



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Sisters of Nazareth Briefing

19 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Fintan Canavan	Jones and Company
Sister Cataldus Courtney	Sisters of Nazareth

The Acting Chairperson: I welcome Sister Cataldus and Mr Fintan Canavan. Thank you very much for coming this afternoon. You have 10 minutes to brief the Committee, and then we will ask questions. Thank you for your time.

Sister Cataldus Courtney (Sisters of Nazareth): Thank you, Mr Chairman. My name is Sister Cataldus Courtney, and I am the regional superior of the Sisters of Nazareth congregation in Ireland. I am happy to be in attendance here today. With me is our legal representative, Fintan Canavan. Fintan has accompanied me to assist my response to any questions that refer specifically to issues of a legal nature.

Before I outline a number of concerns that we have about the Bill, I would like to emphasise our full commitment to co-operating with the inquiry into historical institutional abuse. We particularly welcome the introduction of the acknowledgement forum, as the telling of the victims' story and their having it listened to is known as a positive pathway to closure.

Since 1876, the Sisters of Nazareth have provided care to over 11,000 children across five homes in Northern Ireland: two in Belfast, Nazareth House and Nazareth Lodge; two in Derry/Londonderry, Bishop Street and Termonbaca; and one in Portadown. Since former residents with concerns about their time in care have started to come to us in the past 10 to 15 years, we have begun and established a process of care for them that includes open and frank discussion and the offer of professional counselling. In addition, to provide as much information as we can, for the past 10 months, we have employed a full-time archivist, who has been working continuously to ensure that all our records are in order.

We come to today's proceedings to make the following points in the interests of fairness and good practice for all involved. We believe that for victims to get the answers they need, the inquiry has to be a fair process that can stand up to scrutiny from the beginning. As the Bill stands, we have some concerns about how this will be possible. Let me emphasise again that our aim today is to ensure that all involved, most particularly the victims, receive the fairest and best possible outcome. Many of the points that we outlined in our written submission have been covered by the Northern Ireland Human Rights Commission, Amnesty International and the Nexus Institute. We will revisit some of the most important points from the perspective of witnesses who were involved with institutions within the proposed time frame and who may be called to submit evidence. Fintan will be happy to answer any questions on the written submission that we made in advance of the 27 July deadline.

First, we are very concerned that the legislation fails to make provision for vulnerable witnesses. Many of the witnesses, former residents, past employees and sisters who are called will be very elderly and/or infirm and will require special measures to allow them to give evidence to the inquiry to the best of their ability. We request assurance that evidence gathering will be conducted in an appropriate way to accommodate such situations. We also seek clarification on who will determine the competence of a witness.

Our second point is on human rights. According to the Inquiries Act 2005, an inquiry panel is not permitted to rule on, nor has it the power to determine, any person's civil or criminal liability. However, previous judicial reviews of the inquiry process have highlighted an imbalance between that rule and article 6 of the European Convention on Human Rights. Therefore, we seek clarification on whether evidence given to the inquiry panel will be accepted in subsequent legal actions.

Our third point is on the right to reply. We are concerned that the Bill does not outline the level of access to allegations that will be afforded to institutions that are subject to the inquiry to enable them to reply. If we and other institutions are permitted to view only anonymous summaries of the evidence submitted, we will be curtailed in our response, and that will reduce the effectiveness of the inquiry. Also, many allegations will be made that cannot be fully answered, as many of our former members are deceased. There is currently —

Mr Clarke: Chairman, sorry to come in, but I am not particularly happy with some of this. This is the first time that I have read the submission, and I mean no disrespect to the sister present, but she has legal representation with her. I think that we, as members, are exposed to a degree by the content of some of the submission and the questions that we may wish to ask.

The Acting Chairperson: I think that we have to let them speak. It then depends on how you ask your questions. If your questions —

Mr Clarke: If we want an open and frank discussion, and to ask questions, I am very conscious that there is legal representation supporting the sister, but we are not afforded the same. There is a perception that we could stray into an area that is outside our competence with no protection afforded to members. I certainly am not happy.

Mr G Robinson: Chair, William and I feel the same way.

The Acting Chairperson: I feel that we should listen, and if that is the case, do not ask your question.

Mr Clarke: Chairman, I do not need to listen; I have read the submission in front of me. We are covering the same points as are in the submission. When it comes to asking questions, certain bits of that make me feel uncomfortable. If it means that I have to withdraw from the room, I will do that. I am not happy to go on.

Mr Eastwood: I am not a legal expert either, but if legal questions arise, maybe we could ask legal counsel after the meeting. Is that maybe a way out of it, rather than cross-examining?

The Acting Chairperson: Legal counsel will be here next week, and we will get a briefing then. I think that, if there is a hint of that, you just do not ask the question.

We have invited you here to give your presentation, and I think that we should listen to it.

Mr Fintan Canavan (Jones and Company): If it assists members, Mr Chairman, may I say that my intention in being here is not to act as some form of defence counsel? There are submissions that relate to legal concerns. Sister Cataldus felt that she was uncomfortable and unable to deal with those matters. I am here only to provide clarification on those issues. It is not my intention to give a legal opinion to the Committee. The Committee has access to the legal advice that is available to the Assembly, the Office of the Attorney General, and so on. If my friend is uncomfortable, I can assure that all of my responses are entirely neutral. I do not intend to present a defence representation, but rather, should members have questions of a legal nature, to assist the Committee and try to explain the view behind those —

The Acting Chairperson: You will just have to take questions as they come up. We have asked you here, we are listening to your evidence, and I am very grateful for it. I want to listen to it because there may be things that are not expressed in quite the same way as what is written. Therefore, I apologise, but we will take it as it comes. If a member wants to move outside the room or we think that there is some danger in it, we will not answer or ask a question. If you are happy that we proceed, please carry on.

