Jamieson, who was of course a professional working in this field prior to entering Parliament, also had concerns and this was the reason for our child protection reform programme. It was driven primarily by the child deaths that had taken place in the community, rather than abuse of children in institutional care. As there were child deaths still occurring it was right and reasonable to assume that there was more widespread neglect and abuse that, in its most extreme form, was resulting in child deaths. There were worries about the



effectiveness of child protection committees and my officials and I were seriously concerned that the attention given by local authorities, the health service and police to these matters was not of the standard required. My officials and I were concerned about social work education and training and I had a particular concern that social work generic education did not train in the specific approaches required to deal effectively with child protection issues.

47. It was from these concerns that there was a very strong focus on child protection generally and the reforms enacted or being considered encompassed protection of looked after children. All these safeguards and protections that were now in place, under consideration or in development had not been in place when Chris Daly and many others were in care.
48. A number of measures came out of the report *It's Everyone's Job to Make Sure I'm Alright*. This was the multi-disciplinary Child Protection Audit and Review of November 2002, following the death in the community of the toddler, Kennedy McFarlane. There had also been the Edinburgh Inquiry and the Fife Inquiry. We now knew much more about the system and the past failings of child protection as a whole and this was another factor we considered.

### **Support for survivors**

49. After discussion on the options and their merits, Ministers accepted officials' advice to decline either a public inquiry or truth and reconciliation commission and agreed in addition to current policy the third option, to develop and provide a package of support for survivors
50. There were three components to the package of support: the first was the provision of counselling support for survivors; the second concerned the opening of files for survivors; and the third was a compensation fund.

### **The Package of Support**

- Counselling support

51. There were real concerns that survivors were isolated and unrecognised as a particular group in our society that needed access to real support. Whilst we had now recognised childhood sexual abuse, we had not recognised and addressed the physical, psychological and sexual abuse in the context of institutional care. Counselling support was intended to give survivors a voice and provide a way for them to speak about their experiences through counselling services. We thought that was the most appropriate way to support individuals and their needs

- Opening Files

52. Some survivors were already coming forward to consider legal action. They could continue to take their cases to the police and raise proceedings in court. This was another legitimate way for a survivor to give public voice to what they had suffered and potentially to receive compensation. We considered we ought to facilitate that by opening files for people to examine them and thus aid seeking redress through the courts.

- Compensation Fund

53. The third component concerned a potential compensation fund. We did discuss a fund which would make payments without admission of liability on the part of the Scottish Government, but we concluded this was premature. We decided it was more appropriate to wait until the question of time bar in respect of the court actions had been resolved as we were aware there was a test case pending on that issue. We were aware that we needed to consider a potential compensation fund for people who could not bring a court case because of time bar or prescription. We intended to return to the question of the compensation fund when those matters were resolved.

54. I was frustrated and somewhat annoyed by the time bar argument. I did not think that we should be defending any cases in court just because the claim was out of time. I thought it was sending the wrong signal to survivors. I was very clear that allowing the survivors to raise the court actions was in itself an important element in

supporting survivors. If survivors wanted their day in court, then I believed they should be allowed that opportunity.

55. Cathy Jamieson, in her then role as Justice Minister, made the reference on time bar to the Scottish Law Commission because of our desire to lay it to rest. My lay and private view was that I was not confident a different policy would emerge from the Scottish Law Commission. However, I was prepared to recognise and accept that consideration by the Scottish Law Commission was a reasonable and necessary step on the way to resolving the issue and I supported Cathy Jamieson's decision to refer the issue to them.
56. I have always seen a compensation scheme as legitimate. It continues to be my position that a compensation fund should be available to survivors who have not been able to take their case through the courts. I think children were badly wronged and we have an obligation to do right by them. I also recognise that for many survivors, compensation was not their principal motivation in these matters.

