Northern Ireland Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill: Ciaran McAteer and Co Solicitors Briefing

12 September 2012

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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
Miss Megan Fearon
Mr William Humphrey
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Witnesses:
Mr Ciaran McAteer McAteer and Co Solicitors

The Chairperson: Ciaran McAteer of McAteer and Co Solicitors now joins us. Ciaran, thank you very much indeed for coming.

Mr Ciaran McAteer (McAteer and Co Solicitors): Thank you very much, Chair and Committee members, for inviting me to make some further submissions. Having been here for the afternoon, I think that much of what I wanted to say has already been covered. A lot of work has been done. I know that Survivors and Victims of Institutional Abuse (SAVIA) has been pressing and has worked hard and that the Office of the First Minister and deputy First Minister (OFMDFM) has responded much more quickly than has been the case in other jurisdictions to get the Bill going and heading towards the statue book. So much positive work has been done to date, and I hope that any comments that I make are constructive and will not be regarded as being made from a sectional interest.

The terms of reference are not included in the Bill. At the moment, the power to amend the terms of reference rests with OFMDFM. I wonder whether it would be possible for that to be amended so that, if something came up, the chairperson could go to OFMDFM and say, "I think that I should be able to extend this for the following good reason". I know that the Human Rights Commissioner talked about the Jordan principles. My suggestion is that if the chairperson of the inquiry went to OFMDFM and said, "I think that this should be extended", why could not OFMDFM then consult the Committee? That would widen the terms of reference and take them to well within the Jordan principles of independence.

Earlier, someone made the point that if you read the Bill without paying any attention to who the actors are, it looks as though OFMDFM can pull the strings here, there and everywhere. That is not to say — I think that someone commented on Sir Anthony Hart's not acting as a sort of puppet. We have come this far, so we do not want people raising judicial reviews on the basis of their perception of the surface of the Bill. Victims have come so far, and they are anxious for this to move on, so I do not think that anything should be put in the way to try to hinder them in any way.

Perhaps, it is not so much about the reality of the Bill but the perception of it. There are about seven or eight points in the Bill where OFMDFM can lay down the rules. It can, for example, set the rules on procedure, terminate the inquiry, and decide whether to publish the report and whether to do so in full or in part. I doubt whether OFMDFM has come this far to turn round at the end and say that it is not publishing the report, having spent the time, energy and finance on it. However, on the surface, it looks as though OFMDFM can do those things. As I say, it is quite often not the reality but the perception that counts, especially in this jurisdiction. I think that certain areas should be given more consideration with a view to broadening the Bill. Any public inquiry has a broad set of rules, so, for example, the chair of the panel could set those. Also, OFMDFM has the power to say what expenses should or should not be paid. Should that not be within the chair's prerogative, again, maybe in consultation with OFMDFM, to broaden it out?

The thing has come on very well. I was going to pass comment on the period of the inquiry, but I think that to comment on the early start date is irrelevant. The consensus seems to be that it should go back to 1921. I am not 100% certain about the end date, 1995. I know the Children Order 1995 came in then, but it is an inquiry into historical institutional abuse. When does "historical" come in? Do you go up to 2011? Is that historical? I have no fixed view on that.

From speaking to a lot of the victims I act for, I know that they are anxious about redress, reparations or, plain and simple, compensation. Some are getting on. Many see getting a cheque as an acknowledgement that something happened to them. I was at a meeting where a man put his hand in his pocket and took out a cheque for £10,000, which he had received as compensation for abuse. That cheque was more than five years old. It was not valid. That cheque was someone saying to him, "You were abused. Here is your money." I know of another person, who got his cheque, went to the bank and cashed it, and then went to every Protestant church in his area and divvied the money up between them. He had been in De La Salle. Some think that people are just in it for the money. It is not that. The money says something to them. I am involved in a lobby group with a terrible title: the Association of Child Abuse Lawyers (ACAL). At a recent conference, there was talk about how support must be given to people as they go through this. Sometimes, in these inquiries, what people do not realise is that when someone gets that cheque, their life is over. There are recorded instances of suicide. They have got the cheque and they have had the acknowledgement, which is what they have fought for years for. A long time is over. I know that there is going to be a support service for the victims, but that is something that should be borne in mind. It is not just get the money and go.

