

The Fettes College Child Abuse Cover Up.

Part 1: The Scottish Child Abuse Inquiry.

Summary

1. Fettes College (Fettes) is a boarding and day school in Edinburgh. The governing body is the Governors of the Fettes Trust. The Senators of the College of Justice (Scotland's Senior Judges) and the Faculty of Advocates are part of the governing body. Each year, they elect one of their members to sit as a governor to represent them.
2. The Scottish Child Abuse Inquiry (SCAI) has been set up by the Scottish Government to look 'at the abuse of children in care in Scotland.' Fettes has admitted that children were abused at the school between 1930 and 17 Dec 2014.
3. The SCAI is chaired by Lady Smith (a senior Scottish Judge and a Senator of the College of Justice) and the questioning is being done by practising advocates (who are members of the Faculty of Advocates). This means that people who are responsible for the child abuse at Fettes are investigating child abuse in care in Scotland (including the child abuse that happened at Fettes and other schools).
4. The SCAI has run since 2015 and the cost has been over forty-six million pounds (£46,874,090 to the 30th of June 2021).
5. Legal proceedings, concerning child abuse allegations at Fettes, are taking place in Scottish courts. None of the Judges or Advocates involved in these cases have disclosed that they are part of the Fettes governing body.
6. The Lord Advocate, a government minister, state prosecutor and part of the governance of Fettes, decided not to prosecute or investigate some child abuse allegations made by former Fettes pupils. The Lord Advocate did not disclose to these former pupils that their complaints were against him, other advocates, and the judges (as they are all part of the governing body of Fettes).

7. The common theme is that whenever judges and advocates have been professionally involved with Fettes, they have failed to disclose their role on the governing body. The law requires them to disclose this role and their non-disclosure is a) criminal fraud; b) civil fraud; and c) attempting to pervert the course of justice.
8. All advocates and judges know about the Scottish Judges and the Faculty of Advocates being on the Board of Governors of Fettes, but remain silent and are therefore complicit.
9. The Fair Trial Project contends that a) the SCAI chaired by Lady Smith, who is assisted by advocates, must be redone; b) criminal investigations of Lady Smith, the advocates and the Scottish Government personnel involved in the SCAI must take place; and c) criminal investigations into all senior judges, all advocates and Fettes must take place.
10. The questioning of the head of Fettes by Lady Smith and Andrew Brown QC (an advocate) on Tuesday the 23rd of March 2021 was, in the opinion of the Fair Trial Project, incredibly weak. Please make up your own mind, but this looks like a cover-up.
11. Support must be arranged for the victims of child abuse who gave evidence at the SCAI. There will be a negative effect when they find out that the people running the SCAI were part of the governing body of one of the schools where the abuse took place.

Introduction

12. Part 1 of this paper will concentrate on the SCAI; Part 2 on the legal proceedings taken against Fettes; Part 3 on the Lord Advocate's decision not to investigate allegations of child abuse at Fettes, and Part 4 will summarise parts 1 to 3 and a) call for the resignation of the Senior Scottish judges and all members of the Faculty of Advocates; and b) call for a criminal investigation to be carried out by a non-Scottish Police Force (The Chief Constable of Police Scotland is a core participant in the SCAI).¹
13. This paper, that is part 1 of 4, will explain that the persons controlling the SCAI are part of the governing body of one of the schools under investigation². It will ask two main

¹ <https://www.childabuseinquiry.scot/about-us/core-participants/>

² <https://www.childabuseinquiry.scot/evidence/investigations/>

questions. The first is whether it is correct to have a member of the Board of Governors³, of one of the schools under investigation, as the chair of the Inquiry into an investigation of child abuse at that school and at other similar schools? The second question is whether it is correct to have members of the Board of Governors of a school under investigation questioning the victims of child abuse?⁴

14. The rest of this short paper will first set out the facts and issues, then the relevant law before applying the relevant law to the facts and issues and concluding.

