



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Inquiry Panel Briefing

26 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Andrew Browne	Historical Institutional Abuse Inquiry Panel
Mr Patrick Butler	Historical Institutional Abuse Inquiry Panel
Sir Anthony Hart	Historical Institutional Abuse Inquiry Panel

The Chairperson: We welcome back to the Committee the chairperson of the inquiry, Sir Anthony Hart, with Mr Andrew Browne, secretary to the inquiry, and Mr Patrick Butler, solicitor to the inquiry. Sir Anthony, you are very welcome. I think you know the format, so if we could hand over to you for some brief opening remarks, then we will try to focus on the issues that you know concern us.

Sir Anthony Hart (Historical Institutional Abuse Inquiry Panel): Mr Chairman and members of the Committee, I take this opportunity to update you and, through you, members of the Assembly about what the inquiry has been doing during the two-and-a-half months since my first appearance before your Committee on 4 July.

During that time, we have been working very hard on a number of fronts. First of all, Geraldine Doherty and David Lane have been appointed to act as panel members with me in the public inquiry component of the inquiry. Both have very considerable experience in the practice, management and regulation of social work and social care services in Great Britain, including residential childcare services. I am delighted that they have agreed to devote their time and talents to the inquiry.

Secondly, as you indicated, Mr Chairman, we appointed Patrick Butler as solicitor to the inquiry. With us is our secretary Andrew Browne who, as you may recall, accompanied me on the last occasion. We are in the process of appointing permanent administrative staff, a process that will continue over

the next few weeks. We have secured the help of a number of experienced individuals on a temporary basis in the meantime.

Much of our time has been devoted to moving into new premises, which were a bare shell, and to the mundane but essential work of making it ready for occupation by installing furniture and, in particular, installing telephones and computers. At the same time, we have been pressing ahead with work on the design of our data-handling systems, so that when we invite those who wish to tell us of their experiences in residential institutions, we will be able to deal with them efficiently, expeditiously and sensitively.

Our primary focus over this period has been on getting ready to start the work of the acknowledgement forum, which, you will recall, I said we hope to have in operation well before the end of this year. All of this has involved a great deal of detailed preparatory work on the design of our website and on other matters such as drafting leaflets and application forms. Although we are very anxious to start work, all the background work is essential before we can provide a proper service to those who wish to recount their experiences to us.

I do not want to weary you with every detail of what this has involved. However, I am pleased to be able to announce that in a few days, barring any last-minute technical hitches, we will publish advertisements in the major newspapers in Northern Ireland and in the Republic inviting members of the public who wish to recount their experiences to the inquiry, and to the acknowledgement forum in particular, to contact us. They can do so either by going to our website to download the necessary material or by ringing a free phone number, after which they will be sent a leaflet explaining how the various parts of the inquiry will operate and a form for them to fill in and return to us by Freepost stating whether they wish to speak only to the public inquiry or only to the acknowledgement forum or to both. All applications will be treated in confidence. It will be only at that stage that we will get a clearer picture of the numbers of individuals with whom the inquiry, in both its parts, will have to engage.

Once we receive completed application forms, we will be able to plan who we should contact first and when. Depending on how many people wish to contact us, the process may take a little time, but we plan to offer the first appointments for the acknowledgement forum in a few weeks' time. We intend to give priority to those who are oldest or in poor health. The acknowledgement forum will then start its programme of listening to those who want to recount their experiences. Between then and the end of the year, the inquiry staff will also collate and analyse the information we receive from those who wish to speak to the statutory inquiry element of the inquiry, and we will be preparing for the next stage, which will commence in earnest with the enactment of the legislation that you are considering.

As you indicated, Mr Chairman, there are a number of specific points that I know you or members of your Committee wish to raise. I am quite content to take them in whichever order you wish. There are, I think, three or four that appear to me to be of particular significance, but I am content to take them in whichever order you wish.

