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**First Minister and
Deputy First Minister**

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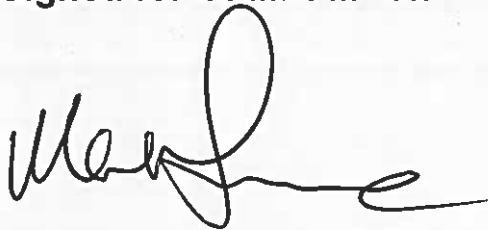
**MEMORANDUM OF UNDERSTANDING
INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO
1995**

VERSION 7

June 2015

This Memorandum of Understanding has been reviewed under paragraph 13. It has been signed and dated on behalf of OFMDFM and the Inquiry.

Signed for OFMDFM on

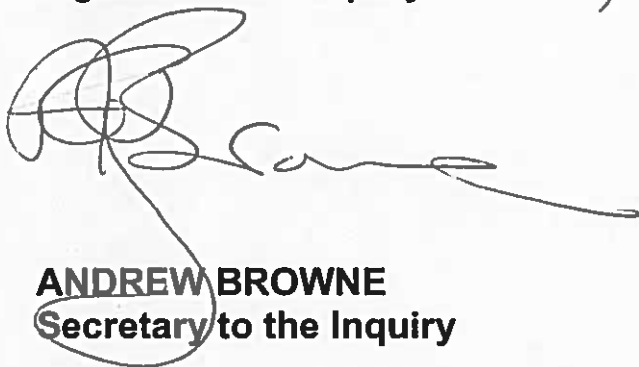


20th July 2015.

MARK BROWNE
Departmental Accounting Officer

Signed for the Inquiry on

9th July 2015



ANDREW BROWNE
Secretary to the Inquiry

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PART 1 - MANAGEMENT

INTRODUCTION

- 1 This Memorandum of Understanding has been drawn up by the Office of the First Minister and Deputy First Minister (OFMDFM) in consultation with the Inquiry into Historical Institutional Abuse 1922 to 1995 (the Inquiry). Its purpose is to ensure that clear roles and responsibilities are in place which will facilitate the smooth running of the Inquiry.

THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922-1995

Statutory basis, Terms of Reference and timescale

- 2 The Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 (the Act) provides the statutory basis for the Inquiry. This came into operation on 19 January 2013.
- 3 The Inquiry's Terms of Reference were set out by FM and dFM acting jointly on October 18, 2012. The Terms of Reference include the timescale for completion of the inquiry.
- 4 The Statutory Rules under section 21 of the Act (the Rules) came into operation on 25 July 2013.
- 5 An amendment to the Terms of Reference under section 1(3) of the Act was made by Order to increase the timescale for completion of the inquiry by one year. The Inquiry Into Historical Institutional Abuse (Amendment of the Terms of Reference) Order (Northern Ireland) 2015 came into operation on 11 February 2015.

Classification

- 6 The Inquiry is within the Accounting Boundary of OFMDFM and its financial performance will be consolidated within OFMDFM's resource accounts.

MEMORANDUM OF UNDERSTANDING

- 7 This Memorandum of Understanding must be read in the context of the Act, the Rules made under section 21 of the Act, and the Order made under section 1(3) of the Act.

- 8 The Inquiry is an independent public inquiry. It is in the public interest for the Inquiry to be conducted at all times in a way that ensures:
- The independence of the Chairperson and panel members in order to meet the Terms of Reference; and
 - That the Inquiry is conducted as economically and expeditiously as possible.
- 9 None of the provisions in this Memorandum of Understanding or its annexes shall be read or applied in such a way as to derogate from or compromise these principles.
- 10 Within financial limits agreed by FM and dFM, and approved by DFP, OFMDFM will finance the Inquiry and pay certain witness expenses, having due regard to OFMDFM and the Inquiry securing value for public money, so as to enable the Inquiry to fulfil its Terms of Reference in an efficient and expeditious manner.