As for redress, some victims are getting quite elderly. Those who are more elderly quite often want the money, not for themselves, but to hand on to their children. A lot of them suffer from substance abuse and have been not very good parents because of their background. They would like to be able to give something to their children or grandchildren to compensate them.

Look at the terms of reference. Sir Anthony Hart said that he may well find it difficult to do an interim report until he has heard everything. The terms of reference are to inquire whether there were systematic failings by the institutions of the state. There is a presumption that abuse has taken place. The inquiry is to see just how systematic that was. There would be provision, I think, for an early report.

My view is that if there were to be compensation, it should not be done through the civil courts, which are too adversarial. In a recent case, the argument was whether the person involved was in a single room or not in a single room. What was the argument? If he was in a single room, he got compensation. If he could not prove that he was in a single room, he did not get compensation. Is that how you want to deal with these people? Also, there is no definition of abuse. To me, there are four elements. There has been a lot of talk here about sexual abuse, but there is also physical abuse. The other two elements, which I think are often forgotten about and which cause more harm, are emotional abuse and neglect. A person who might have gone on to be something useful in society, because of the neglect, takes to alcohol, drugs or crime, when they could have been a useful addition to society. I think that those four areas should be defined. They were the ones for the Ryan commission. They are the four basic areas of abuse. If one follows the Ryan commission, one would

know that there was a redress board to the side. It allows the board maybe to limit the amount of compensation, to limit the fees to be paid out, to limit medical reports, and so on. It can keep the thing within reasonable bounds.

Most of the other things, about independence and the dates, have been gone over. I am not going to reiterate what has already been said. However, there is one thing. I spoke to Patrick Corrigan before coming here. When he talked about people being second-class citizens, he was talking about the people pre-1945 who were being excluded. He was not trying to say that they were second class. However, I think that the view around the table now seems to be that the 1945 date should be altered.

The Chairperson: Ciaran, thank you very much. That was most informative.

Mr Humphrey: If I may say at the outset, I think that your evidence to the Committee was extremely powerful. I know you are here as a member of the legal profession, but, clearly, your experience has shown that, for you, it is not just a profession representing those people. I could see the faces of people in the Public Gallery changing as you spoke. The gravity and import of what you said, and the sincerity with which you said it, have been heard and understood by everybody. Thank you for that.

It is my view, and I have said so in the Chamber, that apologies from the state are good and should happen. We had an apology from the Prime Minister today about what happened at Hillsborough. I do not want to take away from state apologies. You talked about apology and compensation. I believe that there should be apologies from the state, but there should also be apologies from institutions that are not state institutions.

Mr McAteer: I thoroughly agree with that.

Mr Humphrey: Personally, I believe that there should be compensation from the state and that, where the institutions are not state institutions, those institutions should contribute also.

Mr McAteer: On that point, I think that the Assembly should not make the mistake that was made in the South, where, quite frankly, the religious institutions wiped the face of the Government when they were asked to put their hands in their pocket and put money in. They put in pence, and the state paid out pounds against that. I agree with you. The state should apologise where, and only where, it is responsible. The religious orders are all running around and are all going to fight. In cases that I have been involved in, we got letters back saying, "We have no record of this person being in this institution", but those people could tell me that they were in with Mrs So-and-so and Mrs So-and-so. I write back, and they say, "Oh, we are terribly sorry. Yes, we have now discovered them." That is what you are getting. They say that they have no record, and yet that person could name their friends in the institution, and so on. Records are disappearing. I know that there is provision in the Bill for that. Maybe I am just being cynical, but I suspect that, by the time the Bill is enacted and the thing starts, an awful lot of the records will have gone.

Mr Humphrey: I did not want to single out a particular Church. I am a communicant member of the Presbyterian Church and there has been wrongdoing by some there as well, and they are equally culpable. Where there is wrongdoing, it should be apologised for. I absolutely agree with you about what should happen when the state is wrong. However, an apology coming from a politician when the state has not been involved will mean nothing to the people involved.