The Chairperson: OK, Sir Anthony. Thank you. I think that we have no fewer than 19, although, obviously, the significance of them may be varied. I am sorry to add a twentieth, but you mentioned your headquarters without telling us where they are. Are you intending to make your headquarters known?

Sir Anthony Hart: We will make the headquarters known to those who have reason to contact us. The primary consideration for us in all these matters is to ensure that the premises that we have moved to are suitable for those who will have to contact us.

Perhaps I should say that the reason we moved is that we found that these premises are much more suitable for those who wish to come and speak to the acknowledgement forum. There were features in the previous building, which, on consideration, we realised were not entirely suitable for that particular purpose. So we went for somewhere that is more suitable. It is still in the centre of Belfast, and it is still easily accessible.

We are anxious that the headquarters should remain relatively anonymous, so that those who want to come are not, perhaps, stigmatised in the eyes of others by being picked out. As I said on the previous occasion, we do not intend to put a big sign outside. Those who ring up to contact us and who are coming will, of course, be told where to come, but we would prefer not to make it widely known, in general terms. In the next few days, while we are still putting in place the last pieces of equipment, and so on, we want to be absolutely ready when we make ourselves open to the public, in

the sense of placing advertisements. Of course, I will supply yourself and the Committee with the address, in confidence, if you wish. It is something that I do not want you to press me on, unless you really need to know.

The Chairperson: No, you are addressing my concern, which, I think, goes back to when I was in the Victims' Commission. At that time, we chose a building that contained many non-departmental public bodies. That meant that it was possible for somebody to go in and out without anybody being able to say that they knew what the individual was doing there. That differs from a stand-alone premises, where some people would feel that they were wearing a virtual sandwich board.

Sir Anthony, we have the 19 issues that you are aware of. Perhaps, you would like to pick out those that you have already identified as being of primary concern.

Sir Anthony Hart: There are four in particular that I should, perhaps, deal with. Coincidentally, they are the first four on your list. The first issue is the possibility of there being a formal right for me as inquiry chairman to request amendments of the terms of reference. It may be useful for that to be spelt out in the Bill. I believe that it is always open to the chairman of any inquiry to approach the sponsoring Minister to ask for the terms of reference to be amended. Then it is for the Minister to decide whether that will be accepted. It may help, particularly in the eyes of the public, if that were to be clearly spelt out in the Bill.

The Chairperson: Twice you have said "may". Can I push you? Would it be useful to have the terms of reference in the Bill, even as a schedule? Are you saying that you would welcome that?

Sir Anthony Hart: The only caveat I would enter, and I think I entered it on the previous occasion, is that if they are in the legislation and there is to be any change, it has to come back before the Assembly for an amendment. That process is lengthy and complicated. So it is easier not to have them in the legislation. Ultimately, it is a matter for the Assembly and the Executive.

The second issue is the right to request an extension of the two-years-and-six-months period. I think the answer I have just given covers that one as well. It is open to any inquiry chairman to come back to say that the time has not proved to be sufficient, regardless of whether it is set in legislation, but, in this particular instance, I think it would be helpful to have that clearly stated in the Bill. However, I have no reason to believe that, if I did not have that power in the Bill, any request I made would not be considered. I am not saying that it would be prevented. I have no doubt that it would be considered, but it might well help if it is in the Bill. I would not have a problem with that.

The third issue is the possibility of recommending changes to the law of practice and procedure arising out of the investigations of the inquiry panel. It would be helpful to have that spelt out. I am satisfied that it is inherent in the terms, but, again, it may allay concerns in certain quarters if it were clearly stated. The fourth issue is one of very considerable importance, and I see that a number of the submissions you have received have particularly touched on it. I can understand why they have raised those concerns, because they, of course, inevitably, are not privy to the discussions that I have had with my colleagues. It is very helpful for us to have the opportunity, therefore, to put the view that we take about this on public record. We have discussed the need for "abuse" or other terms to be defined. If I could particularly deal with abuse. I have discussed this at some length with my fellow panel members — all six of them — and we are strongly of the view that defining "abuse" is not only unnecessary but may be positively unhelpful. We will, of course, pay very careful attention to definitions in international conventions and those adopted in comparable inquiries in other jurisdictions. However, our view is that we should take a generous interpretation of what may constitute abuse.