Purpose of this document

- 11 Part 1 of this Memorandum of Understanding sets out the broad framework within which the Inquiry will operate and includes:
- The conditions under which any public funds are paid to the Inquiry;
 - How expenditure associated with the Inquiry will be accounted for; and
 - Staff management and security issues.
- 12 Part 2 sets out in greater detail certain aspects of the financial provisions which the Inquiry shall observe. However, the Memorandum of Understanding does not convey any legal powers or responsibilities.

Review, amendment, interpretation and publication of this document

- 13 OFMDFM will review this Memorandum of Understanding annually in consultation with the Inquiry, including:

- Six months before the completion date of the Inquiry; and
 - In the event of any amendment to the Terms of Reference or to the Act.
- 14 The Inquiry or OFMDFM may propose amendments to this document at any time. Any such proposals by the Inquiry shall be considered in the light of operational factors and the track record of the Inquiry. The guiding principle shall be that the extent of flexibility and freedom given to the Inquiry shall reflect the quality of its internal controls to achieve performance and its operational needs. OFMDFM shall determine what changes, if any, are to be incorporated in the document. This Memorandum of Understanding may also be supplemented from time to time by the issue of new or additional guidance. A protocol between the Inquiry and Sponsor Branch has been developed and agreed regarding the interface between OFMDFM and the Inquiry and the detail underpinning the various financial and governance matters addressed in the MOU. The protocol can be reviewed by either party at any time and updated with the agreement of both parties.
- 15 This Memorandum of Understanding has been approved by OFMDFM and signed and dated by OFMDFM and the Inquiry Secretary.
- 16 Any question regarding the interpretation of the document shall be resolved by OFMDFM after consultation with the Inquiry.
- 17 Copies of this document and any subsequent substantive amendments shall be provided to the Inquiry Chairperson, panel members and staff and to relevant staff within OFMDFM and be placed by OFMDFM in the Library of the Assembly. The Inquiry will place this document and any subsequent substantive amendments on its website.

RESPONSIBILITY AND ACCOUNTABILITY

- 18 **FM and dFM acting jointly** are accountable to the Assembly for the funding and support of the Inquiry. They may designate their Junior Ministers to assist them in the discharge of these duties.

19 The responsibilities of **FM and dFM acting jointly** include:

- Setting the Terms of Reference and announcing them in the Assembly having agreed them with the Chairperson and the Executive
- Making and achieving Assembly agreement to any amendments to the Terms of Reference, having first agreed them with the Chairperson and the Executive;
- Appointing the Chairperson of the Inquiry;
- Appointing panel members, having first consulted the Chairperson;
- Approving the amount of financial support to the Inquiry;
- Reporting as appropriate to the Executive and to the Assembly on matters relating to the Inquiry; and
- Receiving the Inquiry report, laying it in the Assembly as soon as practicable after it is published and referring it to the Executive Committee.

20 **OFMDFM** is responsible for:

- providing financial and other resources to the Inquiry;
- meeting certain witness expenses, in accordance with the Act and the Rules; and
- publishing within a reasonable time after the end of the Inquiry, the total amount it has paid or remains liable to pay in respect of the Inquiry.

21 **OFMDFM's Departmental Accounting Officer**, in the context of his wider responsibilities for the standard of financial management in OFMDFM as a whole, is accountable to the Assembly for expenditure by or in relation to the Inquiry. He designates the Inquiry Secretary as the Inquiry's Senior Accountable Officer and may withdraw the Senior Accountable Officer designation if he believes the incumbent is no longer suitable for the role.