#### **Steps after the Ministers' Meeting**

57. Following the meeting of Ministers, officials prepared draft replies to correspondence from MSPs and a draft reply to the PPC. On 8 October 2003, there was a submission to me from the policy official, Gerald Byrne. On the same date, Gerald Byrne also sent a submission to the First Minister saying that the Ministers had met and explaining what they had concluded. The First Minister had always and continued to take an active interest in this matter. On 20 October 2003, there was a submission from Gerald Byrne to me which included the minutes of the meeting of Ministers and referred to next steps to be taken. When I got a submission like that, I would put "noted" on the top of it, if it was simply for noting. If it was seeking a decision on a recommendation for a particular action, I would indicate whether I was "content" or "not content" and make any observations, and then expect agreed actions to be taken by officials. I would then expect to be updated about it subsequently, as appropriate. I normally cleared my Ministerial papers and

correspondence each evening unless I was particularly busy, but there was seldom a delay in turning-round submissions or correspondence.

58. On 18 December 2003, there was internal correspondence to the First Minister and Deputy First Minister from me recommending a course of action. That would have been drafted by an official, probably Gerald Byrne. I cannot recall a reason for the time lapse between 20 October and 18 December 2003 although it may have been because I was unhappy with the drafts and wanted them re-done. I have noted that the documents attached to the correspondence to the First Minister refer to updated draft replies, so it appears that I had caused the drafts to be redone. It now seems clear from records available to the Inquiry that I asked that the replies be run past the First Minister because he was taking an interest.
59. On 22 December 2003, the First Minister responded and asked whether the four options considered were the only four options and whether a further option of appointing an independent expert should be considered to investigate the issues. The First Minister asked for further advice on that. The First Minister was not demurring from the recommendation to proceed with option three but was raising the possibility of a further action, and that would go at least some way to meeting the aspirations of Chris Daly. This was a significant suggestion from the First Minister, and I would have expected the First Minister to get an answer to his question very quickly, indeed, normally within 24 hours unless something very exceptional was being raised that required very detailed further research.
60. A note from Gerald Byrne, dated May 2004, sets out that a reply from the First Minister in December had not been acted on until May 2004. Mr Byrne refers to that as a major failing on his part. I cannot recall pressing for the matter to be chased up as I would have been working on the assumption that if my Private Office was not alerting me to there being a problem, the matters had been dealt with and progressed.
61. I received a briefing from Gerald Byrne on 20 May 2004 on the subject of the petition. I was concerned that the submission made no reference to the Ministers'

meeting of 25 September 2003 and what had been agreed. There was then a submission on 8 June 2004 from Colin MacLean saying that there had been unacceptable delays in actioning certain matters that Ministers had agreed. It was shortly after this that responsibility for the response to the petition transferred to others.

62. The draft reply to the PPC which accompanied the submission of 20 May 2004 was broadly in the terms agreed by Ministers at the meeting in September 2003. The submission also advised against the First Minister's suggestion of appointing an independent person to investigate for the reasons given for advising against a public inquiry and truth and reconciliation commission.
63. The PPC met on 12 May 2004 and that by 20 May 2004 Gerald Byrne sent me a briefing which included a draft reply to the PPC. By the time of the next meeting of the PPC on 29 June 2004, there had still been no substantive response and so I was invited to give evidence to the PPC at a later date. The substantive response from me was dated 30 June 2004.
64. The records made available to the Inquiry disclose that I had signed a letter to the PPC on 25<sup>th</sup> June in time for the PPC to have received it before they considered that matter on the 29<sup>th</sup> June, but this along with other relevant correspondence signed on that date was not sent. I have also been made aware that the version of the letter signed by me on 25<sup>th</sup> June and that signed by me on the 30<sup>th</sup> June differed in so far as the second of the letters made clear it was from me and also on behalf of the First Minister. It appears that I had asked the letter of the 25 June be run past the First Minister to ensure he was content given the interest he had been taking in the matters. This would account for the change in the wording of the letter to include reference to him. I also understand that during this week Gerald Byrne was off sick. This could account for the fact the letter was not sent timeously. This was a sorry series of delays which accounts for the time intervals but is no excuse. It was causing dismay in the PPC and was no doubt the cause of further distressing Mr Daly at that time.