To judge by experience elsewhere, the principal forms of abuse that we may encounter are likely to take the form of neglect or sexual, physical or emotional abuse. However, if the Bill were to contain a very precise definition of what constitutes abuse, our concern is that that may cause more problems than it solves. It really is impossible to define absolutely every form of ill-treatment in advance. If I may say so, in my experience in the criminal courts over many years, there were constant surprises about what people can do to other people. One obviously got to recognise the more usual forms of abuse, but, every so often, something is bound to crop up that we will not have thought of. There may also be arguments about whether this or that falls within particular types or definitions, and, ultimately, many of those disputes may be rather sterile. We are very strongly of the view that the working definition we have sought to give you today is sufficiently comprehensive and, yet, flexible.

The Chairperson: I believe that the Department has said that the terms of reference are clear with regard to abuse, and that abuse relates to the failings of institutions in their duties to the children in their care. I wonder again whether we will be dancing on a pin over what we mean by "failings" or "duties".

Sir Anthony Hart: We will have to investigate those terms in some detail as we take our work forward. We are only at the stage of assembling information to see what exactly the responsibilities of government were. At present, we are going back to 1945, and I cannot say with complete confidence and in every single respect what the responsibilities of government were in 1945, what the systems of inspection were and who carried out those inspections. Those are all things that we will have to dig down into. I think that the terms of reference are as comprehensive and as clear as it is possible to make them.

The Chairperson: OK. Thank you very much. Were those the first four questions, Sir Anthony?

Sir Anthony Hart: Yes.

The Chairperson: We will pause for a second. I think that Colum is keen to come in.

Mr Eastwood: I do not mind if you want to continue, Chair. I have a number of questions on other issues. Do you want me to ask them now?

The Chairperson: Do they relate to any of the first four issues?

Mr Eastwood: No.

The Chairperson: OK. We will press on.

Sir Anthony, I am interested in your views about the possibility of producing an interim report, particularly if, quite early in your inquiry, it strikes you and your panel that this is so awful and there is such a clear need for interventions, be they financial or some other form of assistance, that you see no need to wait to the end to make a call. What is your view on that?

Sir Anthony Hart: I am still of the view, which I expressed on 4 July, that if we are still in the midst of hearing evidence, producing interim reports will involve arriving at a decision before we have received all the information that we can. I can well understand that if one were dealing with an inquiry into, say, a failure in some sort of medical environment — in a hospital or an emergency service — where there is a very clear risk to life and limb if something were not put right immediately, one would have a form of interim report. Here we are looking at a wide range of things and a very complex environment. Although there may well be emerging findings within our work, there will be many nuances that will have to be considered and reflected on. Clearly, if the Assembly considers that there should be some form of interim report, my colleagues and I will do our best to comply with it, but we are, at present, dealing with matters that stop in 1995, which is nearly 20 years ago. It may be that something will be so urgent that it will need to be dealt with —

The Chairperson: Let me put a scenario to you. Say, within the first three to six months, a significant number of people come forward who were abused but whose big concern is not about themselves any more, or indeed about their children who were impacted because of that abuse, but they are now concerned about their grandchildren who perhaps are not achieving what they might achieve at school and need urgent interventions. Would you be sympathetic to that?

Sir Anthony Hart: It would certainly be something that we would have to look at very carefully.

The Chairperson: The next issue was around the idea of redress or reparations. What are your current views on compensation, in financial terms or from rehabilitation or service provision?