Sister Cataldus: Thank you. Point four deals with definition issues. Like Amnesty International, we are concerned that there is no definition section in the Bill, which is essential to enable everyone to understand the parameters of abuse and hardship, the legal definition of "institution" and "resident", and to allow us to be clear on the ambit of the inquiry, nor does it clarify whether the definitions will vary according to the time frame in which an alleged incident occurred in order to reflect society's knowledge and understanding at the time.

There are more technical points of a legal nature in our written submission. However, we propose to conclude at this point with the assurance that the Sisters of Nazareth concur with the Committee's intention that the inquiry process should proceed as swiftly and efficiently as possible, with full regard to the fairness of the procedure. We very firmly believe that a transparent yet robust legal framework is the best route to achieving that. We also assure the Committee of the type of constructive participation that we have shown to the police and social services in their investigations.

Thank you for your time. We are happy to take questions.

The Acting Chairperson: Thank you very much for being so clear. We will put forward most of your points in our report. Our questions will go to Anthony Hart. He will be the one who takes on all the various evidence. Our job today, and all other days, is to listen to everybody so that we have a broad idea, can scrutinise the draft legislation as it comes through, and get it right. Therefore, I do not think that we should have legal problems with it. However, if they arise, we will deal with them as they come up.

Your briefing paper states:

"the Draft Bill fails to include a full list of the institutions that will be subject to investigation".

Again, we are feeling our way through as to who should be asked. There are lots of ideas from each group about people or institutions that should be included. We will keep working on that as we go through the process. Do any members have questions?

Mr Maskey: Thank you, sister, for your presentation. Clearly, as the process evolves, it will be very difficult for all concerned. I want to acknowledge that from the outset. What we are trying to do, and the responsibility with which we are charged, is to ensure that the legislation fulfils the intention for which it was designed, which is to highlight and deal with the issues. Obviously, from our point of view, we want to ensure that all participants have all the relevant support mechanisms that they need and to which they are entitled, and that all witnesses or people who make complaints or allegations have support. We also want to ensure that others who are perhaps responding to that also have the same level and standard of rights, entitlements and support. Therefore, for example, when you talk about vulnerable witnesses, I think that I know what that means. You mentioned special measures. It has been explained to us that support will be provided for people who will participate in the inquiry. I am working on that assumption, and we want to hear from you and other witnesses who present evidence to us what that may mean from your perspective. When you talk about special measures, I am working on the basis that the inquiry will provide support for people who attend. I presume that that would be available for everybody deemed vulnerable.

Can you think of any particular special measures that we need to know of today? Might we think about that? We will be talking to the chair of the inquiry, who will probably have considerable latitude because you can either prescribe these inquiries so that, for everything that is included, other things are excluded. Sometimes, the less prescription there is, the more scope there is. I can see arguments for and against, but we will hear from Sir Anthony Hart next week. We will want to discuss how he sees many of these things being addressed. I use that as one example: are there any particular special measures that you think we should know of today or that we should consider in future and when talking to the chair of the inquiry?

Mr Canavan: The Law Commission has put in a draft proposal paper in regard to special measures. That was to ensure that provision is made to interview victims, former residents and people who worked in homes, if unable — through illness or age — to come to the inquiry. Will there be provision for them to be interviewed in their homes or in their current residence? Will there be a video-link facility? We had no specific special measures in mind; it was just to point out that we should consider those who may not be fit to attend.

The Acting Chairperson: That has been raised previously, and it is something that we have taken on board.

Mr Maskey: That is a helpful explanation. Thank you.

Mr Eastwood: Further to what the Chair said about the definition of "institution", is your issue with the scope of the inquiry or the Bill's clarity about exactly who would be included? You mentioned "a full list" of institutions; is it that or is the issue around whom to include? Do you know the point that I am making?

Mr Canavan: There is no concern as to the scope of the inquiry. We can well see that the inquiry could be expanded ad infinitum to include all sorts of aspects. The scope of the inquiry is not what we had in mind. The concern at the moment is that there may well be people who were in some form of residential care and who are not aware of their right to come forward to the inquiry. Were the Assembly or the Office of the First Minister and deputy First Minister to have a list of the homes or residential institutions that they knew to be within the scope of this inquiry, and put that list out there, people would then be able to check whether they were a resident of such and such a home. As opposed to that, the inquiry is reactive: it will not go seeking people to come forward; it is waiting for people to come to it to give evidence. People may not understand that they have the right to come forward.

The Acting Chairperson: We were keen two weeks ago to make sure that we were publicising this so that everyone knows that they can come forward. If we feel that part of the process is to create a list that we keep expanding and getting people to appear, we will look into that.

Mr Canavan: Listing would help.

Sister Cataldus: It is important that the inquiry is seen as a very positive process, and a huge step. I and we are all aware that children — victims — have experienced suffering and hardship in our homes. We have apologised. I apologise again today. This is vital and it is to the great credit of the people who are driving this inquiry and have brought it to this stage. I worked in South Africa for many years and was involved in the Truth and Reconciliation Commission there. I know the effect that it had on people and the healing that it helped bring about. I think that what we are doing here is tremendous in helping those who come to us or any other organisation to stay with the process and see it as very positive. As for the end result, we will abide by whatever comes of that and whatever you will demand or ask of us. Staying with the process at the moment, it is tremendous that we have reached this stage.

The Acting Chairperson: Thank you very much for your time.

Sister Cataldus: Thank you very much.