



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Committee Consideration

19 September 2012

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Members present for all or part of the proceedings:

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

The Acting Chairperson: We will list the points from that session, and they will be brought forward. Are there any other matters that members wish to raise after that briefing?

Mr Eastwood: It might be the first time that this has been brought up: is the evidence applicable to subsequent legal action? I did not want to start drawing that out while the witnesses were there. Can we get some sort of advice around that? I would like to get a bit more about that.

The Committee Clerk: Will you clarify that again?

Mr Eastwood: They talked about whether the evidence would be applicable to subsequent legal action. There are issues about ensuring that victims and everybody else have that ability. I do not want to start going down the road without legal counsel here, but we should ask for some clarity around what that means. It may be a case of the dual process with the acknowledgement forum, and the other side of it. I do not know whether there is an issue around that, but I would like to find out a bit more.

The Acting Chairperson: Thank you. I think that we need to ask.

Mr Humphrey: I am going to make the point that I made at the start of this meeting and last week: we are not Sir Anthony Hart's inquiry. We decided not to participate in the question and answer session. Everyone who is coming to make submissions to the Committee is bringing legal representation. We have to be very careful; I am saying this on behalf of our party. Point (b) of the witnesses' submission states:

"The sisters require clarification regarding whether all disclosures (oral or documentary) will be exempt from subsequent criminal investigation".

That is not something that we should be discussing. Point (g), which concerns vulnerable witnesses, states:

"Sisters of Nazareth request confirmation that there will be 'special measures' in place to adequately provide for very elderly witnesses who may be called."

I accept all of that; I am hugely sympathetic to people who are elderly and infirm, but if there is wrongdoing, it is wrongdoing. It does not matter what age people are, quite frankly. This has to be open and transparent. We owe it to the people who are victims that this should be open and transparent.

The next point, as Colum indicated, states:

"as previously indicated there are significant issues regarding discovery, preparation of documents and disclosure."

These are not things that we should be discussing. We are, in my view, overstepping our role and responsibility.

The Acting Chairperson: I take that point on board. I said at the first meeting that there were legal issues arising on the back of these witness sessions. However, we need to learn how we are framing the legislation so that the subjects are dealt with.

Mr Clarke: That is a fair point. That is why I suggest that if witnesses are bringing legal representation to the table, the Committee should have legal representation here. We could be going outside the competence of where we are comfortable, and we could also jeopardise the inquiry, given that some of this has been discussed and it is outside our competence.

The Acting Chairperson: We can get advice. We will add that to the advice that we will get next week.

Mr Maskey: I understand the worries. Clearly, there have been two or three times when we were nearly dealing with situations in which people were making a case. That is very understandable given the nature of this; I would not like to be in the shoes of the people who are conducting the inquiry or the acknowledgement forum, because it will be very difficult. If we stray, the Chair or whoever else will have to make it clear that we are off the track. We have talked about vulnerable witnesses. In the minds of some people, they may think that they are coming to answer against a complaint and there is guilt there. That is us straying into presumption. I would expect Anthony Hart to say that if someone is vulnerable, they will get assistance, whoever they are.

Mr Humphrey: That is the point, Alex. That is his role, not ours.

Mr Maskey: I understand that, but I think it is reasonable for someone to ask whether witnesses will be given some level of support. I am working on the basis that they will. I presume that they will.

Mr Clarke: That is fair enough. I can accept the point that Alex is making, but I thought that our role was to hear from whatever organisation wants to make a representation and present its case to us. I have no problem with that, but when they are being supported by legal representation — if you read the Hansard report of what the sister said in respect of her introduction to her legal representation, that is the bit that concerns me. Is he here as an individual, or is he here as a solicitor representing someone giving evidence?

Mr Humphrey: As a solicitor who would answer questions.

Mr Clarke: Yes; how can a solicitor answer questions on behalf of an organisation, other than by being employed by it to do that? I think that strays out of where we should be at.

The Acting Chairperson: Rather than get buried here, I think we should get legal advice next week before we do this again, then we will go through those questions. I am not disagreeing with you — I do not think any of us are. We need to make sure that we get this absolutely right. It is too important to get wrong.

Mr Eastwood: Some of these issues may stray beyond our competence, but I would like to find out whether they do. If they do not, do we need to look at the legislation to make sure that it is framed correctly?

Mr Clarke: It is a bit late to look at it after we have strayed. We are looking at our next presentation.

The Acting Chairperson: I know. We are just about to have it, but we invited them here, you all got the papers in advance, and you must have picked it up.

