

Scottish Child Abuse Inquiry

Witness Statement of

Jean MacLELLAN

1. My name is Jean MacLellan. My date of birth is [REDACTED] 1954. My contact details are known to the inquiry.
2. This witness statement is to give information to the Inquiry regarding some of my responsibilities as Divisional Head/Deputy Director of the Adult Care and Support Division in the Health Department of the Scottish Executive and then the Scottish Government. This statement is based on my recollection and on being given access to some documentation selected by the Inquiry.

Background/employment history

3. I am employed on a part-time basis as a Strategic Lead in the Faculty of Humanities and Social Sciences at the University of Strathclyde and hold a visiting Professorship there. I also provide consultancy on a freelance basis.
4. A social worker and educator by background, I was employed by the Scottish Executive in 1996 as a Social Work Services Inspector and continued to be employed by the Scottish Government until 2013. For a time, I was Acting Assistant Chief Inspector before deciding to transfer to a policy role as a branch head, latterly becoming Divisional Head/ Deputy Director of the Adult Care and Support Division in the Health Department.

Key drivers that informed policy until 2004

5. The first work undertaken in the Health Department to support adult survivors of childhood sexual abuse predates my involvement. From my perspective there were

several elements that had set the agenda ranging from petitions to the Scottish Parliament, the work of the Cross Party Group on Survivors of Childhood Sexual Abuse and the Short Life Working Group (SLWG).

6. The first petition (279), which was brought forward in October 2000 by Anne Macdonald of the Kirkcaldy Area Abuse Survivors Project (KAASP), represented the experiences of 25 organisations who recognised the need: “To address the social, health and legal implications of childhood sexual abuse...and the long term consequences and links with drug, alcohol and substance abuse, mental health problems, homelessness, domestic violence and suicide.” It was this petition that led to much of the activity in the Cross Party Group and ultimately to the Survivor Scotland Strategy launched in 2005.
7. Petition 535, brought forward in August 2002, by Chris Daly was also key, principally in terms of child care practice. It asked for an inquiry into past institutional child abuse focusing on children who were in the care of the state supervised by religious orders. It sought an apology for the role of the state, which was given by the then First Minister in 2004.
8. The SLWG “on the care needs of people who had survived childhood sexual abuse” reported in 2004. It was established as a consequence of the efforts of the Scottish Parliament’s Cross Party Group, launched in 2001, which highlighted what they described as service failings. Much of what they recommended related to what can broadly be termed health and well-being across the lifespan with relevant procedures and processes in place to underpin this. Improved commissioning and sustaining of services and supports sat alongside having better data collection, research and training. Critically, they recommended that the Scottish Executive should incorporate the issue of adult survivors of childhood sexual abuse into policy developments in child protection, domestic violence and mental health services. In other words, that the needs that should be addressed required a cross government commitment.

Role as Divisional Head/Deputy Director of Adult Care and Support-2004 onwards

9. The division which I led was located within the Health Department and consisted of several branches delivering various aspects of government person-centred policies in terms of health and social care. This ranged from supporting autistic individuals and families, Implementing adult protection legislation, carers policy, meeting the needs of people with learning disabilities and their families, sensory impairment policy and implementation of self-directed support legislation. The staff team numbered around thirty. What became the Survivor Scotland Branch started with one part-time staff member who provided the Secretariat for the SLWG and increased to six as the policy developed.
10. The Survivor Scotland Strategy was launched in a debate in Parliament in September 2005. Some actions were already underway but the main elements were intended to address the needs identified by the SLWG. There was to be a cross-cutting Reference Group which I chaired and which consisted of survivors from representative organisations, civil servants from across children's services, justice and health as well as representatives from the statutory and voluntary sectors and academics. An expert in trauma was also recruited. All three petitioners were members. Two lead professionals were appointed with specific expertise who were to liaise with other government departments to maximise collaboration and effectiveness. An initial Survivors Fund of two million pounds was also made available for local organisations to undertake innovative practice or to showcase what they were already achieving and that investment was added to so that progress could be sustained in terms of the good practice that was being developed.