**Giving Evidence to the PPC - 29 September 2004**

65. The Scottish Parliament was in recess in July and August 2004. However, there was a lot of activity internally leading up to my appearance to give evidence to the PPC on 29 September 2004. There were discussions about the wording of the lengthy statement I intended to make and how far I could go in terms of acknowledging abuse when having regard to legal considerations. I was clear, as were colleagues, that there had been abuse and that this should be openly acknowledged.
66. The detailed evidence I gave to the PPC is a matter of public record. I apologised to the PPC unreservedly for the unacceptable delay in responding to them. Matters regarding the petition were still under discussion within the Scottish Executive which is why I said to the PPC that I had an open mind to doing more. However, the decision not to hold a public inquiry had already been taken by Ministers and I was not equivocal about that. Nothing had changed since that decision had been taken and at that time there was no reason to revisit it.
67. One of the matters that was under discussion between colleagues was Chris Daly's request for an apology. I do not recall exactly when those discussions started but they were taking place between colleagues around the time I gave my evidence to the PPC. I had a strong sense that this was an appropriate action. It was understood that there would be potential legal implications in giving an apology and that matter had, in principle, not yet been resolved, and if it was to be resolved in favour of an apology, it would be preferable if the First Minister gave the apology, which I recall I had discussed informally with him.
68. I used the words "profound sorrow" at the heart of my evidence to the PPC to express the view of the Scottish Executive about the abuse that had happened, as that was the furthest that the legal advisers were comfortable with at that particular time. It had the benefit of leaving open scope for the First Minister to make an actual and full apology at a later time were that course of action to be agreed. The words "profound sorrow" were arrived at after a lot of discussion with the legal advisers. It is clear from the records made available to the Inquiry that the legal officials wanted me



to tone down my proposed statement. Other than accepting the formulation of using the expression "profound sorrow" I resisted any substantial toning down of my statement and the statement to the PPC used clear and firm expressions of the feelings of the Scottish Executive in acknowledging and deploring what had happened to all too many children in residential care.

69. The PPC decided that they wished the subject of the petition to be debated in the Scottish Parliament. This was both a perfectly legitimate and democratic thing to do although this was the first occasion on which the PPC had chosen to take that course of action. We were still in the early years of the new parliament when many things were unprecedented and there was no issue with this course of action by the PPC.

#### Engagement with Survivors

70. As I left the Committee room after giving evidence, I had a number of informal conversations with survivors as well as journalists who had been in attendance during my evidence. It is probable that it was during those conversations that I first agreed that officials should engage fully with survivors and that I would be willing to meet as necessary. I was clear on leaving the PPC that we had more to do on the issues.
71. Between 29 September 2004 and the debate in the Scottish Parliament on 1 December 2004, with the PPC having progressed their responsibility to the petition by invoking a debate, there was considerable further activity on matters relating to the petition which included engagement with the survivors through exchanges and meetings between officials and survivors.
72. I met Chris Daly, Helen Holland and David Whelan over that period. You can readily see the effect of abuse from such conversations and also their resilience as individuals, their determination and dignity. We were very alert to the fact that children had been wronged in an awful way. Speaking to Chris Daly at that time, you cannot fail to comprehend the impact that his experiences had had on him.

73. We were also aware that while some survivors clearly favoured a public inquiry, there was some evidence that others did not share this view. There were also differing interpretations of what a public inquiry actually was. To some extent that position was subsequently reflected in the debate in the Scottish Parliament on 1 December 2004 where views for and against an inquiry were aired.
74. There was a meeting with Chris Daly and Helen Holland on 23 November 2004 when we discussed, among other things, the appointment of a 'rapporteur' (later to be known as the 'Independent Expert') and their view on the nature of any public apology that might be made. Although Chris Daly and Helen Holland did not like our decision not to hold a public inquiry, they worked with the consequences of the decision and committed themselves to work with our officials. They were brought into the policy development process and were influencing events. People were listening very closely to what they were saying.

