



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
De La Salle Order Briefing

19 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Danny Kinahan (Acting Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Trevor Clarke
Mr Colum Eastwood
Ms Megan Fearon
Mr William Humphrey
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Witnesses:

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| Brother Francis Manning | De La Salle Order |
| Mr Joseph Napier | Napier and Sons |

The Acting Chairperson: I welcome the witnesses and thank them for coming. I am sorry that you had to listen to a debate amongst us, but that is life in this Building.

Mr Joseph Napier (Napier and Sons): Mr Chairman, thank you. I heard the previous debate, and I know exactly where the two members are coming from and where the grey area in the middle comes from. My points will very much be on the parts of the Bill that I think you need to look at to make sure that the inquiry operates without pollution from judicial reviews and challenges down the line. So, my points will be put forward in good faith. I am not trying to put one slant or another but to highlight the points that I think you need to focus on to make sure you have the legislation right. I say that at the start because I am conscious of the uncomfortableness.

The Acting Chairperson: Thank you, that is very good. OK, just a second.

Mr G Robinson: Three members.

Mr Napier: Sorry, three members. Mr Robinson makes three.

I am a solicitor. I represent the De La Salle Order, and have done for 13 years. During that time, I dealt with a lot of claims arising out of Kircubbin boys' home and St Patrick's training school. I have spoken with a lot of former residents. I spoke with former staff, former social workers and members of the Departments who interacted with those institutions.

I am also very familiar with the types of records that still exist in relation to Kircubbin. The St Patrick's records are with the Youth Justice Agency. That is just by way of background to Rubane and St Pat's.

Brother Francis Manning will introduce himself, but I will say that he is the current provincial of the De La Salle Order in Ireland. Brother Francis will give you an overview of the order's perspective on the inquiry. I will then keep my presentation very short with four key points that I think you need to consider in getting the legislation right. Hopefully, we will not stray into the grey area that the three members raised.

Brother Francis Manning (De La Salle Order): Good afternoon, gentlemen, and lady. I have just a few short comments to make at the beginning. As an order, we welcome this inquiry. We trust that it will be comprehensive and provide a source of comfort and closure for all concerned. We are determined to provide every assistance to the inquiry, as we have done in the past. For instance, we co-operated fully with the Kincora inquiry in 1984, with extensive RUC investigations in 1980 and 1995, and, at present, we provide assistance to the PSNI on ongoing allegations, etc.

That is really all I want to say to you today. We appreciate your listening to us, and I would like now to ask Mr Napier to make known those four wee concerns that we have.

The Acting Chairperson: Thank you very much.

Mr Napier: The order operated the De La Salle boys' home in Kircubbin, commonly known as Rubane House. The records would suggest that 982 boys attended Rubane. It also operated St Patrick's training school. We are not in a position to identify how many boys attended that school because those records are now with the Youth Justice Agency. That school and home fall within the terms of reference.

I will make two points on the terms of reference. One of them, on reflection, may be wide enough to cover it. One aspect is about the state involvement with religiously run homes and how that interacted. I think the legislation refers to institution or state and children in their care but, obviously, as was alluded to here today, all children were in their care. However, I think that is wide enough and, on reflection, probably should not be in the submission.

The second point is about Rubane in particular. I know from having read the testimonies of many of the former residents and spoken to them that this will be an issue that I am afraid that somebody may challenge down the line if it is not cleared up. Rubane was unusual in that it was a residential home but there was also a voluntary school attached to it. The home ran under the Ministry of Home Affairs but the school ran under the Department of Education. The terms of reference says that schools other than training school or borstals are excluded. It was not a training school and it was not a borstal. I anticipate that the intention would be that Rubane school and Rubane home would fall within the remit of the inquiry. I think that it is proper that they do, just so that somebody down the line, such as a former teacher, does not bring a challenge. Not all teachers were members of the De La Salle Order, and somebody representing a former teacher could challenge the jurisdiction on that point. Therefore, that needs to be clarified in the terms of reference.

