Northern Ireland Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013: Briefing from the Inquiry Panel

19 June 2013

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 Leslie Cree
Mr Colum Eastwood
Ms Megan Fearon
Mrs Brenda Hale
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 Andrew Browne, Patrick Butler and Sir Anthony Hart, who is making at least his third appearance. Thank you very much for your continued engagement. Sir Anthony, you have, no doubt, patiently absorbed the comments of the past hour and a bit. Would you like to make any opening comments either on what you just heard or more generally?

Sir Anthony Hart (Historical Institutional Abuse Inquiry Panel): I will very briefly add to what has been said about the effect on people coming to speak to us. In your concluding remarks, you were kind enough to say that everyone seemed very appreciative of what the acknowledgement forum, in particular, does, given the way in which it engages and listens to people in a sensitive, sympathetic fashion.

From the very beginning of this process, we have been very aware of the burden and strain that giving evidence about such events can place on the majority — if not virtually everybody — who come to speak to us in whatever capacity. I will not go through all the procedures that we have developed to try to make it as easy and as straightforward as possible.

Apart from the acknowledgement forum panel members who have been referred to, we have two dedicated witness support officers who go to a lot of trouble beforehand. They lay on the arrangements to speak to people and settle them down when they arrive. We know that it often has a delayed effect on people, so the support officers ring them 10 days or thereabouts afterwards to ask

whether they are all right. The feedback that we have had — I am sure that some others may have commented on this — about their work in particular has been extremely positive.

Somebody may say that they want to progress further with some form of counselling, because it is not unknown, from what we have heard already, for people to say, "I have never spoken to anybody". Sometimes, however, it is the exact opposite, with people saying, "I have been to all sorts of places, and none of it has helped". The Nexus Institute was commissioned by the Department of Health, Social Services and Public Safety (DHSSPS) to prepare a document — it comes to about 32 pages — that we use to give people further advice on the places they can go. Those, of course, are different types of existing facilities. So, there is a lot of provision of different types, but we are alert to the issue. Could I perhaps take the opportunity to deal with the rules? After all, that is why we are here.

The Chairperson: Yes, absolutely.

Sir Anthony Hart: Although I can, within certain limits, give you a certain amount of information about what we are doing, perhaps you would find it helpful on a more general front to take the rules first. I might deal with your question first, Mr Chairman — the last one, as it were — about the apparent difference between rule 6(1) and rule 6(2). If I may ask you to do so, I think that one has to start by looking first at rule 5, which discusses that which relates to core participants. In essence, core participants are the principal people or bodies who will engage with the inquiry. They are the institutions that may be under investigation or the public bodies that may, in one sense or another, also be under investigation, perhaps because they had responsibility for funding or inspecting institutions. They are the people who will be, in one way or another, central to the inquiry's work. If you look at rule 5(2)(a), you see that it states, in various terms:

> *"the person, body, organisation or institution played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates".*

So, if one might put it this way, they are the people who are principally engaged with and required by the inquiry to engage with it.

Then we come to rule 6, which deals with legal representatives. There are two categories of legal representative. If you look at 6(1), which deals with the first category, core participants, you see that the view is clearly taken that if they have a lawyer, I have to accept who that lawyer is. In other words, I cannot tell them to go and get somebody else. If you look at 6(2), you see that there is a different category, because those people are described as being:

> *"any other person, body, organisation or institution required or permitted to give evidence or produce documents".*

That can encompass a huge range of people, which I am sure it will. On the one hand, it might simply be an individual who would be rather like someone in the same position as, perhaps, any of us who witnesses a road-traffic collision. The police maybe take a statement from you, somebody knows that you can help, or you might be a doctor who has treated somebody. You then get a witness summons to come to court. You do not necessarily need a lawyer to help you with that. If we simply ask somebody to come and produce some formal document, that person will not require a legal representative. That is why it states:

> *"the chairperson may designate that lawyer as that person's recognised legal representative".*

That comes to the crucial distinction. If I may, I will ask you to read on. What is the purpose of being recognised? It is because, if you look at rule 21, you see that person can claim their legal costs from public funds. So, in other words, if somebody is a core participant, they will automatically be entitled to come to me and ask for it. However, it does not mean that they will get it, because a very elaborate structure is provided. If someone is simply a straightforward witness, it does not follow that they will get over the first hurdle. That is where the difference is: one is compulsory and the other is discretionary.