The National Reference Group

11. The National Reference Group (NRG) met over a number of years with ministerial approval and involvement, progressing its original agenda as well as holding regular reviews to refresh and revise objectives. It was a diverse group with agreed ground rules where a great strength was having an environment where sensitive issues could

be debated and often resolved. However, not all group members were able to reach consensus consistently and differing views emerged.

12. We know that some who are survivors may never articulate that fact to their nearest and dearest. Some survivors will have been able to function very well through their resilience and the support of others. Others may not be able to function at all because of what they experienced. Some may not recognise until later in life that they have been traumatised by experiences in their childhood. Those who were involved in Survivor Scotland reflected those individual differences in terms of experience and perspectives on what could be offered to improve quality of life.
13. Much of the tension in the NRG centred on what the Group could legitimately achieve. Whilst it was cross-cutting, it was for individual departments of government to pursue their own priorities as defined by their Ministers and the relevant programme for government.
14. The focus of the NRG was not primarily on obtaining justice and legal remedies for survivors, although the agenda did widen out as time passed. Prescription and limitation issues arising out of the historical abuse of children in care were being dealt with by the Justice Department. In 2004 and 2005, Cathy Jamieson, the Minister for Justice had referred this matter to the Scottish Law Commission which published its findings in December 2007. Similarly, the Education Department commissioned the Shaw Review which reported in November 2007.
15. That said, there was a genuine willingness across Justice, Education and Health to work together. The establishment of the In Care Survivors Scotland Service (ICSSS) is an example of cross Department collaboration where one of the Lead Officers from Survivor Scotland worked on this development with Education Department officials.
16. In February 2008 Adam Ingram, as Children's Minister, made a statement on behalf of the Scottish Government in which he set out the Government response to both the Shaw Report and the Scottish Law Commission one. His announcement included an intention to carry out a scoping exercise for a form of truth and reconciliation type forum. That was followed up by a consultation process between September 2008 and April 2009. There was then a decision by Ministers at the end of September 2009 to

conduct a pilot forum using a confidential model, which became Time To Be Heard (TTBH).

17. I undertook some research around this time on models from other countries where some had been successful and others resulting in deep dissatisfaction from survivors. Some of this information was contained in submissions to Ministers.
18. The NRG discussed the proposed truth and reconciliation forum at length. Some took exception to this terminology because of its perceived close association with atrocities. So an acknowledgement and accountability forum came to be used instead.

Acknowledgement and accountability

19. There was discussion within the NRG about what a forum with an element of accountability would mean in practice. Views differed on whether the forum Adam Ingram had referred to in February should have both acknowledgement and accountability elements. The majority view was that acknowledgement was the more critical. Chris Daly and Helen Holland promoted both elements. These debates were heated at times and as Chair it could be challenging to ensure that all voices were heard. To achieve accountability would mean getting all relevant institutions to actively participate, accept their involvement and potentially negotiate with their insurers about the ensuing implications. All of this activity had yet to begin.

Consultation

20. There was a public consultation between September 2008 and April 2009 to seek views on a proposal to develop an acknowledgement and accountability forum. The consultation showed that not all survivors were interested in restorative justice or financial compensation. The majority wanted to be acknowledged, listened to, respected, believed and probably above all else to contribute to ensuring that the experiences they had would not be that of children in care now or in the future.

21. Sometimes in discussion accountability and financial compensation could become conflated. Compensation was not the dominant theme for most. For some it was important. For others accountability was about getting their caregivers to recognise the impact their care experience had had on their lives and how it had prevented some from being all that they could be. People spoke about their mental health issues and were asking for support like counselling and the opportunity to go to further education college. I did not see it as the exclusive role of the state to compensate for what had happened and struggled to see how care providers would accept their responsibilities now too and act on these in the way that the Scottish Government was endeavouring to.

