

Scottish Child Abuse Inquiry

Witness Statement of

Shona Robison

Support person present - No

Background

1. My name is Shona Robison. My date of birth is [REDACTED] 1966. My contact details are known to the Inquiry. This witness statement is to give information to the Inquiry regarding some of my portfolio responsibilities as Minister for Public Health and Sport when I was a member of the Scottish Government.
2. This statement is based on my recollection aided by documents. I have seen documents provided to me by the Inquiry and the current Scottish Government.

Term of office as an MSP

3. I am a member of the Scottish National Party. I have been a member of the Scottish Parliament (MSP) since 1999 and for Dundee City East (formerly Dundee East) since 2003. Between May 2007 and May 2011, I was Minister for Public Health and Sport. Sport became part of my portfolio in 2009. I served as Cabinet Secretary for Health and Sport from November 2014 until June 2018.

Before being an MSP

4. Before being an MSP, I obtained a Master of Arts in Social Sciences from Glasgow University and a Postgraduate Certificate in Community Education from Jordanhill College, Glasgow. After qualification, I worked for the Social Work Department of Strathclyde Regional Council. After local government reorganisation in the 1990s

and the creation of unitary authorities, I worked for Glasgow City Council in community work and I became a senior community worker. There was a re-organisation of that role and I was offered and accepted a transfer to a home care organiser post.

Minister for Public Health and Sport – May 2007 – May 2011

Role in issues arising from historical abuse of children in residential care

5. I became Minister for Public Health in May 2007. There had been a growing level of awareness of the abuse of children in care following the establishment of the Scottish Parliament in 1999. There had been various inquiries and reviews all of which began to paint a picture that the historical abuse of children in residential care was a widespread problem, as had been the case in other countries.
6. The previous administration had been involved in many of the same issues confronting the administration during the period that I was Minister for Public Health. The Shaw Review that began in 2005 was still ongoing and the Scottish Law Commission (SLC) was reviewing the law of prescription and limitation.
7. I worked alongside Adam Ingram, Minister for Children and Early Years. He was very keen to look at the historical situation of children in care to ensure that all necessary improvements had been, or would be, made for children in residential care now and in the future to keep them safe and protected from abuse of any kind.
8. As well as making sure that the current system was improved, there was also a desire within the Scottish Government to address a range of issues relating to the historical abuse of children in residential care which adult survivors were raising. That has continued and there has been an evolutionary process in response to those issues. For example, the current Scottish Government commissioned the Review into Looked After Children, led by Fiona Duncan, to see what improvements can be made for the life chances of children who are in care.

9. As Minister for Public Health I had responsibility for health issues arising out of the historical abuse of children in care. In matters relating to the health and wellbeing of adult survivors of childhood abuse whilst in care, I, my officials, and the Health directorates were responsible.
10. I, Adam Ingram, Minister for Children and Early Years and Fergus Ewing, who was the Minister for Community Safety, dealt collectively with the range of issues arising from the historical abuse of children in residential care. That was because those issues did not really sit within one minister's portfolio or one government department. Decisions taken in relation to such issues were collective decisions. One notable example was the decision taken in September 2009 by Adam, Fergus and I to pilot a private confidential forum which was subsequently known as "Time To Be Heard" (TTBH).
11. Many statements made to the Scottish Parliament on these issues tended to be made by Adam Ingram or Fergus Ewing. One example is the parliamentary statement made by Adam Ingram in February 2008 following the publication of the Shaw Review in November 2007 and the Scottish Law Commission's (SLC) report on prescription and limitation in December 2007. In that statement, Adam Ingram gave the Scottish Government's response to these reports. Adam Ingram also led a lot of discussions in Cabinet.
12. Adam Ingram led more on the day-to-day detail around children currently in care. Fergus Ewing led on legal matters, dealing with things like time bar and prescription. As a Health minister, I had a role around matters such as the SurvivorScotland strategy and support for survivors of childhood abuse, whether in care or in the community. All three of us gave evidence together to the Public Petitions Committee (PPC) on 21 December 2010 given that those complex, difficult, and sensitive issues crossed portfolios.
13. As previously stated as Minister for Public Health I had responsibility for the health and wellbeing of adult survivors and my officials were the lead officials in this matter.