The Chairperson: So, if I am in the category under rule 6(2), and I come to you and say, "Here is my legal representative", you may make a judgement that you will not allow my legal representative because that will cost the taxpayer a significant sum of money and there is no justification for me to have that legal representative at the taxpayer's expense?

Sir Anthony Hart: That is a possible result, because the second part of it comes at a later stage. The very first part of it is to ask whether you need a legal representative at all. Of course, if somebody comes and says that they have been asked to come to the inquiry because they are a possible witness, that person may well make a good case for needing a lawyer.

Of course, if somebody says, "You have asked me to come because I am a possible witness", they may well make a good case for needing a lawyer, but they are not at the point where they must have a lawyer. A core participant must have a lawyer; they cannot operate without one, because the lawyer gets the evidence that we send automatically about their part of the inquiry and matters of that sort. The others may or may not cross the very first hurdle, so that is why there is a distinction. In practice, the end result may be very similar for many people. However, it is not guaranteed, and that is the difference.

The Chairperson: In your view, would it be reasonable to look at the thrust of the rules and conclude that it will be for you to say that it is your inquiry so you will decide.

Sir Anthony Hart: Yes, that puts it in a nutshell. I have to balance a number of —

The Chairperson: Is that pleasing to you? Is that what you want?

Sir Anthony Hart: The purpose of the rules is to ensure that everybody knows, within pretty clear limits, the way that things are going to go. We have supplemented the rules by protocols, which are on our website. Those protocols develop even further the practical aspects of these matters. That is the case so that, when everyone comes to the inquiry and when they are planning their approach, deciding how they are to respond and wondering what they have to do, they can look at the rules and get a clear steer everywhere. They are rules of a relatively common nature, but there are things that are unique to this inquiry. That is because, although each inquiry may have common features, they have to be purpose-built for the particular subject matter that they are looking into. So, I would not like to have just a blank sheet of paper and for people to not know where they were before they arrived. That is not really helpful to anybody. It might be very encouraging to some people, but it is not helpful. I would not regard it as either helpful or encouraging. It helps if people know where they stand before they come in.

The Chairperson: The other issue that I had related to the time restrictions that you could place on documents being released for public view.

Sir Anthony Hart: Yes; the redaction policy.

The Chairperson: You can put a time bar on that, but OFMDFM can lift it the day after the inquiry closes. Is that strange, to your mind?

Sir Anthony Hart: In theory, that could be read into the rule. I find it extremely difficult to conceive of how anybody could justify doing that. If I may just link it to one of the changes in the rules — if it is accepted by everyone — that gives me the power to decide what constitutes the record, there is a requirement under the rules to keep a well-ordered record. I would have to decide what should go to the Public Record Office of Northern Ireland (PRONI). The way that the rule was originally drafted meant that literally every single document would have to go, including the e-mail asking everyone to contribute to the tea kitty. The rule that we now have leaves it to me to decide what should go. There is guidance in that area from the National Archives in Kew, and we understand that PRONI in Belfast will have a consultation exercise about that fairly soon. Naturally, I will be guided by that.

One of the things that I have in mind to discuss with PRONI is the time bars on certain parts of the documents. If you had people's medical records, which have to be examined for a particular purpose, it might be wrong to allow them to be examined for, let us say, fewer than 50 or 75 years or something of that nature. We may need to see things that others may not be justified in seeing. We might need to see all the medical records, but, at the end of the day, you are concerned only with one little element. However, everything else has to be there to check that it has not been tampered with or something. So, I envisage discussing with PRONI and, hopefully, agreeing with it if possible, appropriate periods of time. Given that I would have done that before the inquiry is wound up, I find it very difficult to see how anybody could make a convincing case to OFMDFM that, within months, days or weeks, the order should be overturned.