The other point that I would make — I will finish on this point, Chairperson — is about OFMDFM. You talked about control, and I know that you mentioned Sir Anthony and the word "puppet", and so on. I had never met the man before he came here, but I listened to him very clearly. I have confidence that he would not be that, and I know that you were not saying that.

It seems that those powers residing with Ministers are seen by people as a negative, but they can also be a positive. It is early doors, and we need to look at it that way. I am reading that as being something whereby Ministers can make a quick decision that can help, not a decision that will stall or delay things.

Mr McAteer: I was really talking there about perception. If you look at the Bill, you would think that OFMDFM can ring up and say, "Don't do that". I have appeared in front of Sir Anthony Hart. Things move quickly. There is no excuse. It is there; get on with it. There are rumours that there will be judicial reviews and stuff. It is about perception.

A lot of the Bill, in fact, is lifted from the Inquiries Act 2005, for good reason. One of the provisions is that they can refuse to pay if the inquiry goes beyond its terms of reference. That is a necessity. If the inquiry goes off on a frolic of its own, why should that be paid for? I take on board what you are saying.

Mr Clarke: I concur with William's remarks about your presentation, but I am disappointed in one aspect of what you said. I am sorry that there is a perception, as you said, that people are just in it for the money. There are victims in this, and there are other victims. I am not saying that you are saying that; you are saying that there is a perception of that, and I am disappointed that there is that perception. The victims of the Troubles and their families are looking for an apology, not money. They are not in it for the money, and I do not assume that the people who have been affected by historical abuse are either. I want to disassociate myself from any perception that people are in it just for the money.

Mr McAteer: I am not saying that anyone around this table has that perception. I am saying that it is, sometimes, a public perception.

Mr Clarke: I appreciate that you did not say that. What I want to clearly say is that I would not want to be associated with remarks that people who suffered institutional abuse are coming forward for the money. They are looking for an apology or recognition of what they have suffered, and I think that they deserve that.

Whether the perception about money is there or not, if we look at the terms of reference, we can see that although the provision of some form of compensation payment for individuals is not necessarily there, neither is it ruled out. I would have a difficulty in recognising how you could make a payment to people before the inquiry is over. I can appreciate that some people will be elderly and, unfortunately, some have passed on and will never see the spirit of what is intended here, let alone compensation. However, I do think that the process has to be exhausted first of all. Not for one minute would I say that there has not been institutional abuse, but we need an outcome before we can put a price on it. Things have to be quantified. By the time the inquiry is over, not many people will be surprised by the numbers of people who have been affected, but we need those numbers, as do the Executive.

There have been opportunities in the past when this inquiry could have been done, and others have failed. The current Executive have set aside £7·5 million to £9 million to get this inquiry on the road because of the failings of the institutions in the past. However, to quantify the compensation today, before we get to that stage, would, I think, be foolhardy. We have to quantify the numbers of people affected, including their loved ones. Although I am not averse to the idea of compensation, I think that it really has to come later. I think that the Executive got that right in the terms of reference. It gives them the opportunity, after the inquiry concludes, to look at that and an apology.

The Chairperson: Do you want to say anything on that?

Mr McAteer: You will not know how many people are involved until the inquiry is under way and has concluded. As I say, take the precedent of the redress board in the South; what it did was to set four areas. It is a bit like the Criminal Injury Compensation Board in that if you suffer a broken leg through a criminal injury, you will not get the same amount of compensation as you would get had you been injured in a road traffic accident or an accident at work. That is what they did in the South. There was a sort of quid pro quo. You did not have to give the same level of evidence as you would have to give in a civil court in order to get the compensation. By not having to give the same level of evidence, the value was reduced.

Also, speaking from my side of the profession, the fees to lawyers were capped. There were no massive fees. I take your point that it will be difficult. It could end up being an open chequebook. To go back to the point made earlier, the institutions, where they were guilty, not only have to make an apology but must contribute to the fund.

