



Northern Ireland  
Assembly

Committee for the Office of the First Minister  
and deputy First Minister

# OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:  
OFMDFM Briefing

26 June 2012

# NORTHERN IRELAND ASSEMBLY

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Inquiry into Historical Institutional Abuse Bill: OFMDFM Briefing

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**Members present for all or part of the proceedings:**

Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr George Robinson

**Witnesses:**

Mr Michael Harkin	Office of the First Minister and deputy First Minister
Mrs Cathy McMullan	Office of the First Minister and deputy First Minister
Ms Maggie Smith	Office of the First Minister and deputy First Minister

**The Deputy Chairperson:** I invite the departmental officials to the table. They will brief us on the consultation that they undertook in preparation for the inquiry. I welcome Maggie Smith, Cathy McMullan and Michael Harkin. You are all very welcome today.

**Ms Maggie Smith (Office of the First Minister and deputy First Minister):** Thank you very much, Deputy Chairman.

**The Deputy Chairperson:** Perhaps you would like to give a short briefing, after which we will have questions.

**Ms Smith:** Thank you very much for seeing us again so quickly. Once again, I have with me Cathy McMullan, and we have apologies from Jim Breen, who was going to be here today but has had to see his dentist, so we have Michael Harkin in his stead.

**The Deputy Chairperson:** Which is worse, the dentist or the Committee? *[Laughter.]* No comment?

**Mr A Maskey:** You are going to drill down on this one, anyway. *[Laughter.]*

**Ms Smith:** You invited us here to talk about the consultation that was done to inform the setting up of the inquiry. It is important to emphasise that, as Jane also mentioned, the terms of reference for the inquiry and the legislation are very much underpinned by consultation that was done by the interdepartmental task force with victims and survivors. It is also important to emphasise that Ministers and officials have been in constant conversation with victims and survivors right through this

process. There was even a meeting with victims and survivors on 31 May, before the announcement was made about the terms of reference.

Jane mentioned the interdepartmental task force that was set up by the Executive in December 2010 to consider the nature of an inquiry into historical institutional abuse, and to make recommendations to the Executive on how an inquiry could be taken forward. The people on the task force represented the Departments with the greatest policy or statutory responsibility for the issues — the Office of the First Minister and deputy First Minister (OFMDFM) and the Departments of Health; Education; Justice; Social Development; Finance and Personnel; Environment; Employment and Learning; and Culture, Arts and Leisure.

A major part of the work that they did was stakeholder engagement. They met officials from the South and from Scotland who had been involved in inquiries there. They also met Amnesty International, the Human Rights Commission, the Law Centre and the PSNI. They had consultation meetings in March 2011 with victims and survivors in Armagh, Belfast and Derry/Londonderry. To make sure that victims and survivors were aware of its work, the task force advertised the consultation meetings quite widely, through its website and in flyers that were given out by victims and survivors' groups. The task force also made sure that people outside Northern Ireland knew that this work was going on. That is important, because a lot of victims and survivors have moved away from Northern Ireland, a number of them because of the abuse that they suffered.

Clearly, not everyone was able to come to the meetings. So, the task force prepared a questionnaire, which was completed by over 30 survivors. The questions were about what was important to the victims and survivors about an inquiry. The sorts of issues that were discussed with victims and survivors by the task force included: what do we mean by an "institution"? What do we mean by "abuse"? What do we mean by an "apology"? What should be the time frame for, and nature of, the inquiry?

The issues that came out of the consultation are very important, because the victims and survivors said that; first, any inquiry should be independent; it should have the power to compel witnesses and evidence; there should be some form of acknowledgement for the victims; and there should be an opportunity for victims to recount their experiences in the institutions. The inquiry should be able to establish responsibility for abuse. They also talked about redress, accountability and the need to balance the inquiry's ability to get to the truth with controlling the time frame that it will take to reach a conclusion.

For the victims and survivors, the need to have that experience acknowledged was extremely important, as was the need for an apology and for recognition that wrong had been done. You can see that all of those things that the victims and survivors mentioned have really come through into the terms of reference. If you read in more detail some of what the victims and survivors said, you can almost hear the words that they said coming through and reflected in the text of the terms of reference.

There are some things that are not mentioned in the briefing paper. I will give a little more detail about the consultation. I want to bring those out, because they were mentioned in the written submission that Survivors and Victims of Institutional Abuse (SAVIA) made to the task force. SAVIA was very clear that, when the victims and survivors come to the inquiry to talk about their experiences, it will be a very traumatic experience for victims and survivors. They wanted to make sure that there would be support built in to help people through that process. Ministers have built that in to the terms of reference. As part of the experience, there will be a witness support service, as we are calling it, sitting alongside the acknowledgement forum.