#### **Contact with Care Providers**

75. The PPC had written to the churches to get a response to the petition but had received no response. When I gave evidence on 29 September 2004, the PPC asked me to write to the churches. I did so to offer to share with them our processes on opening files, which was part of our proposed package of support. They responded positively to that offer and were interested in sharing our processes and approach.
76. COSLA wrote to the Scottish Executive, in full support of our initiative, to say they would be encouraging all their local authority members to participate.
77. We were in touch with Quarriers and Barnardo's, whose experience of opening files led them to be concerned it could be traumatic for survivors. We would have to have counselling support available if we were to go ahead with the opening of files alongside it. Sometime later I learned that in many cases what people found in their files was very often not personal information, but minor administrative matters.

**The First Minister's apology and the debate – 1 December 2004**

78. In ongoing informal discussions with the First Minister I continued to share the view that we should include an apology among the other actions we were pursuing, and he was supportive of that approach. The precise wording caused a great deal of discussion and the wording was not finalised until the evening before the apology was delivered. From the outset, internal correspondence between policy and legal officials now available to the Inquiry reveals that the legal advisers were questioning of the need for an apology and indeed the need for Ministers to say anything at all. Even expressing 'regret' was seen as going too far.
79. From the documentary evidence I have seen, there was a note from the official, Rachel Edgar, recounting a meeting with INCAS. INCAS requested the apology be on behalf of the state and the people of Scotland. There was a lot of consideration at the time over the potential legal issues and, politically, concerns about not accepting all responsibility thus possibly allowing other parties (such as the institutions, the churches and local authorities) absolve themselves. Had the apology been made on behalf of the government alone, the concern was that the government was accepting all responsibility. The First Minister was particularly alert to this point. Chris Daly has often spoken about the institutions carrying responsibility. This would have been a factor in the final wording of the apology and was supported in advice from the Lord Advocate the afternoon before the statement was due to be given
80. Legal advice, at the highest level, was provided in relation to the terms of the apology. The records show that, as originally drafted between policy officials and lawyers, the apology was in the name of the people of Scotland. At some stage in the drafting, possibly late in the process, "on behalf of the government" also emerged in the text of the First Minister's statement. The revisions have the hallmarks of some input from Special Advisers (SPADS) to put it in the style of the First Minister. It is quite conceivable that in seeking to meet the requests of the petitioner, Chris Daly, the inclusion of "on behalf of the government" was suggested by myself or Special Advisers and being tested as a proposition. The records show that OSSE, when

urgently clearing the revised statement, did so with those words included. This would appear to have been an oversight and was subsequently spotted by the Lord Advocate's office. I think this is the reason for the last-minute flurry of activity the afternoon before the statement was finally given in Parliament and when the First Minister sought assurance the words had been agreed with the lawyers.

81. The First Minister signed off the final words of the apology the night before the statement and debate and the matter was discussed at a Cabinet meeting the following morning, before the debate and before the apology was made.
82. The apology the First Minister made was fulsome in expressing the recognition that children had been horribly wronged while in care and, as a result of the legal advice, was expressed as being in the name of the people of Scotland and not the people and the state as originally requested by Chris Daly.
83. After the Scottish Parliament passed the Apologies (Scotland) Act 2016 I understand that the then Deputy First Minister both repeated and elaborated on the apology made by the Rt. Hon. Jack McConnell when First Minister. The Act allows such apologies without incurring liability. This shows, I believe, that the constraints on Ministers to act in the way they may have preferred in 2004 were real, to the extent that the Scottish Parliament has now removed those constraints through legislation.
84. Formal public acknowledgement of institutional child abuse came through the evidence I gave to the PPC, and then in a more complete way through the apology the First minister gave. Until the First Minister gave the apology, I do not think the state had formally acknowledged that abuse had been happening at such a level and through a specific Parliamentary Statement. Acknowledgement had been implied in various ways through guidance circulars issued by the Scottish Executive on the question of child abuse. However, to the best of my knowledge, the state had never formally acknowledged the abuse beyond acknowledging specific reported episodes and certainly not through the means of an apology. For us, the survivors, and as it turned out, for the Scottish Parliament, the apology was a moment of considerable significance.