Facts and issues relevant to Part 1

Fettes College (Fettes)

15. Fettes is a boarding and day school in Edinburgh. The governing body is the Governors of the Fettes Trust. The Fettes Trust is a registered Scottish Charity (No. SCO17489). The Senators of the College of Justice (Scotland's Senior Judges) and the Faculty of Advocates are members of the Board of Governors and elect one of their members to sit as a governor each year.⁵

16. 'Judges sitting in the Supreme Courts are known as senators of the College of Justice. The Supreme Courts are the Court of Session, and the High Court of Justiciary.'⁶ The Faculty of Advocates are a group of lawyers who can practise in the Supreme Court(s) of Scotland.⁷

³ Pages 2 – 4 of the 'THE GOVERNORS OF THE FETTES TRUST REPORT and FINANCIAL STATEMENTS For the year ended 31 August 2020' shows the Senators of the College of Justice and the Faculty of Advocate's participation in the governance of Fettes. Online at: <https://resources.finalsite.net/images/v1621329564/fettescom/zux7xc4b0j9tjgg0dq9w/AnnualReportandFinancialStatement2020final.pdf>

⁴ See, as an example, <https://www.childabuseinquiry.scot/media/2752/day-227-scottish-child-abuse-inquiry.pdf>

⁵ N 3.

⁶ <https://www.judiciary.scot/home/judiciary/judicial-office-holders/senators-of-the-college-of-justice>

⁷ See <http://www.advocates.org.uk/faculty-of-advocates/what-is-the-faculty-of-advocates> and <http://www.advocates.org.uk/about-advocates/what-is-an-advocate> for more information about advocates and their faculty.

The Scottish Child Abuse Inquiry

17. The Scottish Government⁸ set up the Scottish Child Abuse Inquiry (SCAI) to look ‘at the abuse of children in care in Scotland.’⁹ The SCAI has run since 2015 and the cost has been over forty-six million pounds (£46,874,090 to the 30th of June 2021).¹⁰
18. Fettes, as part of the SCAI, has admitted that children were abused there between 1930 and 17 Dec 2014.¹¹
19. The SCAI is chaired by Lady Smith (a practising senior Scottish Judge and a Senator of the College of Justice) and the questioning is being done by practising advocates (who are members of the Faculty of Advocates). This means that people who are responsible for the child abuse at Fettes are investigating child abuse in Scotland (including the child abuse that happened at Fettes and other schools).¹²
20. Please note that being ‘responsible for the child abuse at Fettes’ means that the Board of Governors has the legal and administrative responsibility for it.
21. The questioning of the head of Fettes by Lady Smith and Andrew Brown QC (both part of the Board of Governors of Fettes) on Tuesday the 23rd of March 2021 was, in the opinion of the Fair Trial Project, incredibly weak. Please make up your own mind, but this looks like a cover-up.¹³

Brief Facts and issues relevant to Parts 2 and 3

The legal proceedings active in the Court of Session against Fettes College

22. The Scottish Courts web-site reports one active case, A133/21 Jonathan Erasmus &c v The Governors of the Fettes Trust (Fettes College).¹⁴

⁸ Also known as the Scottish Ministers or the Scottish Executive.

⁹ See <https://www.childabuseinquiry.scot/about-us/the-inquiry/who-we-are/#2-what-we-do>

¹⁰ <https://www.childabuseinquiry.scot/about-us/costs/>

¹¹ <https://www.childabuseinquiry.scot/media/2695/214-scai.pdf> at page 143 to 151.

¹² <https://www.childabuseinquiry.scot/about-us/the-inquiry/who-we-are/#>

¹³ N. 11. Page 61 to 151.