SAVIA spoke about an independent, judge-led inquiry, which is a very nice way of describing what we are setting up. It said that that should be supported by a panel of people with expertise. Again, there will be a panel of six supporting the judge. Four of those will be the acknowledgement forum panel members, and you know who those are already. You know that they are eminent experts in their field. There are two other panel members to be appointed. They will be the panel members who participate in the judicial part of the process. Again, those will be people who have specific expertise that suits them to this particular inquiry. Interestingly, SAVIA said that, from its perspective, it was best to have people from outside Northern Ireland. Of the panel members who have already been appointed, three of them are from outside Northern Ireland, and the fourth, Tom Shaw, has been involved in acknowledgement forum pilot work in Scotland, where he did some pioneering work.

They also mentioned the need for hearings outside Belfast. Mr Robinson raised the question about accommodation and where the work will be situated. There will be two centres for the acknowledgement forum — one in central Belfast and one in Derry/Londonderry. Clearly, we have to be very careful to make sure that we locate the acknowledgement forum in the right place, because we want to be very careful to ensure, not only that the building is suitable in the way that it is constructed and laid out, but that it is in a situation in which people could be going for many different purposes. We do not want people to be deterred from coming forward because the acknowledgement forum has a very prominent presence. So, the locations will be quite discreet. Something that happened in the Ryan inquiry which we have learned a lot from in terms of this inquiry was that victims, having come forward, could be cross-examined. So they had the experience of actually being cross-examined by the lawyers of their abusers. Having suffered the traumatic experiences that they did in childhood, having had the courage to come forward — I think we can all imagine how difficult and frightening that experience would have been.

SAVIA was very clear that it did not want a situation where victims and survivors would be cross-examined. It did not want a process which would be, as it put it, over-lawyered. Apparently there were 350 lawyers involved in the Ryan inquiry. We are going to have a very different system here, because we will not have that. Everybody involved in this has been very clear from the beginning that there will not be an adversarial system here with cross-examination of victims. This is something that the Ministers have discussed with Sir Anthony Hart at some length. We will have a situation where the inquiry is inquisitorial. Basically, what that means is it is searching for the truth, as any inquiry should, but the questions are posed by the inquiry itself, not by opposing sets of legal representatives. The interest of the victims will be very much represented by the inquiry, and the inquiry will pose the questions to the people that it feels it needs to talk to and calls forward.

Just on one final point from the SAVIA paper, SAVIA wanted terms of reference that were inclusive so that people would not be unnecessarily deterred or prevented from coming forward. Again, I think the terms of reference that we have been given by Ministers take a very inclusive approach.

Just to finish off, I should also say that, as well as the conversations which have been going on throughout between the Ministers and the victims and survivors, and between us and the victims and survivors, it is also important that we have had more recent conversations with the remaining members of the Dublin team. We are still in conversation with the people who are doing the work in Scotland. So there is a certain amount of cross-fertilisation still going on.

**The Deputy Chairperson:** OK. Thank you very much indeed, Maggie. I think that the Committee would agree with the Assembly debate yesterday that a broad welcome has been given to the introduction of the Bill, with recognition of the Ministers and the officials in the Department for the work that has been done to engage and consult with victims and survivors. I think that is clear from your presentation today, the extent of the work that has been done in that regard. Some questions have been raised, obviously, in the debate, and it is timely and extremely useful to have you here today, hopefully for you as well, to speak to some of those concerns.

Obviously, the independent, judge-led public inquiry is the key aim. Acknowledgement, accountability and redress are key themes that were raised by the respondents as well. One contribution to yesterday's debate went so far as to suggest that the Bill was a charter for political control. I am sure you want an opportunity to respond to that. However, to get into the some of the specifics and to be substantive: some concerns were raised about the terms of reference being outside the Bill. The Human Rights Commission questioned its compliance with the European Convention on Human Rights in terms of not being empowered to restrict the terms of reference; the power to end the inquiry or withdraw funding; the power to decide whether or not to publish the final report; the time frame of the inquiry; and the timescale for decisions on redress. There are also the definitions of "abuse" and "systemic". Those are the raft of issues that were raised, and members want to bring in their own. Would you like an opportunity to speak to some of those concerns that were raised yesterday?