Mr Maskey: I understand the concerns, and we have to be very vigilant, but, for example, someone raised the issue of whether what is said during the inquiry could eventually lead to a prosecution. That affects everybody. I know of circumstances in the past when people have refused to go somewhere and to say something because, if it is going to end up in court, they are not going and are not going to make a complaint. People would not even go to social services to get help because they thought that, if they did, it would have to be reported to the police. There will be choices for people to make. Again, I presume that if someone presents a case with evidence, and so on, that may well lead to a prosecution. I am working on that basis, but is that the case? That is something that we need to understand. If people who may wish to make a complaint are told at the outset that if they make a complaint and the panel and the chair believe that it could be a criminal offence, it will be reported to the relevant authorities, you may find that some of the people say, "See you", and they will not be back. It is something that needs to be understood.

The Acting Chairperson: That is a very good point. Do we go to the next briefing, with members remaining silent?

Mr Humphrey: In the paper in front of us, different parties here may take a different view on, for example, the disclosure of documents, or whatever. If someone gives an indication that their party will take a particular view on that, or is asked a question and states that their party will take a different view on that, I would be concerned that answering that sort of question will in some way jaundice any future discussions, because that is a political viewpoint, not a legal one, which will come out of the Bill. This has to go through the political process at the end of the day. Things like that are hugely dangerous.

Mr Maskey: Are we not just taking points, listening to people making presentations and then asking them questions so that we can understand exactly what they are saying? None of us is determining what we will do with any of that stuff, because we have to get all of those questions put to us, take some responses from the Department, and then we have to process the Bill, clause by clause, and make a decision then.

Mr Humphrey: I absolutely agree with that, but my concern is that we are getting these written dispositions that are clearly designed to strengthen the presentations made orally, and that is not our role. People who are coming to give evidence here need to be clear about that, because they will, potentially, be looking for indications of support for those positions, or not. I do not think that is the role of this Committee. In fact, it is not: it is over and above the role of this Committee.

The Acting Chairperson: We have learned something today by the mere fact that they came here, even if we now realise that we have a legal issue whereby we —

Mr Clarke: William has a point. Alex said that we are not straying into that area, but we have. We did not particularly do so during the previous session, but we have given an indication of what we will support, which is giving directions on how the evidence is presented and how the overall report of the evidence that we have received is presented. For example, all the political parties have said that we would stretch the boundaries regarding 1945, so we are making references that will be included in Hansard reports about what the Committee has decided about its scrutiny. Therefore, there is a real danger that we could make reference to something that could prejudice a case. There are people who come and sit in the Public Gallery every week who have a real desire to see the inquiry started. I would hate to see those people in a few years if the inquiry had fallen flat on its face because, procedurally, we had done something wrong. That is what I am concerned about.

Mr Eastwood: Given the concerns, we need to have legal advice, perhaps at all these meetings. However, we have to be prepared to hear people's viewpoints on a Bill that will become law. If

someone says that this is going to be bad law, and gives a reason, we should be entitled to get our own legal advice on whether it will be bad law. The most important thing about this is to get it done quickly, but to get it done right. I do not want to put something in the Bill that will have the inquiry team going through the courts for another 20 years, and the victims never getting what they want. We should have legal advice, but we should not necessarily be afraid of hearing that someone thinks that it will be bad law, from whatever side that comes.

Mr Clarke: There is no problem with that, if the organisation wants to come and stand by its own presentation. The introduction of supporting legal opinion with it is where we are straying into difficulties. If the sister wanted to make a presentation on the strength of her own convictions about the organisation that she is representing today, I have no doubt —

The Acting Chairperson: I will ask the Clerk to clarify something.

The Committee Clerk: My perspective on it was that the organisation had made a submission to us about the Bill, which members have received. We have been looking at all the submissions. Some of the submission was about legal issues. For example, in the submission from the Sisters of Nazareth, the paragraph about discovery and disclosure refers to some quite complex legal issues. My understanding was that the legal representatives would be here if members had questions about the complexity of some of those issues. Who will address that? Will it be a matter for the chair? Should it be in the Bill, or, potentially, might it be in rules of procedure? These sessions are to help us identify those issues so that the Committee can raise them with the chair and officials.

Mr Clarke: The Acting Chairman is right to say that we have our Committee packs. It refers to Sister Cataldus and Mr Fintan Canavan. Does it say that he was there as her legal representation? I do not believe that it does. I feel hijacked by this, and I am not comfortable with it at all.

The Acting Chairperson: We have listened. Next week, we will get a brief on the legal side, and we will move from there.

Mr Humphrey: That is far from ideal, Chair. We come here to ask questions; that is our job.

Mr Eastwood: If people are not comfortable, we need to figure out a solution. A lot of the organisations that come here have their own professional people on staff. I am thinking of Amnesty International. You would have to imagine that Patrick Corrigan would be well able to answer any legal question. I do not know whether the sister would have been capable of answering the questions that we wanted to ask her about legal matters. If they want to make a particular point, whoever they have employed, about the legal framework of the Bill —

Mr Clarke: Amnesty International did not run homes.

