



**S**cotland's public inquiry into the historical abuse of children in care may not have encountered the same stumbling blocks as its counterpart in England and

Wales but it is still attracting its fair share of controversy.

The inquiry, headed by experienced QC Susan O'Brien, was announced at the end of last year and formally began its work last month.

But there have been accusations of unnecessary delay in appointing its panel members and expert assessors, no meetings have yet been scheduled and one victims' group has even described it as a "shambles".

The inquiry will examine any instance where a child was abused "in care" at institutions, including residential care provided by faith-based organisations, children's homes and secure units. It will also include children placed in foster care.

Under its remit, the term "in care" will go beyond those formally placed in care by the state to include allegations of abuse involving boarded out children, child migrant schemes, school hostels and hospitals providing long term care. Independent boarding schools will also be included.

Announcing the formal start of the inquiry last month, Education Secretary Angela Constance pledged that it would report back within four years.

"Many of those who have championed this inquiry have been campaigning a long time and I want to reassure them that they will see it conclude within a reasonable timeframe," she said.

"Getting here has been a challenge and there is still a long way to go but I am

## As Scotland's public inquiry into historical abuse gets underway, David Mitchell looks at some of the criticisms levelled against it

confident we have taken the time to allow the chair to lay the foundations of an inquiry that will allow us as a society to right historic wrongs."

Since then, two panel members have been appointed – Glenn Houston, Chief Executive of the Regulation and Quality Improvement Authority of Northern Ireland and Michael Lamb, Professor of Psychology at Sidney Sussex College, Cambridge University.

Ms Constance said: "With Mr Houston's strong knowledge and experience in health and social care and Professor Lamb's focus on investigating child maltreatment for over a quarter of a century, their expertise will be invaluable to the inquiry."

### 'revolving door'

The appointment in the summer of Susan O'Brien QC to lead the inquiry had appeared relatively uncontroversial in contrast to the unseemly "revolving door" of successive chairs south of the border.

Widely respected, she had chaired the inquiry into the death of baby Caleb Ness in 2003 which resulted in a reorganisation of Edinburgh Social Work Department and other similar agency reviews.

And yet two Catholic orders, The Congregation of the Poor Sisters of Nazareth and Daughters of Charity of St Vincent de Paul, mounted a legal challenge against her appointment. They claimed she could be biased as she had acted in a damages case by

an alleged victim of one of the charities and had also acted for other alleged abuse victims.

However this was rejected by the Court of Session, which ruled that Ms O'Brien did not have a "close association" with an interested party to the inquiry and had only a "limited role" in the damages case.

The Scottish Government has also said it intends to lift the three-year "time bar" on civil actions for damages in cases of historical child abuse after 1964.

This has been firmly opposed by the Faculty of Advocates, the professional body for all advocates in Scotland, which claims any waiver of the limitation regime ought to be made on a case-by-case basis, as it is at present.

"We do not agree that the current regime invariably leads to a pursuer's case failing. However, it does permit the fairness to both parties of allowing a case to proceed to be scrutinised and assessed," said the faculty.

"The defender is frequently the institutional care provider rather than the alleged abuser, who will typically either have died or will be financially unable to meet any claim.

"Defenders of the former kind are obviously under an inherent disadvantage, as they may have no direct knowledge of the alleged abuse and may also have difficulty in obtaining evidence relating to allegations which frequently date back decades."

Victims' pressure group In Care Abuse Survivors (INCAS) said that when the inquiry was announced in December last year many survivors were euphoric.

“Many had been campaigning for decades and it was hoped that the inquiry would enable survivors to get justice, accountability and reparation for the abuse they had suffered,” said Parliamentary Liaison Officer Alan Draper.

“But survivors were disappointed that the inquiry was given a limited remit by the Scottish Government as it excluded many who were abused in the community by people and agencies who had a duty of care.

“We believe some organisations, specifically religious organisations, successfully lobbied the Scottish Government not to include victims abused in parishes. We have recently seen some of the consequences of that failure with the conviction of the former Bishop of Gloucester in England.”

INCAS has been critical of the Scottish Government for what it sees as “excessive delay” in the inquiry process.

Mr Draper, a former social worker, added: “They have known that they needed to appoint panel members since they announced the inquiry in December and without a panel it can’t be up and running, it is a bit of a shambles.

“We have had no explanation for the delay and survivors have yet to be consulted about any appointments. We cannot see the inquiry starting for several months and probably not until well into the new year.”

Survivors are also disappointed that the remit of the inquiry precludes it from looking at appropriate redress or compensation for victims of abuse.

“It has set up a support fund but most of the money allocated is to be given to organisations to provide psychological support. Whilst this is to be welcomed, it does not meet the reasonable expectations of survivors,” said Mr Draper.

“Survivors hope that they will be recompensed for the loss of opportunity, which can be educational, work related or family related. People generally expect to be compensated if they are involved in a car accident. Why do we deny child abuse victims the same right?

“We have also requested interim payments for elderly and sick survivors but so far the Scottish Government has resisted this request.”

But another survivors’ group, Former Boys and Girls Abused of Quarriers Homes (FBGA), did not feel that process had been subject to delay.

“This has come after years of campaigning and the Scottish Government is saying we



Susan O'Brien QC

want to listen to you, to look at this and to stop it happening in the future,” said spokesman David Whelan.

“As with any inquiry of this magnitude, the process will involve setting up complex structures. It is important that the panel is impartial, fair to everyone and that the people appointed are the right people so that everyone can have confidence in this inquiry.”

### True picture

Mr Whelan also emphasised that victims needed to be treated with understanding during the inquiry process.

“It is important that the inquiry team acknowledge that they are dealing with very vulnerable adults and need to engage with survivors in a sensitive and empathetic way,” he said.

“While victims and survivors are the primary stakeholders, it is also important to ensure that the rights of all are upheld in this inquiry process. Everyone should be entitled to a fair hearing.

“If the process is unbalanced or unrepresentative in any way, we won’t get a

true picture of what actually happened.”

Jennifer Davidson, Director of the Centre for Excellence for Looked After Children in Scotland (CELACIS), said that to set up a public inquiry properly and with due consideration was a complex undertaking.

“There’s no doubt that this takes time and communicating with survivors and other stakeholders about the process is an important part of that complex task,” she said.

“Survivors have been waiting a long time for their voices and experiences to be heard, and keeping them informed about the progress as much as possible is important to allay their understandable concerns.”

Meanwhile, the Scottish Government has denied there has been any undue delay in the inquiry process.

“We understand that many survivors have been campaigning for a very long time to see the inquiry officially begin. It is disappointing that INCAS do not feel that this progress has been fast enough,” said a spokesperson.

“Since the decision to hold a statutory public inquiry was taken nine months ago, we have worked hard to include survivors in each stage to development and continue to work with them to provide support for those who have suffered childhood abuse.”

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## Terms of reference

When the public inquiry was first announced by Angela Constance in December 2014, its terms of reference included:

- To investigate the nature and extent of abuse of children whilst in care in Scotland
- To consider the extent that institutions and bodies with legal responsibility for the care of children failed in their duty to protect children from abuse and identify any systemic failures
- To examine how abuse affected and still affects these victims in the long term and how it affects their families
- To consider the extent of failures by state or non-state institutions, including the courts, to protect children from abuse have been addressed by changes in practice, policy or legislation
- To consider whether further changes in practice, policy or legislation are needed to protect children in care from such abuse in future
- To report to Scottish Ministers with recommendations within four years.