**Ms Smith:** Right; I will perhaps have to come back to you to be reminded of some of them.

**The Deputy Chairperson:** No problem; we can go through them again.

**Ms Smith:** Let us maybe start with the terms of reference and work through.

**The Deputy Chairperson:** OK.

**Ms Smith:** Jane referred, as you did, to the fact that "abuse" and "systemic" are not defined. However, there are a number of other definitions in the terms of reference. The terms of reference define, for example, "child" as someone who is under 18. That is a wide definition of "child", particularly given the period that we are talking about, when people were regarded as adults and as being able to fend for themselves from much younger than we would regard them to be able to now. There is a tendency throughout to define where there can be a clear cut-off point. There is no definition of "abuse" because it is difficult to define. Implicit in this is sexual, physical, emotional and neglect, but there are, potentially, other ways of looking at abuse and, if you define it too tightly, you could end up excluding people who feel that they have been abused. I noticed in one of the notes that came out of the public meetings that there had been a discussion around whether emotional and psychological abuse were the same thing, and whether the word "psychological" included "emotional" or "emotional" included "psychological". The terms of reference attempt to cut through that by simply saying "abuse". If somebody has been abused, they know it and they have the opportunity to come forward to the acknowledgement forum to talk about what happened to them.

Similarly, as has been pointed out, there is no definition of "systemic". I think, really, that it is what the system did. Did the system fail in its duties? So, again we could get tied in knots about what exactly we mean by "systemic", when the terms of reference are really saying please look at the system. What did the system do or not do? It is left open to the inquiry to do its research and ask its questions.

The terms of reference are not in the Bill, but it is probably first worth saying something about how we got to the terms of reference. We cannot say too many times that the terms of reference have developed out of discussions with victims and survivors. Clearly, they know and understand what they are talking about and what they feel needs to be investigated. The point has already been made about the difficulties in having a large number of people— in this case, 108 if we threw it open to the Assembly — agree on what is really quite a long passage. Although it says in the Bill that Ministers can change the terms of reference, the process that got us here involved the agreement of the Executive, the agreement of the chair of the inquiry and continual discussion with the victims. So, it would be very difficult to imagine how the terms of reference could suddenly be changed without going through that process again. It would not be possible to renege or change a decision of the Executive without going back to the Executive. Was there anything else on the terms of reference?

**The Deputy Chairperson:** No, that is covered. Next is the powers afforded to the Ministers.

**Ms Smith:** The clause 1 powers are the powers to set up the inquiry. That is vital, because it gives OFMDFM the power to spend, so it really gives the Department the power to support this inquiry. The inquiry panel is being appointed by the First Minister and deputy First Minister, and people have said that that also means that the inquiry panel members can be removed by the First Minister and deputy First Minister. However, the Bill is quite specific about the situations in which it is possible to remove members. We have made the point, and the junior Minister made it yesterday again, that this is about safeguarding. We are asking what could go wrong, what the risks are that we need to control for and what we need to build in to allow us to control for those risks. It is highly unlikely that there would be a circumstance in which a member would have to resign, but an opportunity is needed to allow for that. There could be a circumstance in which it is discovered that, for reasons of illness, misconduct or whatever, someone who is involved in the inquiry is not able to continue. If you think about it from the point of view of a contract of employment — now, clearly these people are not in the employment of the Department but they have been engaged to do this piece of work. Any letter of appointment gives the conditions under which you are appointed to do this work and the conditions under which your employment will be terminated. This is the equivalent of that.

The Bill talks about replacement members, or reappointment of members, I should say. That might be to replace someone because a vacancy has occurred for any reason, but, equally, it might be because the panel needs to be expanded for some reason. For example, if more people than expected came forward to the acknowledgement forum, out of fairness to the victims and survivors and the people who are already part of the panel, we might need to expand the panel. Therefore, Ministers would need to make further appointments. The watchword here is "safeguard", as it is with many, many things that are in legislation.

I know that you have had access to the human rights report, which is about the Inquiries Act 2005. As Jane said, some parts of our Bill are similar to the Inquiries Act, but the 2005 Act is, clearly, a different instrument. It is also a much longer document, and the Ministers have more powers in that. Some of the concern about ministerial powers might actually be about powers that are not in this legislation.

**The Deputy Chairperson:** Were there consultation submissions in relation to the power to withdraw funding and the power to decide whether to publish the report in full?

**Ms Smith:** The Ministers do not have the power not to publish the report in full.

**The Deputy Chairperson:** OK.

**Ms Smith:** The Bill says that the inquiry will end when the report is given to the First Minister and deputy First Minister and when the terms of reference are completed. It does not say anything about the publication of the report.