Decisions were very much collective decisions of Adam Ingram, Fergus Ewing and I. From minutes of meetings, there were very few meetings that did not involve all three of us. For example, the meeting between Adam, Fergus and I decided on the TTBH pilot. We took that decision in September 2009.

14. As Minister for Public Health I was involved more directly with SurvivorScotland and decisions about the wider support arrangements in place for adult survivors. That said, I would emphasise that key decisions about what to do and how to respond to issues concerning adult survivors of childhood abuse were made by the three of us

Calls for a public inquiry

15. In the period 2007 to 2011, there continued to be calls for a public inquiry. A public inquiry was never ruled out by the SNP administration and was always in the background as an option. To the best of my knowledge a public enquiry was neither ruled in or out at that time.
16. The focus during that period was on the question, "what can we do in the here and now and what would a public inquiry add to what is already planned?". We looked at what had been done internationally, the relative success or otherwise of how other jurisdictions had taken forward similar issues and tried to learn lessons from that. The focus was very much on trying to get to a position where there could be a response to the concerns of survivors in a reasonably short timeframe.
17. There were concerns at ministerial level around a public inquiry taking a long time and perhaps not necessarily providing the desired outcome for everyone in whose interests it was established. I do not think collectively we were against a public inquiry. On the back of the Shaw Review report and the SLC report, we were focused on how we could now address the concerns being raised. That is why, in 2008 and 2009, we looked at establishing some kind of forum. The ministers' attitude at that time was that a forum seemed to be something that could be done immediately and would give an opportunity for people's voices to be heard.

Truth and reconciliation forum or a confidential forum

18. We were attempting to do something different and trying to learn from what had worked quite well elsewhere. The advice from officials, before the decision in September 2009 to pilot a confidential forum, drew quite heavily on what was seen to be a successful part of the Irish experience. This was a confidential committee model that enabled people to have their testimonies heard, of which there was then a public record. A confidential forum was seen by officials and ministers in the Scottish Government as a way of avoiding some of the difficulties encountered in attempting to pursue matters through the civil and criminal justice systems. A pilot confidential forum would also enable an organisation, which had already admitted and accepted that abuse of children had happened in childcare establishments run by it, to test out whether a confidential forum would work and what it would do.

19. A confidential forum was not seen as being the only answer or the sole response to the issues being raised by adult survivors. At the time it was seen as a model worth testing in order to see whether it could give a forum for survivors to be heard but avoid some of the challenges that have been seen elsewhere when other types of model have been used. The TTBH report on the confidential forum and its outcome was actually quite positive in that regard. I accept that there were criticisms in some quarters that it was too restrictive. However, it was a pilot. When you have a pilot you are trying to test something out, rather than saying that it is the only way. In piloting the confidential forum we wanted to find out whether it could serve a really important purpose.

20. We were very focused on the need to provide some forum that could enable people's testimonies to be heard asking ourselves, 'what would be the best way of doing that, a way that could be tested reasonably quickly and lessons learned in terms of strengths and weaknesses?'. That is why we decided upon a confidential forum. Officials did a lot of work on gathering international evidence. There were strengths and weaknesses in the various models used elsewhere. The reason we decided upon a confidential forum was that it presented as one of the best ways of providing

a forum that would enable people's testimonies to be heard while avoiding some of the negatives, pitfalls and difficulties that other routes might pose.

