

Scottish Child Abuse Inquiry

The opening statement made on behalf of the Lord Advocate, James Wolffe QC, by Advocate Depute Martin Richardson to the Scottish Child Abuse Inquiry on Tuesday 28 November 2017.

Role of the Lord Advocate

I address the Inquiry on behalf of the Lord Advocate.

The Lord Advocate is the head of the system of prosecution and investigation of deaths in Scotland. He has Ministerial responsibility for the Crown Office and Procurator Fiscal Service – or more shortly the COPFS – the sole public prosecution agency in Scotland. He exercises his functions as head of the system of prosecution and investigation of deaths independently of any other person. In fulfilling that role, COPFS receives reports from the police in relation to alleged offences, and prosecutors within the Service have the responsibility of deciding what action to take, including whether to prosecute individuals accused of crimes and if so in what forum. Once investigations are complete, a decision must be made as to whether there is sufficient evidence of a crime and what action would be in the public interest.

It is in respect of those prosecutorial functions that I address the Inquiry today.

The Lord Advocate's contribution to the work of the Inquiry

The Lord Advocate is committed to supporting the work of this Inquiry, and, where possible, to contributing positively and constructively to that work.

As Scotland's public prosecution agency, COPFS plays a pivotal role at the heart of the criminal justice system. As the Lord Advocate has previously said:

“The effective, rigorous and fair prosecution of crime in the public interest underpins our freedom and security and helps keep our communities safe from crime, disorder and danger. The work of the public prosecutor, acting independently in the public interest, is essential to an effective criminal justice system – one which deals fairly with people accused of crime, secures justice for the victims of crime, and punishes those who are convicted of crime.”

The Lord Advocate recognises that the Inquiry's Terms of Reference include consideration of the extent to which failures by state institutions (including the courts) to protect children in care in Scotland from abuse have been addressed by changes to practice, policy or legislation. We understand that the response of the criminal justice system may be the subject of a separate phase of hearings in the future.

The criminal justice system has changed significantly since many of the incidents with which the Inquiry is concerned took place. These changes have affected many aspects of the justice system – including the investigation of crime; the way in which prosecutions are conducted; the laws of evidence and procedure; and the way that children and vulnerable witnesses are treated in court.

The COPFS has provided and will continue to provide the Inquiry with information about its own practices and policies in dealing with allegations of abuse in care both in the past, and how those

practices and policies have changed over time. The COPFS is well placed to assist the Inquiry with evidence about the changes to the criminal justice system which have improved the response of the system as a whole to allegations of institutional abuse of children.

This aspect of the Inquiry's work will hold a mirror up to our individual and collective response as a society to the institutional abuse of children. It will require the institutions charged with the investigation and prosecution of crime, to face up, candidly and critically, to the practices and policies of years gone by. In understanding and acknowledging the deficiencies of the past, lessons can be learned for the future.

I fully expect that this aspect of the Inquiry will reveal a journey of significant improvement over decades. Today, with our greater understanding of the true nature and gravity of this type of offending and the lasting impact it has on its victims, the Crown Office and Procurator Fiscal Service consistently and successfully prosecutes historical allegations of abuse of children in care. That is as it should be.

But while prosecution practices and policies have moved on considerably, the Lord Advocate will use the knowledge acquired and the lessons learned through this Inquiry to shape and improve prosecution practices and policy for the future.

The Review Process

Finally, it is plain from what I have said that the prosecutorial response, indeed the response of the justice system as a whole, to the institutional abuse of children has changed over time. It is also clear that some prosecutorial decisions taken in the past would not be taken in the same way today.

The Lord Advocate has, accordingly, established a team of prosecutors dedicated to reviewing decisions taken in the past by COPFS in respect of allegations of abuse of children in care which were reported to it by the police. Where further investigation, using modern investigative techniques, is appropriate, the cases are being re-investigated, and consideration given to whether or not a prosecution can and should now be brought.

Conclusion

In conclusion, may I repeat the Lord Advocate's commitment, first, to assisting the work of the Inquiry, and, second, to the effective, rigorous and fair prosecution of crime in the public interest, consistently, for all, including for the most vulnerable in our society.