However, given that the inquiry goes out of existence when it produces its report, somebody has to be in a position to look again at something if a really compelling case is made. I am confident; I cannot be more than that. I cannot say that I am certain, because I do not know who will be making the decision in 10, 15 or — dare I say it — even in five years' time. So, I think that somebody has to make the decision. However, I would be very surprised indeed if it were decided to reopen documents, unless a very compelling case were made that was based on something that had come to light since the inquiry brought its processes to an end.

The Chairperson: Is there anything in the proposed set of rules that gives you any significant concern?

Sir Anthony Hart: Not now, because the three matters that I was concerned about have all been addressed and accepted. There was an area that was put in at my request and has now been taken out at my request. I should perhaps take the opportunity to explain that. Some may wonder why the witness anonymity orders have been moved. When we looked at that, we realised that it was a very complex, cumbersome, time-consuming and probably expensive procedure. We effectively rendered it redundant by approaching the question of anonymity from a different direction. We have now decided that, in due course, I will make a blanket restriction order that will provide everybody with anonymity, both in documents that are used and in their personal appearance before the inquiry. That is unless, of course, they themselves want their names to be used, in which case we would of course respect that.

The other way of doing it would give a degree of enhanced protection, because the original proposal meant that every individual had to ask me for their name to be rendered anonymous. We are likely to have hundreds of people, and it would just be far too difficult. So, we have constructed a proposal that will allow me to make a blanket order, and then the process will simply be an opt-out exercise. I reassure you and, through you, everybody else that the protections that were going to be available, such as screening and matters of that sort, can still be utilised by me, and they will be utilised by me if necessary. So, we are not taking anything away except a rather cumbersome procedure. The actual protections that the rule was going to confer will be given on an enhanced basis to everybody. I am pleased about that.

The Chairperson: As you say, it is an opt-out now.

Sir Anthony Hart: It is an opt-out.

Mr Maskey: Can I go back to rule 6(2)? It is not a major issue for me, but I think that I understand the different categorisation. If someone comes to you and says, "This is my lawyer" and you say, "Fine; you do not need a lawyer, but I am not asking them to leave the room", that person might have that lawyer just to accompany them or whatever, but you have made a determination from the first point that they do not actually need a lawyer. I am just making that point.

Sir Anthony Hart: That is the very first stage. Obviously, some people would be able to make a case that they need a lawyer, but others would not. I am very anxious throughout the entire process to strike a proper balance between ensuring that people who need legal representation have it and that people who do not need it do not expect to be given it at public expense.

Mr Eastwood: Thank you, Sir Anthony. I am very happy with the rules generally, but Amnesty International brought up one particular point. It recommended that people who give oral evidence to the acknowledgement forum should be provided with a written record of their testimony if they request one. The Department has just said that that point has been raised and passed to the inquiry.

Sir Anthony Hart: Is that a record of their evidence to the acknowledgement forum?

Mr Eastwood: Yes.

Sir Anthony Hart: Our view about that is that it is incompatible with the purpose and function of the acknowledgement forum. The acknowledgement forum is there to provide a private, confidential occasion at which the individual person can unburden themselves. We allow them to be accompanied by someone if they wish — a companion. The companion does not speak for them, but we recognise that people find it comforting to have a supporter there. That supporter can be their lawyer, if they want. Indeed, we have made this clear to a number of solicitors who wrote to us, but, somewhat

surprisingly in the circumstances, none of them has come. That is perhaps because it was made equally clear that we would not pay them for doing that; I do not know. So, I wonder why these requests are being made for those people to be provided with a copy of what they have said, because there is nothing to stop them from speaking to their lawyer if they wish and telling them what they want to know.