Sir Anthony Hart: It is always very tempting to indicate what one might think, but I do not consider that it would be proper for me to express an opinion before we have even started our work. Those are all issues that the terms of reference require us to look at, and we are going to have to do that, with the victims as well as everybody else. Many people will feed into that process. I certainly do not think it proper to pre-empt what we might say.

The Chairperson: OK. Next is the publication of the report. Who, when and in what form? Have you any views?

Sir Anthony Hart: To allay any public concern there may be about that, I think that there is much to be said for the chairman of any inquiry being the person who is responsible for the publication of the report. There may be some reports involving matters of national security or very considerable commercial issues where there may be issues to be discussed before the matter comes into the public domain, but, by and large, I think that there is much to be said for the chairman being responsible for publishing the report. Obviously, those who would be affected by it would be given notice of what is in the report and given the opportunity, when it is at a draft stage, to comment on any facts that may be wrong — not to rewrite the report, but to correct any factual mistakes there may be. My view on how it will be published is that I expect it to appear in hard copy form and to be put up electronically on the internet. That is virtually a given these days.

The Chairperson: Next, Sir Anthony, is the question of whether the scope of the inquiry should be extended to take in abuse that did not occur in institutions. Since you were with us, we have heard a variety of views and, perhaps, the Committee is coming towards a conclusion that, even if we stick with what is intended for yourself and your panellists, there will, at some point, be a requirement for another process to satisfy those who do not come under your ambit.

Sir Anthony Hart: Again, Chairman, that is something that I have discussed with my panel colleagues in some detail. We understand the concerns of those who may wish to see the scope of the inquiry extended to include abuse outside institutions, but, as far as the scope of our inquiry is concerned — and I stress our inquiry — we do not support that. Let me explain why. If, for example, we were tasked with considering issues involving abuse in foster care, in schools or in families, that would have enormous implications for the scope of our work — the scope of the inquiry — and it would require a complete restructuring of the way we are going to go about our work and that, in turn, would require very much greater resources in money and staff. All of that would certainly mean that the inquiry would take very much longer to produce its report. The implications for the acknowledgement forum would be equally significant, because everything I have said would apply with just the same degree of force. Those who, quite understandably, wish other areas of abuse to be included in our remit by our remit being widened would have to understand that the implications are very considerable, and it would take much longer and a great deal more time and money to carry out that inquiry.

The Chairperson: The next issue is around privilege — somebody who comes and gives evidence in front of the inquiry panel. What are the implications for any potential subsequent civil or criminal proceedings?

Sir Anthony Hart: The draft legislation makes it clear that we are prohibited from making any findings as to civil or criminal liability. My view is that, as the law stands, if there were to be litigation afterwards, the findings of the inquiry would not be admissible as a matter of law because it is not a court, it is an inquiry. If there were to be a criminal prosecution, for example, and somebody wanted to say to the jury, "Well, the inquiry found that there was abuse in this particular home", the judge would have to stop that and say to the jury, "You will decide the case on the evidence that you hear". Judges have always found that juries are very good and very faithful in following the instructions that they are given and they leave things out of account. There are no technical implications, as it were, in that sense, in my view. However, I should say — and it is, perhaps, appropriate that I should take this opportunity to say this — that we are alert to the possibility that people may say things to us that indicate that criminal offences have been committed, and we will have no hesitation in making that known to the police where it is our legal duty and, indeed, we have already opened discussions with the PSNI as to how we would do that if that should happen. There would be no question, first, of us ignoring such matters and, secondly, we would have to give way, as it were, because my view is that the public interest is best served by those matters being investigated by the police and not by us.

The Chairperson: So, is there an inherent risk of self-incrimination from a witness?

Sir Anthony Hart: Yes, that could certainly arise. I see that that is an issue that is further on in your list, so perhaps —

The Chairperson: I skipped ahead because you took me to it.