¹⁴ <https://www.scotcourts.gov.uk/current-business/court-rolls/court-roll?id=1ca592c1-384f-4ab0-8f92-5f9164dfac&contentType=Session>

Contempt of Court Orders

23. The prohibition of publicising some elements of two cases is shown on the Scottish Courts website (*O v The Governors Of The Fettes Trust* (under section 11 of the Contempt of Court Act 1981), All Scotland Personal Injury Court, Edinburgh, 27 July 2021 and *EG v the Governors of the Fettes Trust* (under section 11 of the Contempt of Court Act 1981), Edinburgh, Court of Session, 23 November 2020).¹⁵

Other cases involving Fettes

24. There are other historic cases¹⁶ and probably some that have not been reported.

Reports of the Lord Advocate failing to investigate / extradite alleged offenders.

25. Reports of the Lord Advocate failing to investigate the allegations of child abuse crime sat Fettes are found in the Scottish press.¹⁷

26. The facts and issues relevant to parts 2 and 3 will be set out in more detail in those papers.

The relevant law

27. In Parts 2 and 3 the right to a fair trial and perverting the course of justice are relevant, but for Part 1 only the definition of civil and criminal fraud and Article 8 ECHR, the right to respect for private and family life, need to be covered.

Fraud

28. Criminal Fraud is defined as ‘a false pretence made dishonestly in order to bring about some definite practical result. It is not necessary that the result should be actual gain to the

¹⁵ <https://www.scotcourts.gov.uk/current-business/court-notice/contempt-of-court-orders>

¹⁶ *Fettes Trust (Governors) v Assessor for Lothian Region 1983 SLT 554n*

¹⁷ <https://www.tes.com/news/boarding-schools-apologise-unreservedly-over-abuse> ;

<https://www.edinburghnews.scotsman.com/news/crime/men-consider-private-prosecution-of-fettes-teacher-facing-abuse-claims-after-crown-office-decide-not-to-pursue-south-africa-extradition-3155189>

offender or actual loss to some victim. Where the practical result is achieved, the fraud is complete.¹⁸

29. It is contended that the false pretence is the pretense that Senators of the College of Justice and members of the Faculty of Advocates are suitable people to take part in a child abuse inquiry when a school that they play a part in governing is under investigation. The practical result is that these people are taking part in the inquiry. The benefits are career and financial payments.

30. Civil fraud is mainly covered by contract or delict law. In brief, a misrepresentation can be made innocently, negligently or fraudulently. Here, the contention is that the misrepresentation that caused loss is the pretense that Senators of the College of Justice and members of the Faculty of Advocates are suitable people to take part in a child abuse inquiry when schools that they play a part in governing are under investigation.

Human Rights Violations

31. Article 8 (Respect for private and family life, home and correspondence) of the European Convention on Human Rights (ECHR) was brought into UK law by the Human Rights Act 1998. Damages can be awarded for any violation of this right.

Application of the law to the facts and issues

32. It is contended (applying the test for criminal fraud) that the action of chairing the SCAI by Lady Smith is criminal fraud. The result of this fraud is that the SCAI will need to be redone. This has cost the taxpayer over 46 million pounds.

33. It is contended (applying the test for criminal fraud) that the action of the advocates becoming involved in the SCIA amounts to criminal fraud.

34. The right to respect for their private and family life has been violated for the victims of child abuse who gave evidence.

Damages for Human Rights Violations

¹⁸ See *Whyte v HMA* [2017] HCJAC 14 at para. 3

35. The witnesses who told the most personal parts of their private life to an unlawful inquiry should be compensated. Support must be arranged for the victims of child abuse who gave evidence at the SCAI.

Conclusion

36. By being part of the governance of Fettes, the chair and other members of the inquiry team have conflicts of interest. The participation of a senior judge and advocates in the SCAI fits the definition of criminal fraud. The result is that no valid probe into the extent of child abuse in care in Scotland has taken place. This looks to be a coverup and we must redo the inquiry.

37. The Fair Trial Project calls for a criminal investigation into all who took part in the SCAI. Many of the people working as part of the SCAI knew that Lady Smith and the advocates were part of the governance of Fettes. This makes them complicit in the fraud.