21. As Minister for Public Health, I saw the benefit of such a forum as being the provision of a therapeutic forum and as providing a form of support that was not previously available. There were concerns that introducing features such as accountability, the therapeutic aspect might be diminished and the forum may not achieve its desired outcome.
22. We were advised by officials that if we went for a different model with an element of accountability built in, then Quarriers and other childcare providers would probably be reluctant to take part unless there was a whole legal framework around it to safeguard their interests.
23. In the Irish model, it became quite a legalistic process. There were a lot of lawyers involved and it became almost like a court process. If we wanted to provide a forum that an institution was going to be part of and in which former residents were the focus, the strong advice to us was that the confidential forum was the best model to enable that to happen in a way that did not involve too much of a legal process.
24. Quarriers were in a different position to other institutions in that they had acknowledged that there had been abuse in their homes and former care staff had been convicted of abusing children who were in their care. In these circumstances, they felt more comfortable in taking part in a pilot confidential forum.
25. There was a hope that this model would extend to other institutions. The hope was for a domino effect that would lead to people supporting this type of forum and such support would gradually lead to reconciliation. I accept, however, that the confidential forum did not have that effect. Other institutions did not rush in with acknowledgements and apologies. The Scottish Government was trying to create an environment where we hoped that would happen.

26. A confidential forum did not debar people from raising or continuing civil actions or preclude criminal proceedings. Cases were being dismissed, however, which is why there was also a focus on the legal issues and whether legal routes could be made easier for victims of abuse.

The National Reference Group – acknowledgement and accountability

27. I am told that a point made to the Inquiry by survivors, such as Helen Holland, is that they were part of the National Reference Group (NRG), chaired by Jean MacLellan, and the NRG were discussing an accountability-type forum which survivors' thought was a good idea in principle. I understand that the Inquiry was told that survivors on the NRG were informed the forum would not be an accountability-type but more of a private confidential forum with no accountability in any meaningful sense and that the survivors felt let down by this.
28. I do not recollect at the time a sense of disappointment coming from the NRG and survivors on the NRG. What I do remember is that there was a lot of emphasis put by officials on the responses to the consultation exercise, between October 2008 and April 2009, on a proposal for an acknowledgement and accountability forum. The very clear advice that came to ministers from those responses was to steer away from using the term "acknowledgement and accountability". There was a view that survivors may not relate to such a term. Looking at the consultation responses, you can see why the direction of travel ended up being what it was.
29. Questions were raised about this with ministers when we appeared before the PPC on 21 December 2010. In this regard the advice to us was that the most important message from survivors that was coming out of the consultation responses was that they wanted an opportunity to tell their stories and have them recorded. Not everybody was happy, I am sure. Whatever governments do and whatever decisions ministers make, not everyone is going to be happy. If there was some who were not happy with the decision to pilot a confidential forum, I cannot recall it being a particularly big, public disagreement at the time.

30. The survivors responding to the consultation were wanting a range of things such as appropriate redress, including financial redress, and better support. I accept that to interpret the responses as saying that the majority wanted the type of forum that we decided to pilot may be true, but that did not necessarily mean that they did not want anything else.
31. At the time of the consultation I am not sure it was ever thought that a forum of this type would address all of the concerns of survivors. What the pilot confidential forum did do, and from the TTBH report (published in February 2011) did quite successfully, was to provide a forum to address one significant concern for survivors which was an opportunity to be heard, to be believed, and to have a record of what had happened to them. I saw a confidential forum as simply one piece of the jigsaw.
32. The pilot confidential forum and the restorative justice pilot were intended to be part of an evolutionary process. These preliminary steps were intended to help address many of the concerns and issues that survivors were raising. The pilot forum was a genuine attempt to provide an important contribution to what was a complex set of issues. There was not one solution that was going to satisfy everybody. The forum was never intended to provide for the full range of things which the survivors had talked about, such as justice, accountability, redress and acknowledgement.
33. I can see that some survivors at the time might have preferred an acknowledgement and accountability forum, seeing that type of forum as a way of getting care providers to acknowledge abuse had occurred and make proposals for meeting survivors' needs without them having to resort to formal court processes. It would have been difficult to have created a single forum that could have done all of that.