Sir Anthony Hart: — I will deal with it now. If a person refuses to answer a question on the basis that it might incriminate him or herself, the inquiry would not compel someone to answer the question. Indeed, just as one, as a judge, has occasionally had to do, you would say, "You don't have to answer that question if you don't wish to in case you incriminate yourself." However, it would always be open to the inquiry to draw an inference from the fact that a person would not say something.

The Chairperson: And you would assume that it would excite the interest of the PSNI.

Sir Anthony Hart: That depends. I cannot say what view the PSNI would take. If someone said to us, "I saw my abuser in the street the other day. I haven't seen him for 20 years. I then spoke to a friend, and they said that that person is working in another institution.", there are two possibilities that we would have to consider. The first is alerting the relevant social authority, whether it is a trust or the employer, to the fact that there may be allegations against an individual. Depending on the nature of the allegation, if it were a reportable offence, we would have to tell the PSNI. Our preference would be to ask the individual first whether they have reported it to the police. If they say no, we will tell them that we think that they should. That would not relieve us of our duty, which is the duty that any citizen faces under the Criminal Law Act 1967.

The Chairperson: Institutions and individuals will stand accused of some pretty heinous acts. What level of disclosure — what detail — will they be given?

Sir Anthony Hart: Although we have not worked out every detail of this because we have devoted much of our time to getting the acknowledgement forum and related things that I have described going, I envisage that the inquiry will make available to each individual or each institution whose conduct is being investigated all the material that the inquiry has gathered relating to that person or institution. We will do that in sufficient time to enable the individual or institution to prepare to deal with any possible issues that may be revealed by the material on the face of it, such as an allegation of an individual act or a course of ill treatment by a particular individual at a particular place, or issues that the inquiry has identified. It is only after the person or institution has had what we would regard as a reasonable period of time to prepare whatever they want to say about it that we then move to the point of having the public hearing.

Perhaps I should explain that that, in turn, will mean that hearings will not start on day one because the process will require those who may find themselves being questioned to have time to prepare what they wish to say.

The Chairperson: On a related matter, have you got your head around data protection and those processes and how they impact?

Sir Anthony Hart: Yes. We have been very alert to the data protection implications in everything that we do. We take that very seriously. We are building precautions into our procedures to ensure that information is kept properly secure and is not disseminated in a way that puts individuals' information that should not be publicly available into the public domain.

The Chairperson: The next issue, Sir Anthony — one that the Human Rights Commission described as being unworkable — is the idea of cutting the time available to mount a judicial review from the normal to 14 days.

Sir Anthony Hart: I regard the 14-day time limit as extremely important to our work. Any judicial review, by its very nature, will involve a certain degree of delay. Of course, that depends on the nature of the challenge to whatever the decision is that is being made. It may result in consequential appeals, for example. All of which could have the effect that I would have to go back to the Executive and say, "We now need an extension of time because so much time has been taken up with those challenges."

The concern that you specifically recount on behalf of various people, including the Human Rights Commission, is that a 14-day time limit inhibits access to the courts. I am afraid that I regard that suggestion as completely without merit and quite unfounded. The High Court is well used to dealing with applications for judicial review at a matter of a few hours' notice. It is not unknown for people to come into the High Court late on a Friday afternoon and produce an urgent judicial review, and arrangements are made to deal with it, either that night or the next day. The suggestion that is inherent in that argument, which is that any competent practitioner cannot frame the argument that

they are going to make within 14 days, is simply unsustainable. Competent practitioners are doing that from time to time.

A 14-day limit does not mean that the court will decide on the issue in 14 days. All that it means is that you have to put in what the courts call an "order 53 statement", which is essentially the points that you want the court to decide and the remedy that you seek. It is an important document because it is the main framework of the case, but it can be done overnight if necessary, and to suggest that you cannot do it within 14 days is simply wrong.

The Chairperson: I think that you are pretty clear on that.