Engagement with care providers

22. Scottish Government officials met with representatives of care providers, including faith based providers, to update them and to discuss their individual and collective accountability for past abuse. Those who were delegated to attend by their organisations tended not to be at a level where they could commit to change. There were no spontaneous offers to commit to making a financial contribution. Some cited insurers advice that accepting culpability could lead to bankruptcy which could jeopardise the quality of life of those who were presently living in care.

Ministers' meeting on 30 September 2009

23. On 30 September 2009, there was a cross-ministerial meeting to discuss the Acknowledgement and Accountability forum attended by Adam Ingram, Children's Minister, Shona Robison, Health and Community Care Minister and Fergus Ewing from Justice. An options paper setting out the options for a pilot forum had been prepared and circulated in advance by Sue Moody, who was a lawyer working in the Survivor Scotland team.
24. As is required in such briefings, the financial implications made clear that what was possible needed to be modest to be affordable within the available budget. Ministers

were advised that the cost of an Investigative Committee (of the kind established in Ireland) would be high and that it was unlikely that there would be funds to meet the heavy cost of legal representation including for a pilot. In some jurisdictions, such as Canada, a considerable resource was used to fund legal representation.

25. So the briefing favoured a Confidential Committee model. Ministers were also advised that if this model were chosen it would require to be human rights compliant. The team had already approached the Scottish Human Rights Commission (SHRC) and asked that they produced a Framework that would inform the design and delivery of a model acknowledgement and accountability forum and Ministers were made aware of this.
26. There were some tensions here too in that the Confidential Committee approach went ahead before the SHRC had concluded its work but incorporated much of their work into the pilot. They knew that there was a possibility of all the other options in time and that incremental development was the intention. Ministers were keen to get things done as soon as possible having been made aware regularly of the pressing needs of older and frail survivors.
27. Quarriers Board agreed to a pilot forum involving its former residents in order that the organisation could move forward from its past where former staff had been found guilty of abuses. Whilst the majority of staff had not behaved in this way they were sometimes seen as culpable by association. It is interesting to note that 20% of former residents made positive statements about their Quarriers experience which further evidences the complexities and sensitivities that need to be managed.

The Ministers' Decision

28. Ministers decided to pilot a confidential forum which was known as Time To Be Heard (TTBH). The decision was not straightforward as Mr Ingram would have wished to go further but collectively it was agreed. It was difficult because it had become clear that the civil justice route was closed to survivors under the existing law of prescription and limitation.

A Time to Be Heard – pilot confidential forum

29. Tom Shaw, who had chaired the Shaw Report, agreed to chair and was accompanied by the first Children's Commissioner and a highly respected clinical psychologist. Although they were supported by the Survivor Scotland team in terms of set up, they functioned independently thereafter.
30. Quarriers gave the names of previous residents for TTBH to contact and helped with piloting a small restorative justice model as well. Some survivors were not in favour of the pilot as there was no compensation element and it was perceived to be giving an unfair opportunity to some individuals whilst others from other establishments would have to wait.
31. Petition 1351 was launched in 2010 by Chris Daly and Helen Holland and asked that the Time To Be Heard Confidential Forum was made available to all survivors and that this should include a compensation scheme. Some survivors indicated that there would be insufficient candidates for the pilot as they would not be willing to put themselves forward for the process.
32. As it transpired, the 100 target figure of participants was reached and the pilot was valued by the vast majority who participated. Those who were old and frail were prioritised. There were a small number who did not find it useful. In addition, Quarriers set aside some money for a small number of restorative justice requests which were brokered by SACRO.

SHRC report, Human Rights Framework and the InterAction process

33. The SHRC produced the Human Rights Framework in February 2010. The Scottish Government gave the SHRC an interim response on the points relating to TTBH in June 2010. When the TTBH report was published in February 2011, the Scottish Government gave a response to the SHRC's wider recommendations which included the establishment of an interaction process to consider a range of possible next steps and measures.