Ministerial decision to create a pilot forum without consulting the Scottish Human Rights Commission

34. The Scottish Human Rights Commission (SHRC) had been commissioned in early 2009 to produce a human rights framework to inform the design and delivery of the

forum. In its draft report, the SHRC said that they had not been consulted about the decision in September 2009 to pilot a confidential forum. In hindsight, I think that criticism of taking that decision in advance of the production of the Human Rights Framework (which was published in February 2010) is probably fair criticism.

35. In hindsight, I can see that the meeting on the 30 September 2009 which made a key decision without knowing what the SHRC's report was going to say. I accept that it would probably have been better to wait. I do not remember at the ministerial meeting being made aware of that being a potential issue.
36. If it had been put to ministers that the SHRC's report is coming and you have a choice of whether to make a decision now or wait for the report, I would probably have preferred to wait for the report. However, I do not recollect that ever being the subject of discussion at the meeting.
37. The pilot forum was very much a preferred option for officials, because it was something that could be done relatively straightforwardly. That was an attractive option, and attractive to ministers, because we were keen to do something and get something moving. I do not think there was an extensive discussion about whether the confidential forum model was strong enough at the meeting on 30 September 2009. There were pros and cons to each of the options in the submission by officials and those were laid out.

The Irish model

38. The Irish model was a confidential and investigatory committee. There was also redress scheme. Of concern was the costs associated with this model were much higher than the official projections. One thing that stuck in my mind was that something like half the costs went to lawyers representing both the survivors and institutions rather than going directly to survivors and that there was a whole industry growing up around the legalistic nature of that model.

39. Had the discussion in September 2009 agreed upon a different option then there would have to have been a requirement to cost that option. If there was not a budget to deliver that option, then ministers would have taken the matter to the Cabinet or to the Finance Secretary.

Engagement with survivors

40. There were a few events which I attended between 2007 and 2011 at which survivors were present. The detailed engagement with survivors in that period was with officials. I remember attending a couple of conference-type events that were SurvivorScotland events.
41. In every policy area there is always a key official. Jean MacLellan was the key lead official who provided briefings to all three ministers on the matters with which this statement is concerned.

Leaving post of Minister for Public Health

42. I left the office of Minister for Public Health in May 2011 and Michael Matheson was my successor. I was not involved in what happened thereafter in relation to issues raised by the historical abuse of children in care.

Some Reflections

A public inquiry

43. Chris Daly asked for a public inquiry in 2002 and one was announced in September 2014. I accept that this seems a long time. All of the things that were happening under different administrations and therefore different Ministers between 2002 and 2014 by way of response to the issues raised by the Daly petition were to the best of my understanding, part of an evolutionary process. During this period, public

understanding was changing, and our understanding within the Scottish Government was changing. In 2014, the Scottish Government reached the conclusion that, in addition to the many things that had been done between 2002 and 2014, there was the need for a public inquiry.

44. I understand the frustration of survivors who would have wanted these things to have been resolved before now. In the defence of Ministers and officials in post between 2002 and 2014, I believe all would have tried to play their part in helping to resolve some of the issues. They have not all been resolved but the actions taken have helped to bring support and cultural change that needed to be brought.
45. I would like to think what we did in that period has been of significant benefit to survivors in general, albeit that not every issue has been resolved to the satisfaction of every survivor. When you look back on where we started on this journey back in 1999, and before that, we have come a long way in our collective understanding and things have changed for the better legally and policy wise. The evolutionary process still continues in order to improve things further.
46. Over the years much has been done to try and address different aspects of the historical abuse of children in residential and foster care. We have got to the right place to really be able to look at the whole picture. If you look at the decisions of politicians from 1999 onwards, I think all ministers involved with the issue would acknowledge that we should have established a public inquiry earlier.

Handling of the acknowledgement and accountability forum or confidential forum

47. I understand that Chris Daly and Helen Holland have raised issues with the Inquiry, and made similar points to the PPC, about the way that the acknowledgement and accountability forum issue was handled in 2008 and 2009 and that they were, and are, critical of the handling.