The next two points I will group together. There is the notion of being open and transparent, but the risk is that your inquiry airs an allegation that is unfounded or cannot be stood over, and the damage that that will cause to an individual or an institution, as against how you might bring in reporting restrictions and whether you would do that in consultation and liaison with victims and survivors.

Sir Anthony Hart: By its very nature, any inquiry looks into a matter of public concern, and it is perhaps more than probable that any inquiry — I do not think that ours is any different — will involve allegations that will be made in public. That is why inquiries sit in public — so that everyone can know what point is being made.

Of course, that process involves the risk that there may be wild or unsubstantiated allegations. My view is that it is open to the inquiry, and indeed it is its duty, to ensure as far as possible that only allegations that appear to be of substance are made, and then, if they are explored and found to be justified, the inquiry makes that clear. Equally, if they are found to be unjustified, the inquiry makes that clear. It is impossible, in my view, to have a situation in which one cannot air allegations in public. If that were the case, we would not have any inquiries at all.

The Chairperson: Some concerns have been raised over the witness support service, which, I am sure, the Committee considers to be absolutely vital in offering support to witnesses if they come forward. Take a look at the concern raised by the Sisters of Nazareth about extending that service to vulnerable and elderly witnesses. Perhaps I can also ask you to expand that into the case of, say, someone who may not be able to come to you. How will that person be able to submit evidence?

Sir Anthony Hart: One has to distinguish between the witnesses called by the inquiry and those who may be called by individuals or institutions that have been given a right of representation before the inquiry. In other words, they may want to call someone in their own defence.

So far as any individuals who come to the inquiry are concerned, no matter who calls them, we will treat them all exactly the same. If they are elderly or infirm, we will try to adopt measures that will make it as easy as possible for them to give evidence. We take the same view for anybody. It does not matter whether people are called by an institution or the inquiry. They will all be treated exactly the same and, I hope, fairly.

So far as the exact mechanisms that we may use are concerned, we have certainly given consideration to, and are anxious to use, modern technology. For example, where somebody is in a nursing home in Australia, we would try to have them give evidence by video link if at all possible. If people are not able to come at all to give evidence, we may have to send someone to take a statement from them, which would then be read out. However, those are problems that are, regrettably, not unknown in the courts. There are various mechanisms that we can use to make it easier for people to give evidence. Those will apply, I stress again, just as much to those who may be called by the institutions as they will to anybody else.

The Chairperson: If I may just press you a little bit, the witness support service will obviously be around your headquarters and where the inquiry takes place. Let us say that the witness in Australia is not in a home but is just a citizen living in Australia. What support is there for such people should they come on a video link and discover that giving their evidence is not cathartic but, in fact, traumatising, and they are thousands of miles away and you do not know that they cannot go to bed at night because they have traumatised themselves?

Sir Anthony Hart: Support will be offered through two separate avenues. The avenue that is our responsibility we are calling the witness support service. Those are the people whom we will employ who will help individuals as they come to give evidence on a particular day, and we will contact them

afterwards to find out how they are feeling. We will then direct them to whatever the appropriate source of help may be.

However, the Executive intend to set up a separate body — a victim support service — that is not our responsibility. Therefore, there is a good deal of commonality and possibly risk of confusion in the titles. The victim support service, as I understand it, will perhaps follow up in greater detail the sort of issues that you described.

The Chairperson: Barnardo's raised the issue of children sent by Barnardo's to care provision in England and Scotland, and outwith Northern Ireland. Will you be looking at potential abuse that happened outside the jurisdiction of Northern Ireland?

Sir Anthony Hart: We could not, Chairman, because our terms of reference and the legislation will apply only in Northern Ireland. If we were to investigate allegations of abuse outside Northern Ireland, we could do that only really with the assistance of the authorities in whatever jurisdiction it was, whether it be the Republic of Ireland, Scotland, England or Wales.