A number of organisations, such as Amnesty, make the point that the occasion is very upsetting for many. I am sure that we have all had the experience of seeing a doctor or someone else and coming out thinking, "I wish I had said that" or, "Did I remember to say something else?" At least 75% of people will go to the statutory inquiry element — to the legal team. They have a statement recorded from them, which they will have sent out to them after it has been written up. They can look at it, and, if they think that they have left something out, they can come back. That evidence will be given as public testimony if they are called as a witness. So, it will be available to everyone. There are perhaps 20% to 25% who will not go to the statutory inquiry. The rules provide that, provided everyone agrees, the record — the tape recording that we make — will be destroyed at the end of the exercise. With possibly one exception, everyone has agreed to that.

In our view, to simply hand out on request the detail of what people have told us is completely incompatible with that emphasis on privacy and confidentiality. They are free to talk to people if they wish, but I am afraid that I find it a little difficult to see what real benefit there is for people. That is because the reality is that, if they are given this, it is going to their lawyers; it is not for them. We are not here to gather evidence for other legal proceedings that people may wish to engage in. That is entirely a matter for them, but I do not see this inquiry as functioning to do the work of barristers and solicitors in other areas. That is something that they must do themselves. If they get a benefit from seeing what we turn up, that is well and good, but we are not here just to help people to do things that they should be doing for themselves.

The Chairperson: Sir Anthony, thank you very much. You were asked to come today to talk specifically about the rules. I hope that you will forgive me, because I am now going to stray from that slightly. Your first two appearances were when you were in set-up mode, and now you are partially established with the acknowledgement forum. In the context of the legislation's putting some restraints or expectations on you, not least on the inquiry's time frame and costs, since you were last with us, has anything come to light that gives you concern about delivering to the specification?

Sir Anthony Hart: I will answer that in a number of ways. As of today, 281 people have formally contacted us. Others ring up, but nothing materialises. That does not surprise us, because not everyone can bring themselves to come to speak to us. Of those 281 people, a small number have either withdrawn or, in fact, fall outside the terms of reference. So, we are probably looking at somewhere around 260 at the moment, and the acknowledgement forum will have seen 173 of those people by the beginning of July.

We are moving towards starting our public hearings, with an opening session probably shortly before Christmas. We will then start the public hearings in January. As we explained, I cannot tell you just yet, for reasons that I hope you will understand, which hearings will come first. However, that will probably be announced in early September. Provided that we do not come up against any major obstacle, I am still hopeful that we will be able to comply with this very, very tight time limit. So far, I am confident that, with a lot of hard work and effort on everyone's part, we should be able to manage it.

That is not least because the first intimation of the inquiry's existence came as long ago as, I think, September 2009. So, there are people who have been waiting a long time. I mention that because there are suggestions from time to time that our remit should be expanded to take in other organisations or institutions. All that I would say about that is that it would almost certainly require us to formally ask for the three-year limitation to be removed, because we simply could not cope with some major new area of investigation in the time limit that the Assembly has imposed on us. If we were required to take that on, in my view, the people who would find their interests being pushed back are the very people for whose benefit this inquiry has been set up. They will be asked to wait even longer.

The Chairperson: You said that 260 out of 281 people fall within your remit. So, of the 21 who do not, would it be accurate to —

Sir Anthony Hart: Some have withdrawn, and there are one or two duplicates.

The Chairperson: Is there any sense of how many of those who have approached you were subjected to abuse in a non-institutional setting?

Sir Anthony Hart: There is a small number. There are 12 who fall outside the terms of reference, and almost all, but not quite all, of them are people who said that they were abused in a school. For example, we had one applicant from Australia, and, from what we know so far, it rather looks as though the abuse may have happened after that person left Northern Ireland. So, there are some who are not within the terms of reference in any circumstances. There are others for whom the institution concerned may not be within our remit, and, unfortunately, we have to say that we cannot do anything for them.

The Chairperson: Sir Anthony, Patrick and Andrew, thank you very much indeed, as always. We appreciate your patience.