- 22 In particular, **OFMDFM's Departmental Accounting Officer** shall ensure that:
- the financial and other management controls applied by OFMDFM are appropriate and sufficient to safeguard public funds;
 - the Inquiry's compliance with these controls is effectively monitored;
 - the internal controls applied by the Inquiry conform to the requirements of regularity, propriety and good financial management; and
 - appropriate action is taken, in line with the Act, if the Inquiry operates outwith its terms of reference.
- 23 Within OFMDFM, the Sponsor Branch for the Inquiry **sits within the Social Investment and Victims Division**. The Branch, in consultation as necessary with the OFMDFM Departmental Accounting Officer and others, is the main source of advice to FM and dFM on the discharge of their duties in respect of the Inquiry, and the primary OFMDFM contact for the Inquiry.
- 24 The Sponsor Branch shall carry out its duties under the management of a senior officer, who shall have primary responsibility within the team for overseeing the financial accountability of the Inquiry.
- 25 The Oral Hearings for the Historical Institutional Abuse Inquiry take place in Banbridge Courthouse. OFMDFM and the Northern Ireland Courts and Tribunals Service (NICTS) are the two parties to the Memorandum Of Terms of Occupation (MOTO). Attached to the MOTO are the Marching In Report and Inventory of Assets. The period of occupation was from 1st December 2013, with the right to terminate the agreement from 30th September 2015 or anytime thereafter. Following the HIA Inquiry Chairman's application to extend the Inquiry until January 2017, the NICTS have agreed to extend the Banbridge Courthouse lease until 30 September 2016, with an option to extend for an additional seven months (until April 2017). Whilst OFMDFM is the occupier, the Courthouse is to be used by the Historical Institution Abuse Inquiry. Reference

has been made to the MOTO with regard to the responsibilities of the Sponsor Branch.

- 26 The Sponsor Branch will advise FM and dFM on
- the agreed budget forecast of the Inquiry and its performance against it;
 - progress being made by the Inquiry in respect of its Terms of Reference;
 - issues that the Inquiry would like brought to the attention of FM and dFM; and
 - issues which the Sponsor Branch require to be brought forward to the attention of FM and dFM e.g. legal challenges.
- 27 In support of the OFMDFM Departmental Accounting Officer, the Sponsor Branch will:
- Continuously monitor the Inquiry's financial activities through an adequate and timely flow of information from the Inquiry on budgeting, control, and risk management; (Part 2 – Financial Matters, paragraph 77 et al refers) including early sight of the Inquiry's Governance Statement;
 - Meet the Inquiry Secretary bi-monthly to keep abreast of the Inquiry's plans, progress and expenditure, and to address issues arising from the Inquiry's Terms of Reference, legislation or financial approvals;
 - Address in a timely manner any significant problems concerning the Inquiry's finances or other resources;
 - When reviewing the Memorandum of Understanding (and more often if necessary), assess the risk associated with the Inquiry's activities, the public money at stake, its governance arrangements, the openness of communication and/or other relevant issues; if necessary, strengthen the oversight arrangements and/or amend this document; and

- Inform the Inquiry of relevant OFMDFM and DFP policy and procedures on financial management in a timely manner, advise as necessary on the interpretation of that policy; and issue specific guidance to the Inquiry as necessary.
- 28 **The Chairperson and the Inquiry Panel Members** are appointed in writing by FM and dFM in line with the Act. The terms and conditions of their appointments are set out in their respective Letters of Appointment.
- 29 The Chairperson and Inquiry Panel Members are each accountable for the proper management of resources and expenditure on Inquiry business in so far as each is individually responsible for such resources or expenditure, or involved in decision making about such resources or expenditure. That accountability will normally be through the Inquiry Secretary, in his capacity as Senior Accountable Officer, to OFMDFM's Departmental Accounting Officer.
- 30 **The Chairperson** is responsible for formulating the Inquiry's strategy to ensure fulfilment of the Inquiry Terms of Reference. He will ensure that panel members are fully briefed as to their duties, responsibilities and involvement.
- 31 Subject to any provision of the Act or the Rules, the procedure and conduct of the Inquiry are to be such as the Chairperson may direct. In making any decision as to the procedure or conduct of the Inquiry, the Chairperson must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds, to witnesses or others). The Act confers upon the Chairperson certain powers to assist him in the conduct of the Inquiry.
- 32 **The Chairperson and Inquiry Panel Members** are responsible for:
- Carrying out the Inquiry;
 - Ensuring the work of the Inquiry is in line with its Terms of Reference;
 - Regular and efficient, economic and effective use of the Inquiry's resources, including funds, staff, equipment and other resources; and

- Delivering high standards of regularity, propriety, probity and impartiality.