What we will of course do is investigate such aspects of any such allegations that happen in Northern Ireland. What I mean by that is if, for example, there is material to show that someone was abused outside Northern Ireland, and that was reported to the authorities in Northern Ireland, we will be pursuing in our inquiries what they did about that, how they reacted to it, and so on. The mere fact that it happened outside Northern Ireland does not mean that we will never look at it. We can look at it up to only that extent, but we certainly can look at it in that area. Therefore, if somebody were to come back into Northern Ireland, report abuse and nothing were done about it, we would certainly be looking at that very carefully.

The Chairperson: The nineteenth and final issue deals with the acknowledgement forum and the question of whether you would, as it were, quality-assure submissions to see whether they were consistent with previous narratives that are already out there and are clearly being gathered up.

Sir Anthony Hart: I have discussed that. The acknowledgement forum is there to offer individuals the opportunity to unburden themselves and describe their experiences. It is not an investigative body. Its function is not to decide whether somebody is telling it the truth. That can be the function of the public inquiry side, with which I will be most directly concerned. We will certainly look at whether people have given contradictory accounts, if that is suggested in the material placed before us. That is inherent in any form of court, or inquiry or in any other body that looks at the reliability of what people say. The fundamental thing is that you check whether what they say squares with what they have said before and whether there is an obvious explanation if both accounts do not match word for word. That is not the function of the acknowledgement forum. It will not in that sense, if I may adopt your phrase, quality-check what people say, because that is not what it is there for. Of course, if somebody says, "I went to the police before and told them", the acknowledgement forum may ask, "Well, what did you tell the police?". I do not see the forum as being able to engage — nor should it engage — in the type of investigation that the other part of the inquiry will be responsible for.

The Chairperson: You will be glad to hear that that is the full 19, Sir Anthony. I know that at least a couple of members want to ask follow-up questions, if you do not mind. Members, can you keep it relatively brief? As I said, we have a lot more to get through today.

Mr Eastwood: Do not worry, I intend to be brief. Thank you very much for your evidence so far, Sir Anthony. It has been very useful. Perhaps I missed this, but I did not see it in that list: have you any viewpoint on 1945? I know that a number of elderly victims will be excluded by that date. I think that the Department said that it is willing to look at that. Would you be comfortable with seeing that date extended back to, say, the foundation of the state?

Sir Anthony Hart: I have discussed that with my panel colleagues. We have no difficulty with the starting point being altered from 1945 in some way. We really do not know very much about this because we go by what is said in the papers and what is recounted on occasions such as this, but from what we have learnt, the number of individuals concerned appears to be quite small, and they have made, what appears to us, a compelling case. The only drawback, of course, is if that you go back to 1921, it will be more and more difficult to find out what happened. I do not imagine that many people who were children in institutions in 1921 are still alive, but it is certainly possible, I suppose.

Therefore, in a word, the answer to your question is yes. I want to take the opportunity to add to that. We would have very great concerns if the 1995 date were changed, because that would very significantly increase the scope of what we have to do. There are concerns, which I already mentioned, about time and resources, and those would apply in great force there.

Mr Eastwood: You set out the difficulties around the possibility of an interim report on redress. Is there a possibility in your mind that if you felt able to produce an interim report, you should be allowed the scope to do so?

Sir Anthony Hart: I have to say that I would prefer not to be under an obligation to provide an interim report, but if that is what the Assembly considers necessary, we will of course do everything that we can to provide that.

Mr Eastwood: What if there were no obligation but you were given the opportunity to do so because you thought it would be useful?

Sir Anthony Hart: I think that that perhaps carries the implication that we should do it.

Mr Kinahan: Sir Anthony, you said that if hints of a criminal act came forward, you would refer those to the PSNI or another appropriate group. Does that mean that you would stop investigating there, or would you still be thorough and carry out a complete investigation right to the end? What is going through my mind is that if you meet a great deal of crime, we will never actually get to the point of identifying thoroughly whether there was institutional abuse.