48. In hindsight, I can see that criticism from the records I have read before making this statement. At the time, I did not feel that there was much disagreement. There were different survivor voices, some more critical than others. At the time, I recollect that there was quite a welcoming of the pilot forum and what it was intending to do. Looking back, I can see that if you are trying to take people with you on a journey, there could have been better communication. I was not in the room when the NRG was having these discussions but, looking back on the notes of those meetings, I get more of a sense now that there were indeed concerns raised. The concerns were not as apparent to me at the time.
49. I understand that survivors may have appeared content with the government when the government was doing something they supported. I can see that if you are dealing with highly complex and sensitive issues, such as those experienced by adult survivors of childhood abuse in care, there may be a more subtle nuance to those discussions.
50. Certainly we, as ministers, believed that survivors' voices and the NRG were being listened to by Scottish Government officials. Between 2007 and 2011, ministers all thought that it was important that the voices of survivors were heard and that they were fully involved in the process.


Justice issue and/or health issue

51. I am told that Helen Holland has said that, in the period 2007 to 2011, the issue was seen as a health issue rather than one for the Justice Department to deal with. She has said that the abuse of children in residential and foster care is primarily a justice issue rather than a health or education issue as children were abused and abuse is a crime.
52. I wish to make some comments in response to that observation. One is that, without a doubt, there was a focus on support in all of its meaning. There was a focus on outcomes. It was recognised within the Scottish Government that survivors who gave testimony to TTBH might require counselling support during the pilot and beyond.

Survivors might require support to be able to move on with their lives. There was also a discussion about what education support survivors might need. It was about looking at the person's needs, whatever they were. There was an element of also having the police involved in being able to have an easy pathway for those survivors who not only wanted to talk to the forum but also wanted to seek legal redress and/or report something to the police. All of that was set up to follow on more easily from survivors giving testimony during the pilot forum. To some extent, there was very much a focus on support services in the widest sense and wrapping those around the survivor.

53. There were a lot of justice issues which I was given briefings on. The three ministers were given briefings from each other's officials because we were dealing with these matters collectively. There was a huge amount of discussion about the time bar issue. I understand that Helen Holland wanted the legal impediments removed. The Justice Directorate were very much involved. There were a lot of justice issues and a lot of statements made in the Scottish Parliament in relation to the law.
54. I can understand the frustration that survivors might have felt with regards securing accountability and achieving justice. Ministers from the previous administration and our administration were keen to find a resolution to these issues, but we were mindful of the independence of the judiciary and the SLC. When you are told by eminent members of our legal profession that finding a resolution to challenges and difficulties facing survivors who wished to bring claims against their alleged abusers is extremely difficult, it is very difficult to ignore that advice. There would have been legal advice coming to ministers. I do not recollect what the legal advice said at the time, but there would have been a lot of caution on that issue.
55. If court proceedings were the only route for survivors, there was also a concern that people might actually be disappointed at the outcome of court proceedings particularly in cases involving alleged abuse many decades before. There was a concern that there needed to be other opportunities as well and that the court route might not fulfil people's expectations.

56. I remember a number of issues being raised, not least ECHR issues around claims relating to pre-1964 abuse, but also other substantive issues that were quite difficult to find an easy answer to. Other jurisdictions have similarly had these challenges. I had a health focus given that this was my role. I was motivated to try to find routes of support for people, whatever that was, that could help them to say what happened to them and to get the necessary support afterwards. For many people, giving testimony to TTBH might have been the first time of giving that testimony. I felt it was important to ensure that people were well supported when they gave their testimony and afterwards. From my point of view, I feel there was progress made in that sphere with the establishment of the In-Care Survivors Support Service in 2008 and with TTBH providing an opportunity for survivors to be heard. From my perspective and my portfolio, it felt to me as if some progress had been made.
57. From the survivors' perspective, I can see why they feel that there is still unfinished business. The National Confidential Forum is not going to be for everybody. There are other support services. It is too early to say how well Future Pathways are operating, having taken over from the Open Secret consortium. I am not as close to the detail now. It is part of the requirement that every kind of service is constantly evaluated by officials.
58. 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..... 12 August 2020