85. When any Minister is making a statement it is not possible to fully anticipate what the reaction is going to be. What was remarkable was not that people from all the political parties were lining up behind the apology, but that people saw the words of the apology as inclusive. Kenny MacAskill MSP and Robin Harper MSP both made the point that we all carry responsibility. Chris Daly, both at the time and today, thinks the apology was well cast, genuine and heartfelt. Notwithstanding the legal considerations, the apology caught the mood of what was necessary at that moment. and the representatives of survivors also welcomed it.
86. We did not regard the apology as a closing of the book on the issues, but rather the opening of a new chapter. It was seen as part of building something better for the future.

#### **The Independent Expert**

87. At the debate on 1 December 2004, after the First Minister had given the apology, I announced the appointment of the independent investigation which, in principle, had been suggested by the First Minister in December 2003.
88. I had become convinced that more needed to be done to answer the question I kept hearing from Chris Daly and others, namely: "Why the abuse had been allowed to happen and not stopped?". While we felt we understood the reasons for this, this had never been examined formally or reported on in public.
89. The Independent Expert idea developed from an original concept to appoint a 'rapporteur' to examine matters. The use of the term 'rapporteur' caused difficulty internally as it was not an expression commonly used within the Scottish Executive. However, to me this term had specific meaning as it was a term used in the early days of the Parliament as Committees appointed 'rapporteurs' to conduct inquiries into matters. It was also the term used within the European Committee of Regions of which I had been a member. Indeed, the principal way of working in the Committee of the Regions was through 'rapporteurs'. In this context the rapporteur process

would involve appointing someone to investigate an issue, report back on what they had found and draw any obvious conclusions and recommendations. The term 'rapporteur' was also a term that the First Minister would have been familiar with from his involvement in European political institutions and it would have conveyed the same meaning to him as it had for me. The 'rapporteur' proposal was close to the idea he had raised, back in December 2003, but which officials advised against at that time. None the less, the difficulty with the term soon gave way to the use of the expression "independent person" or "expert" within the Scottish Executive.

90. It is also clear from examining files that the idea of the 'rapporteur' first raised by me with INCAS in the meeting of the 23<sup>rd</sup> November 2004 is reported in an internal email as a "new suggestion". The officials at the meeting with INCAS had not been dealing with these matters at the time the First Minister raised the possibility of some form of investigation back in December 2003.
91. I am clear this issue was the subject of discussion between me and the First Minister, likely over a period of time and certainly in the days leading up to meeting INCAS. The records show a formal meeting between the First Minister and I on the 18<sup>th</sup> November, but there were also many informal conversations that took place between colleagues all the time. It was common, often involving special advisers, to discuss rapidly developing and sensitive political issues, such as this one.
92. I continued to receive legal advice commenting on the proposed course of action on the 'rapporteur' right up to the wire from senior levels within OSSE when I received a six page note of advice to me, and with the Crown Agent also expressing concerns around this time.
93. The nature of the legal advice I received on these issues was perfectly proper. It did not advise that making such an appointment was beyond the powers I had, but it went to considerable lengths to raise a series of potential adverse consequences to the interests of the Scottish Executive. This advice followed my policy officials, who were facilitating the approach I had been suggesting, asking the legal team to consider any potential risks which may result from the appointment of a 'rapporteur'.



It was clear a lot of work had gone into the advice and I needed to consider it carefully. It conveyed to me a sense that I was being strongly dissuaded from progressing with the action that I thought appropriate and necessary; an action which would move us closer toward meeting the aspirations of survivors and exploring and reporting on their legitimate concerns.