Sir Anthony Hart: If there were institutional abuse, I doubt very much whether we would be prevented from finding out its extent. There are already a number of instances in the public domain going back a number of years where proceedings have been completed. We know that it has happened in certain instances. Our concern is to avoid prejudicing, to any extent, the police inquiry. We will simply have to look at each one as it comes up.

Mr Maskey: Thank you for your very comprehensive responses. They are very helpful. I have a couple of points. I want to reverse the question and make it more simple. My understanding is that the terms of reference in particular would have been discussed and perhaps agreed with you and agreed in the Executive before they were announced. Therefore, if you take that in reverse, any changes to that would have to go through the same process. A lot of people have expressed concerns about the latitude that the Office of the First Minister and deputy First Minister might have with regard to the terms of reference. My view is that it is better to have these things as non-prescriptive as possible, as long as they still enable the scope for you and your panel members to proceed. I think that we can deal with the terms of reference by a simple amendment, with the terms of reference going to the Assembly for negative or affirmative resolution. Is there anything in the current terms of reference that you or your panel would see as prohibiting you from taking some of the latitude that you referred to earlier? You did not use that word, but I expect that you, as chair, are required to do and say things based on what you discover in the process. I am more interested in establishing whether there are things that you would not be able to do under the current terms of reference.

Sir Anthony Hart: I do not think so. The terms of reference, as they had been drafted, were given to me. I was asked whether I agreed, and having considered them, I did agree. That is the usual practice in these matters. I did not draw them up, but I looked at them, and I was content with them. So far as the terms of reference are concerned, I do not see any problem in carrying out the inquiry's work. There are obviously issues of principle, such as whether we move beyond 1945. The legislation is somewhat different, and I have expressed some of my views on that, but no, I do not have a problem with the terms of reference.

Mr Maskey: I have one final question, which will be very brief. In some of the submissions, people were asking about those who were located in institutions outside this jurisdiction. I believe that to be the position, but I am interested to hear your view. I do not think that we could pass any legislation here that would give you any authority in any other jurisdiction. I think that that is important.

Sir Anthony Hart: I agree entirely. It is an elementary principle that the power of any law-making body is effectively limited to its own territorial area, unless you get the agreement of the Government and the Parliament in the other area.

Mr Humphrey: Thank you very much for your presentation, Sir Anthony. I welcome what you have just said about the terms of reference. My party colleagues and I have been uncomfortable in recent weeks regarding contributions, in the sense that religious orders have come along with senior people from those orders and read out a statement, and then solicitors have answered questions. Therefore, we very much welcome the move to your inquiry carrying out its work in the near future. I think that that is very important, because my party has got the sense that some people are coming here and thinking that this is the inquiry, and they are making contributions on that basis.

May I return to point 16 that you mentioned, which concerns witnesses? I want to get absolute clarification on this, because a witness can be somebody who is elderly, infirm, unable to travel or whatever, as can someone who has been abused. However, that can also be someone who, it is alleged, is an abuser. It is very important, in the context of some of the letters that I have read from solicitors or statements from orders, that we, or you, look at it in that context. It can be someone who has been wronged, but it can potentially be somebody who has been involved in wrongdoing.

Sir Anthony Hart: Yes, I think that that puts very well what I was trying to say earlier. We will treat everybody the same. They will not be treated less favourably when it comes to access, courtesy, consideration or any special measures that we feel are necessary, and that we can adopt.

The Chairperson: Sir Anthony, Andrew and Patrick, thank you very much for being with us today. That was very useful.

Sir Anthony Hart: May I conclude, Chairman, by thanking you for the opportunity to put in the public arena what it is that we are trying to do and what we hope to do in the next while? I think that it is only right that I should, at this stage, thank Ministers Bell, Anderson and McCann, because we have had a lot of very determined support from them. It has helped us to move to where we hope to be in the next not too many days.