The Chairperson: The money question is very complicated, Ciaran, because it works on two levels. As you say, there is the cheque that is never cashed because, for some, it is not about the value of the money but about its value as recognition and acknowledgement of what they went through, which they should not have gone through. To me, compensation is under the category of lost opportunities. Let us take lost employment opportunities. Someone might go on to a get a job, but they might have got a job that was worth twice as much money. However, it is not just a question of lost earnings. What

about the pension contributions that they would have made? So, even in retirement, they are being disadvantaged because of something that happened when they were 16.

Mr McAteer: That is what is happening in the civil courts in England at the moment. In fact, there have been one or two cases where people have been able to, believe it or not, claim for the purchase of alcohol because they suffered from alcoholism. There have been one or two cases of that recently, although not too many.

What happened with the redress board in the South was that it fixed a certain level of compensation for sexual abuse, physical abuse, emotional abuse and neglect. People presented themselves, gave their evidence and were then judged to be a certain percentage. Not everybody who went to the board had been sexually abused, and those people may have got compensation under one or two of the four headings.

There is a precedent for that in this jurisdiction. Many years ago, during the industrial deafness cases, it was, I think, his honour Judge Pringle, when he was recorder of Belfast, who set a scale that 1% equalled so much, 2% equalled so much, and so on. So, there is a precedent in this jurisdiction for doing something along those lines. If you set up a redress board, the person who goes down that route will not get the same amount as they would get if they were to go down the civil court route, but it is less adversarial and less traumatic for them. They are going to have to go back in there and relive everything. I have people going to psychiatrists, and some of them are finding even that difficult. They have difficulty telling the whole story to the person who is helping them. In fact, one or two have had to go back a couple of times because they had to get up and walk out.

It is very difficult to get something that will satisfy everybody, but all we can do is our best.

Mr Maskey: Thanks, Ciaran, for your presentation, which, like all the presentations today, has been compelling, so thank you for that. It was comprehensive. I appreciate your acknowledgment that other contributors made points that you would have made and that you share.

I know that we strayed into compensation a wee bit. We are not here to set compensation or anything else. For me, the key issue in that was the point that a lot of people have made about the need for an interim report of some type. I think that people who make the argument for an interim report do so largely because of the age profile of some of the victims and survivors. It is about trying to expedite any reparation, compensation or similar support, if there is to be any. That is what I get.

Mr McAteer: That is correct, yes. There is one lady in the Gallery here whose mother is more than elderly. You have got to try to accommodate such people.

Mr Maskey: I appreciate that. My focus is on the arguments around having an interim report, and we are keen to hear those. It is obvious from the arguments heard today and at the last meeting that a lot of members share the concerns. It is a matter of us re-engaging with the Department and hearing what it thinks about that, on the back of which it is up to us to make decisions. The Department came here and made what people thought were very good arguments, but when we hear some of the counterarguments, we think, "Hold on a second, we will have to revisit that." That is what we are going to do. I just want to assure you and everybody else who has made presentations that I am satisfied that everybody around this table will do their level best to get at all those issues and to get the best outcome.

This is not to be personal, but I hear people saying that they do not want powers residing in two people who just happen to be the First Minister and the deputy First Minister. People are talking about the terms of reference being made compliant with the Jordan principles, and so on. There is an argument that we should let powers reside with those two to get this thing sorted out. There are counterarguments to that, many of which have been made here today and last week. So, we will look at that and see what will achieve the best outcome. We want an inquiry with integrity that will deal with the issues and that does not leave anybody behind, even if that means that the inquiry is more focused. I do not know and cannot prejudge what the final outcome will be. We are in the process of taking presentations. This is a consultation, and I am satisfied that people are taking it absolutely and fundamentally seriously. So, I thank you and all the other contributors.

The Chairperson: Members, I think that we are done. Thank you, Ciaran. At the risk of defaming the entire legal profession, you have surprised us in a very positive way. *[Laughter.]*

Mr McAteer: I am here representing myself, not the profession. I may be in some trouble elsewhere. *[Laughter.]*

The Chairperson: Thank you very much.