33 The **Inquiry Secretary** is the Senior Accountable Officer for the Inquiry and as such is responsible to the Departmental Accounting Officer for:

- Reviewing the Inquiry's 3 year outline plan and resource profile and submitting same to OFMDFM by 31 March;
- Preparing the Inquiry's annual business plan and forecast of expenditure and communicating the profiles to OFMDFM;
- Ensuring that all public funds made available to the inquiry are used for the purpose intended by the Assembly;
- Ensuring that the Sponsor Branch is notified in a timely manner of all legal challenges to facilitate notification to Ministers and, as appropriate, is copied into relevant documents and alerted to any financial implications.
- Ensuring the effective oversight of the day-to-day operational matters in Banbridge Courthouse as well as the effective management of the contracts awarded in relation to the facility i.e. legal support services, security, cleaning, hospitality and any other ad hoc contracts which may occur.
- Ensuring that such monies, together with the Inquiry's assets, equipment and staff, are used economically, efficiently and effectively;
- Ensuring that the Inquiry's affairs are conducted with probity and in line with Managing Public Money NI and with relevant OFMDFM and DFP guidance and requirements;
- Maintaining a comprehensive system of internal delegated authorities that are notified to all staff, together with a system for regularly reviewing compliance with these delegations;

- Ensuring that robust internal management and financial controls are maintained by the Inquiry, including effective measures against fraud and theft;
- Ensuring that the Inquiry operates within the limits of its remit and any delegated authority agreed by the OFMDFM Departmental Accounting Officer, and in accordance with any other conditions relating to the use of public funds indicated by the OFMDFM Departmental Accounting Officer or by DFP;
- Providing OFMDFM with timely forecasts, monthly profiles and variance reports at +/- 1.5% tolerance; and monitoring information on performance and finance and notifying it promptly if overspends or underspends are likely in line with the Monitoring Rounds process and year end requirements;
- Ensuring profile, oversight and control of funding from HMH via NIO to the Inquiry to discharge its enhanced function with regard to Kincora;
- Ensuring effective liaison with Whitehall Departments and Agencies either directly or through the NIO as required in completion of the Kincora module.
- Notifying in a timely manner any other significant management or financial problems and whether detected by Internal Audit or other means;
- Ensuring that a system of risk management is maintained to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
- Taking corrective or other appropriate action as necessary in response to likely overspends or other adverse financial risks;
- Implementing risk management and other relevant financial or management guidance issued by DFP;
- Signing a governance statement regarding the Inquiry's system of internal control;

- Signing a quarterly assurance statement prepared in line with OFMDFM requirements;
- Ensuring that effective procedures for handling complaints about the Inquiry are in place and widely known within the Inquiry;
- Giving evidence, normally with the OFMDFM Departmental Accounting Officer, if summoned before the Public Accounts Committee on the use and stewardship of public funds by the Inquiry;
- Ensuring compliance with the requirements of the Data Protection Act 1998;
- Ensuring that effective personnel management policies are maintained; and
- Acting in accordance with the terms of this document. Also act in accordance with the instructions and relevant guidance in Managing Public Money NI (particularly Chapter 3), the Treasury document Regularity and Propriety and Value for Money, and other instructions and guidance issued from time to time by OFMDFM and by DFP.

34 As Senior Accountable Officer, the Inquiry Secretary is personally responsible for safeguarding the public funds for which he has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the Inquiry.