34. It was always understood that the Scottish Government would participate in the InterAction process and that Ministers would come to the beginning and end sessions and that officials would be there in between. The InterAction process was an objective, impartial mechanism independent of Scottish Government. Ministers were invited on the same basis as everyone else. It was the Scottish Government that had commissioned the Human Rights Framework in the first instance. Complying with and promoting human rights was a given.
35. I did not anticipate at this point that the Human Rights Framework would lead to the Child Abuse Inquiry on the basis that there had been a number of inquiries and reviews in Scotland which had reflected on the issues and made recommendations on what should be done. There had also been a number of successful prosecutions. So the added value of any further inquiry needed to be clear. The SHRC has also recognised in its 2010 report the need to be pragmatic and realistic in relation to austerity and affordability.

Time Bar, compensation and access to justice

36. At this time, the Justice Department was leading on time bar and limitation and prescription. There were officials working for Fergus Ewing and other Justice Ministers who had responsibility for those aspects of policy.
37. Shona Robison, Adam Ingram and Fergus Ewing gave evidence to the Public Petitions Committee on 21 December 2010. It was the first occasion that three Ministers from different Departments had attended together. Fergus Ewing made a firm commitment to consultation which would explore creative ways to solve the time bar problem.
38. This signalled the breakthrough that survivors had been hoping for. This consultation went out a year later as officials in Justice had other legislative priorities to conclude first.


Reflections

39. The Survivor Scotland Strategy led by the Health Department did make a positive difference to many lives. Awareness of the impact on adulthood caused by childhood trauma became better understood by individuals, professionals and the general public through research, training and conferences. Practice at local level was enhanced across Scotland by the distribution of the Development Fund which totalled over £4 million over the years. This made it possible for local organisations to shape local solutions to the issues they were facing and the learning that was taking place was supported and disseminated across the country. The projects would be too numerous to mention but to name a few they covered remote and rural areas, men's issues and work with perpetrators targeted at preventing further harm.
40. At national level, sensitive practice within health settings was promoted which recognised what survivors can experience when faced with physical examinations of any sort. Specific work was undertaken, for example, to make dentists more aware of the impact that sexual abuse of an oral nature could have on patients.
41. Work was undertaken with the National Records office too to ensure that data would be available to those who had been in care as previously some people had experienced difficulties in accessing what they needed.
42. The Survivor Scotland Reference Group was the obvious point in the system that survivors looked to drive all relevant changes. As explained earlier, there was a limit to what could be delivered. Some incremental changes were possible. So a group that had started out to solely address the needs and aspirations of those who were survivors of childhood sexual abuse was widened to include all children. Similarly, the agenda broadened out to include the TTBH provisions given that the purpose was acknowledgement and respectful listening to testimonies in ways that it was hoped would improve the health and wellbeing of those who participated.
43. Throughout the period of the Strategy sound cross-cutting work took place. Equally, the Education and Justice Departments made their own contributions with the Shaw Report and the work on time bar, prescription and limitation. The latter was particularly

complex and took a long time which some survivors found frustrating, as is reflected in some petitions.

44. Survivors are individuals and have differing needs and aspirations and ways of conveying these. Many survivors were engaged and actively involved in the Strategy. Some were silent supporters and did not wish to openly disclose that they were survivors or to participate in any groups. It was not unusual for those individuals to make contact to express their gratitude to the team for shining a light into a dark place. In one such call a person said that a national conference we had held which had TV coverage had made her feel she was valued as a member of Scottish society. Some survivors could become very vocal about the pace of change and others did become afraid at times when tensions ran high. This required careful and sensitive communication to try and keep the agenda moving positively. It was not always possible.
45. It was a privilege to be able to contribute to this work and I know my colleagues felt similarly. To be of public service was important to all team members. However, it would be remiss not to make clear that this had its costs at times. Some staff found the deep emotional content affected them to such an extent that they transferred to other roles. Counselling support was made available to team members.
46. In the early days the team was subjected to anonymous written threats, too, when we were about to hold a conference that was to expose the extent of the harm. These came from individuals who wanted to silence survivors.
47. Another factor was that civil servants worked for the government and some survivors understandably took the view that it was the State and its policies that had led to their abuse which made it difficult to trust those of us they were collaborating with. This was natural but was also challenging.

48. 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..........

06 August 2020

Dated.....