

Update on Issues Relating to the Scottish Child Abuse Inquiry

I would like to provide Parliament with an update on a number of points within my responsibilities in connection with the Scottish Child Abuse Inquiry and other questions in relation to addressing the consequences of historical abuse.

First, I would like to set these decisions in context.

In 2004, the then First Minister Jack McConnell officially apologised to victims of child abuse in residential care homes. What Mr McConnell said then was a first and very important step on behalf of us all; but survivors made it clear it was, in and of itself, insufficient to address the scale and nature of the issue.

In 2010 the Scottish Government invited the Scottish Human Rights Commission to work with Survivors on a Framework for Justice and Remedies for Historic Abuse of Children in Care. Based on this work, and at the further request of Scottish Government, Scottish Human Rights Commission and the Centre for excellence for looked after children in Scotland established an InterAction Group to work with in-care survivors to make recommendations on how they could best be supported.

In the two years since the InterAction reported in 2014, this Government has taken unprecedented steps to begin to address the wrongs perpetrated by individuals and institutions who should have cared the most for some of our most vulnerable children.

Those steps include establishing one of Scotland's most wide-ranging public inquiries into the abuse of children in care, establishing a national In-Care Survivor Support Fund, supporting an Apology Law, and legislating to create a National Confidential Forum for in-care survivors.

As Parliament knows, the previous chair of the Inquiry and one of her panel members resigned from their posts in the summer, citing accusations of government interference in the Inquiry's work.

I did not then, and do not now, accept the complaint made. The Government established an independent Inquiry and I am determined that should be what is delivered.

In my discussions with survivors since these events, they have raised with me issues in connection with the replacement of a panel member, the remit of the Inquiry and on redress for survivors. I want to update Parliament about all of these issues today.

Panel membership

On panel membership, I listened to a range of views from survivors when I met them in July, and appointed Lady Smith, an experienced judge in the Inner House of the Court of Session, to lead the Inquiry. Lady Smith joins Mr Glenn Houston who continues in membership of the panel. There may be the need in time of further specialist knowledge to add to that of Lady Smith and Mr Houston and the Inquiries Act 2005 permits Lady Smith to appoint Assessors if need be.

On that basis I do not intend to appoint a replacement panel member. I am not required to consult Lady Smith on that issue, but I considered it appropriate to do so, and she is content with my decision.

Remit

The current remit of the Scottish Child Abuse Inquiry was arrived at following extensive consultation and engagement with survivors and other interested parties.

As a result of this, we broadened the definition of in-care settings within the remit to include, for example, foster care, and we also ensured that the Inquiry was able to consider not only sexual abuse but also physical abuse, emotional abuse and neglect. A timescale for concluding the Inquiry was set, reflecting the views expressed by some survivors, particularly older survivors, about it being sufficiently focused to produce meaningful recommendations within a reasonable timescale.

Since the summer, some survivors have told me they wanted to see the current remit extended to include abuse which took place in non-residential settings such as local parishes, day schools and youth organisations.

Other survivors pointed out that, if read narrowly, the current remit might not allow the Inquiry to pursue evidence of abuse when children were outside the care home, for example when they attended recreational activities or summer camps.

And then some other survivor groups told me they were content with the remit of the Inquiry, and did not wish to see an extension that could prolong the timescale.

It is clear that there is not unanimity on this issue across survivors – some are strongly in favour of no change, and others are strongly in favour of extensive change.

It has always been the Government's intention that the abuse of children and young people in care is to be taken into account, wherever it occurred, and I want to put that matter beyond any doubt. As the Inquiries Act requires of me, I have consulted Lady Smith and I have amended the Terms of Reference to clarify this point.

That is the only change I intend to make to the remit of the Inquiry.

I have to ensure a remit that is deliverable within a reasonable timescale. I have concluded there is a clear distinction between 'in-care' settings and 'non in-care' settings. 'In-care' settings are those where institutions and bodies had legal responsibility for the long-term care of children in the place of the parent, with all of the legal and moral obligations that status carries. That is different to the position in 'non in-care settings', such as day schools and youth groups, where others had a duty of care on a short term basis but crucially were not replacing the role of parents.

In too many cases, terrible crimes were committed in those settings too. Criminal behaviour should be referred to the police and I hope, where the evidence exists, this will be energetically pursued through the criminal courts.

If we set a remit which would in practice take many more years to conclude, we are failing to respond to those survivors of in-care abuse who have taken us at our word – in Government and in Parliament – that we will learn from their experience and, by addressing the systematic failures which existed, ensure it can never happen again.

Limitation Bill

Yesterday we introduced the Limitation (Childhood Abuse) (Scotland) Bill in Parliament – the first bill of this Parliamentary term. The Bill will fulfill another recommendation from the Scottish Human Rights Commission's report and we are grateful to survivors who have long campaigned for this change. The Bill removes the three year limitation period for cases of child abuse and will remove a barrier which has prevented survivors from accessing justice.

This Bill goes further than other jurisdictions by including sexual, physical and emotional abuse where other similar legislation has been limited to only sexual abuse or has only included emotional abuse which is connected to other forms of abuse.

This Bill also goes further by allowing cases that have been raised previously but were unsuccessful because of the limitation period to be re-litigated, regardless of whether they were determined by the court or settled between the parties without damages being paid, subject to appropriate safeguards where this would be incompatible with the Convention rights of the defender.

However, the removal of the limitation period will not assist survivors whose right to claim compensation has been extinguished through the law of prescription, which is relevant to abuse that took place before September 1964. This is because the significant legal issues and the Human Rights legislation made it impossible to establish a sustainable way forward. I regret there is no legislative solution that can be found for pre-1964 survivors.

Redress

Turning next to redress, I have been giving this complex issue serious consideration.

By redress in this context I mean monetary payment to provide tangible recognition of the harm done, as part of a wider package of reparations which this Government is already delivering.

As part of that package of reparations, survivors of in care abuse already have access to the new £13.5 million In Care Survivor Support Fund. This innovative fund is highly tailored and personalised and focuses on helping individuals achieve their own personal outcomes, whatever those may be. I am confident it is already making a difference to the lives of many survivors.

I have examined very carefully the issues around the provision of redress. I am grateful to INCAS and FBGA for making proposals as to how this might be pursued. I have looked into how some other countries have approached this in relation to past abuse in residential institutions. I am conscious of the connection with the Limitation Bill and the position of pre-1964 survivors. There is also the question of how it would be funded and the role of other organisations alongside government.

I am therefore committing to a formal process of consultation and engagement on this specific issue with survivors and other relevant parties, to fully explore the issues and gather a wider range of views. Discussions have already begun about that engagement process and its timing. I will be in a position to provide details in the coming weeks and can assure Parliament that I will take this issue forward with the urgency it deserves.

Summary

I would like to close by thanking survivors for their continued input and engagement. I recognise the importance of building their trust and confidence, while being honest with them about what I am able to deliver.

This government remains committed to addressing the issues identified in the SHRC Action Plan on Justice for Victims of Historic Abuse of Children in Care. We have made real progress in delivering its recommendations. The decisions I have outlined today are another important step towards realising our collective goal of addressing the systemic failings that existed. They are part of our collective determination that children in care must be better supported and protected than ever before.

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