**Mr A Maskey:** On the issue of the terms of reference and this issue around human rights, obviously people are concerned. I thank you for your presentation and responses so far. A lot of what you outlined appears to be logical, but, of course, people have been saying "What if?". Are the powers too extensive or more extensive than necessary, for example? I do not necessarily think that, but others are raising the question. We are duty bound to explore all of these things. I spoke to a number of the victims who were here yesterday. They were more than happy that the process was under way. If there are any issues, we can explore them; that is what Committees are for. We can tease all that out.

The human rights people said early on that they had some concerns, but you, Maggie, seem to suggest that you do not think that they have those concerns now. Can we clarify that somewhere along the line? If the rule of thumb is that they can change the terms of reference but not restrictively, if you know what I mean, I would like to think that most of what you outlined this morning tells me that a lot of this is enabling and further enabling. I would like to think that that is the route down which we will be going if need be. If people are concerned about the terms of reference being changed, and you have outlined reasons why they may need to be changed, do we need to have a protection to say that we need to have the flexibility to change them but outwardly, as opposed to narrowing them? If that is a human rights convention obligation or requirement, can we clarify whether we can address that matter?

**Ms Smith:** We certainly can. Clearly, terms of reference can be changed. I have outlined what I think the process would need to be, involving the Executive and the chair. There is no plan to change the terms of reference. That is important. As we said, they are designed to include as many flexibilities as possible. They are not contrary in any way to any aspect of human rights. We will check the point about the narrowing of the terms of reference.

**Mr G Robinson:** I thank the panel. I have one or two points. The cost is estimated at somewhere between £7 million and £9 million. Can that be shared with anyone else?

**Ms Smith:** Sorry?

**Mr G Robinson:** Will that cost be shared with anyone else? The estimated cost of the inquiry is somewhere between £7 million and £9 million. Will any other body help to pay the cost?

**Ms Smith:** I beg your pardon. Sorry. The costs are not yet finalised. That was an early estimate. We have not completed the business case yet. Clearly, a lot of work has to go into finishing the business case so that we can get to the final costs. The costs of the inquiry will be met by OFMDFM and will be bid for through the usual budgeting process.

**Mr G Robinson:** Solely by OFMDFM?

**Ms Smith:** Yes. The money will come from the block in the usual way. It is important to emphasise that we are bidding for that money; we are not taking it from our existing funds.

**Mr G Robinson:** I am not being a killjoy or anything.

**Ms Smith:** No; it was just in case you needed that.

**Mr G Robinson:** I would just like to think that some other bodies would be involved in paying the costs as well.

**The Deputy Chairperson:** How was that figure arrived at, and what is budgeted for at the moment in the departmental budget?

**Ms Smith:** There are two areas of spend, and they are set out in clauses 11 and 12. OFMDFM is responsible for the general costs of the inquiry; that is all the sort of domestic costs that you would have with any body, which include the cost of panel members, the cost of the staff, any assessors who may be appointed to assist the inquiry, and all the support — the rent and rates. OFMDFM is also responsible for meeting witness costs, and the main part of that will be legal representation. Therefore, when we come to the judicial part of the inquiry, some of the people who are called to give evidence will have their legal costs paid by OFMDFM. There is also the possibility that OFMDFM will pay compensation for time lost if someone is called to the inquiry. There is also the issue of travelling expenses, and that will be important for people coming to the acknowledgement forum.

**The Deputy Chairperson:** How do you intend to strike the balance between what you have called an inquiry that is over-lawyered and the level of legal representation that will be required?

**Ms Smith:** I mentioned earlier that this will be an inquisitorial inquiry, rather than an adversarial one. That immediately changes or reduces the number of lawyers involved. You do not have nearly so many lawyers if you do not have opposing teams of lawyers. Therefore, the whole style of the inquiry is victim-centred rather than lawyer-centred.

**Mr G Robinson:** We are told that, unlike the Ryan inquiry, which cost £1.2 billion, at least appointing our own legal teams and so forth will cut down quite a lot of the expense. It actually says that here. We will have our own legal teams for the inquiry, rather than individuals.

**Ms Smith:** There will be two types. The inquiry will have its own legal team, which will be the people involved in conducting the inquiry and supporting the inquiry chair. There will be lawyers on the staff, and they will be a crucial part of the team. The expectation is that witnesses will employ their own lawyers. However, in situations where the fees are being met by OFMDFM, there will be a clear schedule of payment and allocation of time. That will be worked out between the Department and the inquiry. Certain parameters will be set by the Department. They are not yet finalised, but we can talk about them later. There will be issues that people will have to answer, and the inquiry will be able to say whether advice is necessary and, if so, how much it should cost. The whole thing will be very carefully controlled.