In relation to the acknowledgement forum, I am not asking for it here today and I appreciate that it will come later, but there must be clarity with the institutions as to that interaction. It is important for the order and for the Assembly in how it delivers the inquiry. As I see it, from reading the various guidance notes, the acknowledgement forum gives former residents a confidential forum to go to and recount their experiences. There is no difficulty with that. I understand how difficult it is for people to come forward with their stories, and it needs to be confidential. At some point as it passes through, it needs to move into an investigative stage.

I have a point about the previous submission from the Sisters of Nazareth about the right to reply where the order has an opportunity to see those allegations and comment on them and perhaps even accept them as being true. That is where the difficulty comes for the Assembly. Article 6 of the European Convention on Human Rights does not generally apply to inquiries. However, there could be a situation in which a prosecution arises out of the inquiry or out of the criminal investigations, which are ongoing, and if something is disclosed as a result of an acknowledgement forum without a right to reply and comes into the public domain, you could undermine the current criminal investigation. That is the last thing that I imagine the Assembly wants to do. It is not so much that the article 6 point would be taken against the inquiry, but the article 6 point would be taken at the criminal

investigation, and they would then say that their client has not had a fair trial because he was named in that inquiry without having the right to reply.

The second point about that arises from article 8, which is about the right to family life. It is a similar sort of point. Part of the Bill is about the protection of children and young adults. If the name of an individual comes out, there might be a report made in relation to him, and he, too, could apply under article 8 to say that he was named in that inquiry without a right to reply. Therefore, he could say that he could not be prevented from seeing his grandchildren, for instance. So, I think that you need to take legal advice on article 6, which relates to undermining a criminal prosecution, and on article 8.

The other aspect is a general point about the identification of witnesses. Barnardo's put something in my head that I had not thought of prior to today. In respect of focusing on the terms, I am aware of at least one individual who came to Kircubbin from Scotland. I stand to be corrected, but I think that he was funded by a Scottish board at the time. Would he fall within the remit? I am also aware of at least one from the Republic of Ireland, and I am not sure who he was funded by. So, it falls into that Barnardo's aspect of making sure that there is total inclusion for everybody who attended.

Again, I reinforce the point that Barnardo's made about isolated witnesses. We are aware of one in person in England whom I have spoken to. There are also elderly individuals in the United States, who may be in a position to give evidence, but it is unlikely that they are going to be able to travel here in person. However, they could be very valuable witnesses to Sir Tony Hart.

I could be wrong, but there seems to be a general perception about which institutions were involved and the perception that the acknowledgement forum is for people who describe themselves as abused and survivors. The Assembly in general should try to widen that to encourage anybody who was a former resident, a former member of staff, a former social worker or involved in a former departmental body. The Ministry of Home Affairs and the Department of Education examined those places and had experience with them. People like that should be encouraged to come forward. We will not have access to them. The only people who will have access to them will be those in the Assembly.

I do not want to labour everything too much, but one other point that has not been covered by anyone else is in regard to clause 11, which relates to expenses. It says that expenses will be determined by the Office of the First Minister and deputy First Minister (OFMDFM). I believe that the guidelines to the Bill say that OFMDFM will liaise with the presiding member. There is a conflict there as to whether the role of the presiding member should be included in clause 11. There is no mention of the presiding member in the clause, but he is mentioned in the guidelines.

The Acting Chairperson: We will try to get that clarification on that.

Mr Napier: I will turn to the question of civil and criminal liability and the involvement of articles 6 and 8. The Assembly's Research and Information Service drew up a paper dated 25 June 2012 on the Inquiry into Historical Institutional Abuse Bill. From looking at page 25 of that paper, it is quite clear that the Assembly has already identified that difficulty and the paper asks how it would manage the evidence relating to potential criminal and civil liability. It has obviously been in the mind of someone in the Assembly, but I believe that that is probably the strongest weakness in the Bill when it comes to challenges and the pollution of the progress of the Bill.

The Acting Chairperson: We will put those points to Sir Anthony Hart at one end and to our legal team on the other to get things clarified. Is that the end of your presentation?

Mr Napier: That is the end, Mr Chairman.

The Acting Chairperson: Thank you very much indeed. Do members have any questions that they wish to ask? *[Interruption.]* I am afraid you cannot ask questions from the Public Gallery, but thank you.

I thank the witnesses very much. We will note what you said and it will be put to the various people next time.

Mr Napier: Thank you.