94. I had INCAS on the one hand wanting me to proceed and give the person appointed a very open remit, akin to that of a public inquiry, to interview and hear the testimony of survivors and make judgements about the responsibilities of individuals and institutions. On the other hand, the legal advisers were, in my view, clearly seeking through their legal advice to have me seriously question taking the initiative to make any appointment at all, or to constrain the role of any appointee. Although I do not recall this, the records available to the Inquiry show that I was liaising with opposition spokespeople and seeking to head off a potential division in Parliament that may have had the effect of 'politicising' the issue of child abuse in institutional care, as such an outcome was undesirable.
95. After receiving the lengthy submission from the head of OSSE referred to above, I spoke with the Lord Advocate about the matters raised. The Lord Advocate, in this context, is both the most senior legal adviser to the Scottish Executive and a fellow Minister. As a Minister and at that time a full member of Cabinet, the Lord Advocate was well aware of the politics surrounding key matters. We considered the issues carefully in balance with the political imperatives of the moment, and this gave me the confidence to confirm my intention to appoint the 'rapporteur'.
96. The final remit of the 'rapporteur', now known as the Independent Expert, was also the subject of much further legal advice and reflects both the policy intention I had for the appointment while avoiding as far as possible any unintended consequences the lawyers were concerned about.
97. The remit would encompass an examination of the systems governing care at the time of the abuse. The initiative for the independent expert and the final remit was a reasoned exercise of political judgement in order to address the circumstances at the

time. I had no doubt then that making this appointment was both appropriate and necessary and I remain of this view.

98. As far as I am aware, the appointment of the independent expert did not trigger any of the adverse consequences it was suggested could arise. Policy officials who sought to facilitate my objectives here are not in a position to formally depart from legal advice received. I took the decisions I saw as right to take, having liaised with colleagues, the Lord Advocate and the First Minister and notwithstanding what I regarded as the discouraging nature of the legal advice on those actions I had received from OSSE.

### **The Appointment of the Independent Expert**

99. Tom Shaw was appointed as the Independent Expert and I sent a letter of appointment to him in August 2005, having revealed this was intended in a letter in June 2005 to the Chair of the PPC. It took time to find the right person to undertake the review, with Tom Shaw having been identified by Colin Maclean as I recall. There was a lot of discussion with INCAS about that. We wanted to make sure they would have confidence in whomever was appointed, and it took several months. There were then negotiations about the remit, including to-ing and fro-ing with OSSE as part of that process.
100. Mr Shaw's remit was to try to establish how the abuse was allowed to happen, by looking at the inspection regime at the time, the law in force, the procedures and training standards, and so on.
101. It is confirmed within the records that Tom Shaw asked to extend the remit in 2006. He said he needed to talk to survivors to get a better understanding and came up with a way of handling this. My policy official, Rachel Edgar, advised that his suggestions formed a suitable approach. We were trying to make sure that Tom Shaw's inquiry did not turn into a lengthy period of hearing people's testimonies rather than doing what was asked, which was to look at the policy frameworks of the time that determined what was happening in the system. We wanted him to do what

he thought was best. I do not recall placing any restrictions on the number of people he should speak to and the records confirm that I was seeking to restrict his actions as little as possible and trusted his judgement on how best to proceed with the remit. He put forward proposals for what he wanted to do, and we accepted these.

102. The Tom Shaw report was concluded after my time as Minister for Education and Young People. I do not claim to have significant insights into what the report said. I cannot say whether Tom Shaw was fully able to answer the question of why abuse was allowed to happen, though I understand he did shed light on the issues through his final report.

103. It is evident from the continuing requests by the survivors for a full Public Inquiry that they did not think all the questions had been answered although I am aware that a good relationship had been built up between the survivors and Tom Shaw and they valued his work. He went on to do subsequent work which showed that a level of trust had been built up, so his appointment was not insignificant. I understand that a series of initiatives can be traced back to what Tom Shaw recommended and that they have continued to evolve in order to provide practical support for survivors. His report and subsequent work form an important part of the process which has brought us to where we are today.

104. We have seen a lot of work done on the issues by four governments and it has still not answered the full concerns of survivors. The Tom Shaw review has assisted in the understanding of institutional abuse, but it has evidently not met all the needs of survivors.

### **Closing Thoughts**

105. I welcome this Inquiry. The decisions that we took at the time were taken in good faith and after a lot of consideration based on the evidence we had and prioritising the needs of the survivors as we saw them. Presented with the same evidence again I do not believe I would have come to a different conclusion, but it was a decision for that time.