**Mr G Robinson:** Hopefully, that should cut down a lot of the costs.

**Ms Smith:** Yes, absolutely.

**Mr Eastwood:** I have a number of issues, but we can go into them in more detail later. I do not believe that the terms of reference will be changed. However, I am uncomfortable with the idea that they can be changed without consulting the Assembly. I do not think that we need the consensus of 108 members — it is not going to work like that — but we need to think more carefully about that issue.

I am thinking about the cross-border dimension, and I know that there are jurisdictional issues, but what about the Bethany Hall survivors; people who were taken from the North and moved to the South and have fallen between two stools in terms of inquiries down there? They were moved out of this jurisdiction without the proper documentation and everything else. Is there any way that they can be accommodated in the inquiry, or is there anything that we can do to look after their needs?

**Ms Smith:** The inquiry is about what happened to people in institutions in the North.

**Mr Eastwood:** I understand that. However, is there any cross-jurisdictional work that can be done, because they were moved from here and the state here failed them in that regard? I think that they would argue that very strongly. Is there anything that would accommodate that?

**Ms Smith:** I do not know the details of that situation. Our inquiry is about abuse that happened in institutions in the North. We are being very careful. We know that a lot of people who grew up in those institutions have moved away. Therefore, the Ministers have been very clear that they want to ensure that those people have the opportunity to tell their stories to the acknowledgement forum. For that reason, the acknowledgement forum will be advertised very widely. We expect that it will be

advertised in the South, Scotland and England. We also expect it to be advertised in Canada, Australia and places where we know people went. Ministers have told the chair that they want him to make sure that appropriate arrangements are put in place so that those people can contribute and come to the acknowledgement forum.

**Mr Eastwood:** I understand that the primary responsibility for those people lies with the Irish Government. We can talk about it again, but I think that there is a responsibility, although it may not be in this mechanism, for the North — the state here — to do something to recognise that it failed those people.

**The Deputy Chairperson:** Maggie, concerns were also raised about the timescale for decisions on redress, which you acknowledged in your opening comments was a key aim explained by the victims on consultation. Is that something that you can speak to?

**Ms Smith:** Yes. Certainly, victims mentioned redress during the consultation process. However, there were mixed views, and that is very important. Some people said that it was very important that people should get some sort of redress, whether that was financial or some sort of service. Other people said that they did not want to have anything to do with an inquiry if it was about giving people money, because, for them, none of it has anything to do with money. Financial compensation was not going to help them resolve their issues. They wanted the acknowledgement, they wanted to be understood, they wanted an apology and they wanted a memorial, particularly for those who did not survive. There were lots of other views in between as well.

The whole issue of redress is complex. As you know, the inquiry has been asked to make findings and recommendations about redress. The way that it is written is important, and it reflects the debate and the discussion that there has been. It talks about:

*"the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims."*

So it is an issue, and one which the inquiry has been asked to make recommendations about.

**The Deputy Chairperson:** Will the findings — the recommendations — be those of the chair and the panel? How and when will they be published?

**Ms Smith:** A three-year timescale has been set for the inquiry: two and a half years for the inquiry and the investigation to be done, and six months for the chairman to write his report. What goes into the report will be completely a matter for the chairman and the inquiry, as is how they organise that, whether it is an agreed report or a chairman's report. Ultimately, the chairman is responsible. He is the chair of the inquiry; he directs it, and it is a matter for him. The chair will make his report to the First Minister and deputy First Minister, who have been very clear that the decisions that arise will be made by the Executive.

So, for example, the terms of reference tell us:

*"the requirement or desirability for redress"*

is a matter for the inquiry to make findings and recommendations about. However, the nature or level of any potential redress — financial or the provision of services — is a matter for the Executive to discuss and agree, following receipt of the inquiry report. So, the report goes to the Ministers and the decisions will be a matter for the Executive, as you would expect they would be, because, clearly, these are major decisions that will need to be made about the apology, memorial, redress and so on.

**Mr G Robinson:** One small supplementary: although I made some small observations about costs and so forth, I full support the inquiry. I think that it is long overdue and I am glad to see that it is finally to happen. Some of the things that happened are absolutely horrific. Quite honestly, some people should hang their heads in shame.

**The Deputy Chairperson:** OK. Thank you very much indeed for your detailed briefing today and for taking our questions. The Committee obviously has a scrutiny role to perform, but it is very much our intention to make this Bill, as we said in the debate yesterday, the best that it can possibly be for the victims. So we appreciate your time here today and we will continue to be in contact with you.



**Ms Smith:** Thank you very much for seeing us.