Mr Eastwood: I know that, and we are not talking about our opinion on any of this stuff.

Mr Clarke: Yes, but it did not run homes.

Mr Humphrey: Colum, I accept the point that you are making, but there are two letters here from two solicitor's companies, and the sister said at the very start of her presentation that Fintan would answer any questions. Clearly, she is a very competent lady, but the view was clearly taken that Fintan would answer questions on legal issues. That leaves members exposed.

The Acting Chairperson: It is right on the edge. You are damned one way or the other. We have asked people here, we knew that they were coming, and we should listen to them. We will get the brief next week, and if you are uncomfortable, either do not ask the question, or please leave the room. If we then meet the quorum problem, I will deal with it when we get there.

Mr Clarke: It is a real difficulty, if we proceed. We are raising something that is a genuine concern for the people who come here, week in, week out, wanting to see a conclusion to this process. If we do something to jeopardise that, I do not know how you, as Acting Chairperson today —

The Acting Chairperson: If you do not do something, and that jeopardises it, it is the same from the other point of view.

Mr Clarke: No it is not, because the process will continue whether or not we receive the evidence.

The Acting Chairperson: OK, but you have the evidence here, it is in public view, and I want to hear from the people who have come here. I think we should.

Mr Clarke: On your head be it, Chair, if something jeopardises the case for the benefit of those people who have wanted justice for many years.

The Acting Chairperson: I am very happy with that, thank you. It will not, because we are all level-headed people.

Mr Maskey: I suggest that, for further presentations, the Chairperson should make it clear to those making their presentations that we are not lawyers and, therefore, we cannot adjudicate on legal matters, but what we will do is take questions, suggestions or proposals that people are prepared to put to us. That is what we are here to do. We are here to take evidence. Witnesses will make arguments.

Guidance has to come from the Chairperson to the effect that we are here to deal with a piece of legislation. We are not here to determine complex legal issues. We can seek advice to make sure that we do not stray. If you look at the earlier part of the evidence, we probably gave indications as to how we might have felt. No decisions were taken; we did not go that far. However, I see the point that Trevor and William are making. Therefore, we will just remind ourselves that we are not here to adjudicate on the issues. We are here to get the best piece of legislation.

Mr Humphrey: The other thing that is very dangerous, Alex, is that the letter from Kevin R Winters and Company, Solicitors, talks about witnesses:

"The Research and Investigative Team would not be permitted to consider her case. Nor could she participate or feature in the all-important Inquiry".

It is not our place to determine who should take part in any inquiry. That sort of letter is clearly drafted to garner support for that viewpoint. That is not our role.

Mr Maskey: Yes, but it has to be the case that if someone writes a letter, we can take —

Mr Humphrey: Yes, but I am a wee bit concerned. It is the point I made at the last meeting. People think that by making these submissions, they will be able to shape the thing. That is not right. The Bill is what they are going to shape, not the inquiry itself.

The Acting Chairperson: That is right. I think that that is why we should listen. We have learned a great deal today, and we may move on now and ask for the next set of witnesses. If you do not want to be a part of it, fine; please do not take part in it.

I call forward the De La Salle Order witnesses.

Mr Clarke: Through the Chair, is there nothing in Standing Orders that will allow us to ask for that opinion now, as opposed to continuing this meeting?

The Committee Clerk: If members wish to suspend the meeting, they can do so.

The Acting Chairperson: Do you want to suspend the meeting?

Mr Clarke: I am just asking whether there is any provision in Standing Orders for the protection of members who are not happy to go ahead with this submission?

The Acting Chairperson: Not that I am aware of.

Mr Clarke: Can we check that, then? We might have to go into suspension to check that.

The Acting Chairperson: Do you want to hold up the meeting until we know that?

Mr Clarke: How long will it take to check that?

The Acting Chairperson: Is this something that we vote on?

The Committee Clerk: Yes.

The Acting Chairperson: I think we should take a vote on that. Do members want to suspend the meeting so that we can check Standing Orders?

Mr Maskey: I would rather we tried to moderate the meeting through the Chair and just see how we go.

The Acting Chairperson: These witnesses have come here to be listened to. We have listened to all sorts of other groups. They all have legal issues involved in what they are talking about, and I think we should listen and take it from there.

Mr Humphrey: On behalf of the DUP, I want to make this clear: I do not want the people representing the De La Salle Order or Mr Napier to think that we are in some way singling them out. I have made this point on behalf of my party for the past couple of weeks. We do not want to hold things up. We have made the point as strongly as we can. We will simply do in this process what we did with the evidence given by the sister: we will stay out of the questioning.

However, this is not satisfactory. It is our role to question things, and I think that there needs to be sufficient protection for members to enable us to do our job properly.

The Acting Chairperson: I think that we will carry on. You are free to do as you have said. That is what I suggested earlier: you can keep quiet and we will listen to the witnesses.