106. A lot has happened since the petition was first lodged. A lot of initiatives were taken by our government and later governments, including the Tom Shaw Review and actions on and flowing from his recommendations, and services created for survivors; Time to be Heard and the work of the Scottish Human Rights Commission and so on. What is evident is that, despite all that we and successive governments did, those initiatives and developments had not met all the aspirations and needs of survivors to the extent they continued to seek a full inquiry.
107. Chris Daly's petition was a trigger to considerable subsequent action. It and the work of INCAS were very significant and influenced child protection policy. Without the petition, we would not have had the apology of the time and the formal acknowledgement of child abuse that represented, nor the Tom Shaw review, the opening up of files and the development of various new policy initiatives and services.
108. I think Chris Daly has done a remarkable job. He was acting as an individual at the beginning of the petition process. He was not part of INCAS at that time. I think it was a very strong thing to do to raise the issues in public in the way he did. I have huge admiration for him sticking with this, the way it was done, and how he has used his awful experiences to positive effect.
109. I thought his evidence to the Inquiry, and that by Helen Holland, was moving and they spoke incredibly eloquently about the nature of the difficulties that survivors face.
110. The PPC showed its absolute worth through this process, which is designed to air issues important to people, to establish what the government's position is on an issue, to comment on that position, and to try to shift the government's position when felt appropriate. Unquestionably, the PPC process played an important part in helping the evolution of how these issues were considered.


111. From the time I first heard direct testimony about child abuse referred to in the early part of this statement when I was undertaking induction training on starting work for the CABx, I can think of few things that can be worse than as an innocent child to be taken from your home, however challenging the circumstances, and placed in a residential home for your care and protection, and then find yourself physically, emotionally or sexually abused. In such circumstances you have been badly wronged and failed by society.
112. Society and the systems of the time failed Chris Daly and other children in care. Society at the time was not looking for abuse: children were sent to institutions that society then thought were loving, caring and respectful, often Christian institutions. If children had reported abuse in those days, they probably would not have been believed and may even have been punished and accused of being wicked for having cast doubt on the 'worthy and dedicated' people running the institutions, as may have been the perception of society at the time. Society did not then have services in place for allowing children to have an independent voice. The inspection services at the time were inadequate by current standards and people who worked with children were not in those days vetted effectively. The post of Children's Commissioner, who helps look after children's interests, had yet to be created and the training in these institutions was inadequate by the standards of today. Many of those who were employed to look after children in these institutions were poorly remunerated. At the time, the systems in place were not good enough, failed to ask the right questions, failed to challenge what was happening and did not have sufficient independent scrutiny to offer children the protection they deserved.
113. It might be argued that, until the Children's (Scotland) Act 1995 came into force, which put individual children's interests at the heart of decision-making, society as a whole and governments were failing all too many young people. The institutions did not do enough to protect children and perhaps too much to protect abusers in some instances, inflicting irreparable damage on all too many. This has also detracted from those who did look after the young people in their care properly, thoughtfully and with love, and supported them throughout their often troubled lives.

114. With the exception of the administrative failings during the early stages of events which I have referred to in this statement, I believe that in considering the issues at the time my colleagues and I sought to do what was right by the survivors. We considered the issues seriously and conscientiously, and we followed proper procedures when doing so. We carefully considered the policy and legal advice we received. We subjected the issues to scrutiny by means of collective discussion between senior Ministers across different portfolios, as we tried to find the right way forward and to move policy and actions along. All the issues and our decisions played out fully in public and were subject to open and proper scrutiny in the PPC, in media coverage and in full discussions of the entire Scottish Parliament, which are a matter of public record.

115. We sought to try and ensure that child abuse cannot happen in any setting where children may be vulnerable, building on the work of previous governments, and subsequently built upon by following administrations. It would be rash to say that in any system there will not be some people who will manage to breach the institutional protections and abuse children, this is why we need strong systems in place and should always remain vigilant. If there is anything to learn or put in place from anywhere in the world to make children safer still, then it should be done.

116. My sincere hope is that the work that has been done since 2002 will assist the Inquiry in offering adding insights that may enable additional measures to those already in place to protect our children. I also hope that the process of the Inquiry will provide the kind of closure the survivors are looking for.

117. 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 in so far as my recollections and examination of past records permits.

Signed..........

Dated.....03 August 2020.....