

Our Ref: MI/RL/O'C0024-1
Your Ref:

05 June 2020

Please reply to:

46-48 Cardiff Road
Llandaff
Cardiff
CF5 2DT

Janet Finch Saunders MS
Chair Petitions Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

Dear Ms Saunders,

Kevin O'Connell and Caldey Island Inquiry Petition

I am writing further to the letter of Julie Morgan MS, Deputy Minister for Health and Social Services to the Committee of the 6th April last in which I am named as the solicitor of Mr. O'Connell. Mr O'Connell has been represented by another solicitor in respect of his civil compensation claim arising out of the abuse he suffered. I am acting for him (and other victims) solely in respect of the demand for a full Public Inquiry. In that respect, I would like to make some observations in respect of the aforesaid letter.

I have had the opportunity of speaking to several victims of the abuse that, it is not disputed, took place on Caldey Island. Mrs. Morgan's letter refers to compensation payments for such victims. Such payments have been made without matters being heard in Court. The priority for victims at this time is seeking the truth as to what was happening on Caldey Island and ensuring that those responsible are taken to account and lessons are learnt for the future. The Deputy Minister appears to confuse compensation payments with the obtaining of justice.

The Deputy Minister states that the matter is more properly considered by the Independent Inquiry into Sexual Abuse (IICSA). However, the IICSA specifically stated to ITV Wales last year that;

The Inquiry is not currently considering matters related to Caldey Island within its investigation into the Roman Catholic Church.

That was stated in the subsequent ITV documentary so the IICSA's position would have been well known to the Welsh Government. Further, it is apparent from even a cursory

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Clive R. Thomas
Jonathan M. Wellington
Sophie C. Hughes
Lisa J. Guscott
Michael Imperato
Kate Roberts

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consideration of the IICSA website that its investigation into the Roman Catholic Church has now finished, and was limited to England.

The second inaccuracy in the Deputy Minister's letter, is the suggestion that I have commenced some sort of legal action. That is not correct.

There are a number of reasons why a Public Inquiry is the only proper process that should be followed:

1. The Deputy Minister refers on a number of occasions to police investigations. The police are one of the bodies who would be significantly scrutinised by any such inquiry. There are various allegations by victims, which may or may not be unfounded, as to police complicity in "turning a blind eye" or subsequent "cover ups". Numerous inquiries take place where there have been previous police investigations (Saville, Orgreave, IICSA, Infected Blood, Shipman) – often the investigation undertaken by the police is proved to be wholly inadequate. This is not a reason against a public inquiry.
2. Child safeguarding is a critical issue and is of course devolved. It was common during the time that the sexual abuse was being undertaken, for Catholic schools in Wales and in England to send children to the island and for the Local Authority to allow – even to actively promote – holidaying families (with of course young children) to visit the island. Many of those children will then have been victims of abuse. Therefore, issues arise as to what schools and Local Authorities actually knew as to what was happening on Caldey, what steps did they take – or more pertinently - not take? Lessons must be learnt to ensure children are properly protected today.
3. The Catholic church is quite obviously culpable and has a case to answer. What did the church authorities in Wales know of the abuse that was taking place on Caldey Island? How did they interact with other authorities/public bodies in Wales?

The fact that the Inquiry is touching on matters from some time ago, should not be a deterrent. I am currently acting for several hundred Welsh victims from the Infected Blood Scandal, which concerns a time period, primarily, in the late 1970s and early 1980s. It could be argued that the fact that the matter concerns events some years ago, means that it is even more urgent that such events are scrutinized at this time. Indeed, one of the terms of reference of the Infected Blood Inquiry is why it has taken so long for there to be a thorough investigation, what happened and why? Just because there has been no investigation to date does not mean that it should not be investigated now.

Welsh Statutory Inquiry

The Inquiries Act 2005 s1 provides that “A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that– (a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred.” Minister includes a Welsh Minister.

Section 27 provides (insofar as is relevant):

“(1) This section applies to an inquiry for which a United Kingdom Minister is responsible.

(2) The Minister may not, without first consulting the relevant administration, include in the terms of reference anything that would require the inquiry to determine any fact that is wholly or primarily concerned with a Scottish matter or a Welsh matter”

Section 29 provides (insofar as is relevant):

“(1) This section applies to an inquiry for which the Welsh Ministers are responsible.

(2) The terms of reference of the inquiry must not require it to determine any fact or to make any recommendation that is not wholly or primarily concerned with a Welsh matter.

...(5) In this section “Welsh matter” means a matter in relation to which the Welsh Ministers have functions.”

The abuse at Caldey Island concerns Welsh matters – education, social services and safeguarding of children. Under s37 of the Social Services and Well-being (Wales) Act 2014 local authorities have a duty to children at risk of abuse. Section 28 of the Children Act 2004 requires local authorities to promote the well-being of children. Section 175 of the Education Act 2002 imposes a duty on local authorities to safeguard and promote the welfare of children.

Article 3 ECHR imposes on the state a duty to take all reasonable steps to prevent inhuman and/or degrading treatment where it knows or ought to know that there is a real and immediate risk of such treatment. Article 3 ECHR also imposes an investigative duty on the State where an arguable breach of the article has taken place including where the perpetrator is a private individual. It will be a breach of article 3 ECHR if there are serious failings in the investigation; *Commissioner of Police of the Metropolis v DSD* [2018] UKSC 11, [2019] AC 196.

The 2005 Act gives the Welsh Ministers a discretion to hold an inquiry even when the criteria are met, although such criteria are statutory considerations and will carry more weight in the decision-making process than non-statutory considerations. The discretion is converted into a duty if it is the only effective means by which the procedural duty under article 3 ECHR can

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be met.

It is clear that the statutory test is met – there is public concern regarding the events that took place at Caldey Island. It is equally clear that there has been no investigation that would discharge the investigative duty under article 3 ECHR. Therefore, there is a duty on the Welsh Ministers to hold a statutory inquiry into the abuse at Caldey Island. If an inquiry is not held, the Welsh Ministers would have to explain why not bearing in mind that the UK Government set up IICSA for reasons that would appear to be indistinguishable from those relied upon in this request.

If there was any consultation between the UK Ministers and the Welsh Ministers in relation to Caldey Island, as required by section 27(2), the details of that consultation have not been made known.

The Welsh Ministers must exercise their discretion under the 2005 Act either way. As the Supreme Court held in *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69; [2016] AC 1355 per Lord Neuberger PSC at §§ 117-121, the duties to hold investigations into deaths, as required by article 2 ECHR, are now legislated for and there is no free-standing duty under the common law.

Conclusion

From what I have been told from victims, the sexual abuse on Caldey Island was undertaken at something of an industrial scale. To borrow a phrase from the Jimmy Saville abuse, it was done “in plain sight”. It is clear from my instructions that the Island became something of a hub for perpetrators of child abuse. With the settlement payments being made to victims and with the IICSA concentrating on issues in England, the victims from Caldey Island continue to be overlooked and ignored, and lessons from this terrible abuse on Welsh soil, risk never be learnt. Victims are surprised and distressed as to the Welsh Government’s apparent vehement opposition to any such inquiry, which of course only further fuels their suspicions as to institutional ‘cover up’ and their determination to try to seek proper justice.

Yours faithfully

Watkins and Gunn

[Redacted contact information]