35 **The Inquiry Chairperson, Panel and Staff** shall act in accordance with their wider responsibilities to:

- comply at all times with the rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their appointment for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations and to declare publicly and to the board any private interests that may be perceived to conflict with their public duties; and

- act in good faith and in the best interests of the inquiry.

PLANNING, BUDGETING AND CONTROL

The business plan

- 36 The purposes of planning are to enable the Inquiry to fulfil its Terms of Reference and to enable OFMDFM to plan its financial support of the Inquiry.
- 37 The business plan shall include key targets and milestones for the year immediately ahead and shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by OFMDFM. The annual Business Plan should be submitted to the Sponsor Branch by the end of January for approval by the Departmental Board.
- 38 DFP reserves the right to ask to see and agree the Inquiry's annual business plan.

Reporting performance to OFMDFM

- 39 The Inquiry shall operate management information and accounting systems which enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in its business plan.
- 40 The Inquiry Secretary shall take the initiative in informing OFMDFM of changes in external conditions, which make the achievement of the Terms of Reference more or less difficult, or which may require a change to the budget or objectives as set out in the business plan.

Budgeting procedures

- 41 The Inquiry's budgeting procedures are set out in Part 2 of this Memorandum which deals with financial matters.

Internal Audit

- 42 The administration, financial and governance function of the Inquiry shall fall within OFMDFM's internal audit arrangements and will be audited in accordance with the Government Internal Audit Standards (GIAS). Copies of all final audit reports will be copied to OFMDFM's Departmental Accounting Officer.

- 43 All the Inquiry's procedures and processes should comply with audit requirements. Auditors should be given access to the Inquiry's management and financial records, but not to records concerning the evidence obtained by the Inquiry, the analysis or interpretation of that evidence, the decisions of the Panel, the Inquiry's dealings with witnesses and other parties to the Inquiry or any other records where this would conflict with the overriding principal of independence outlined at paragraph 7 above.

Fraud

- 44 The Inquiry shall notify OFMDFM of any subsequent changes to its Anti-Fraud Policy or to the Fraud Response Plan. The Anti-Fraud Policy and the Fraud Response Plan will be reviewed by OFMDFM as necessary.
- 45 The Inquiry shall report immediately to OFMDFM all frauds (proven or suspected) including attempted fraud. OFMDFM shall then report the frauds immediately to DFP and the Comptroller and Auditor General. In addition the Inquiry shall forward to OFMDFM an annual fraud return commissioned by DFP, on fraud and theft suffered by the Inquiry.

Whistle Blowing

- 46 The Inquiry shall ensure that whistle blowing procedures are in place that are consistent with the Public Interest (Northern Ireland) Order 2003 and comply with DAO (DFP) 02 15. (See paragraph 53 below)

Register of interests

- 47 The Inquiry shall maintain a written register of interests and provide a copy of that document and any changes to it, to OFMDFM. Panel members, Inquiry staff and others engaged on Inquiry business (including Counsel for the Inquiry, Assessors, consultants and contractors) must declare any interest they have in respect of the nature of the Inquiry.
- 48 A record should be kept of any financial interest by panel members or inquiry staff in any company or consultant engaged in connection with the Inquiry.

- 49 A record should be kept if an Inquiry panel member or member of the Inquiry staff knows any of the parties or witnesses to the Inquiry.

STAFF MANAGEMENT

Selecting and recruiting staff

- 50 Where a post has been approved by the OFMDFM Departmental Accounting Officer, OFMDFM Human Resources (HR) will advise on appropriate recruitment methods and processes and their timescales, in line with NICS recruitment policies. Where it has been deemed appropriate for a post (permanent or temporary) to be recruited directly from an employment agency, the Inquiry shall conduct all necessary processes with the employment agency to secure the services of the individual the Inquiry wishes to appoint.
- 51 The Inquiry Secretary will agree with OFMDFM HR the recruitment route and timetable, and will provide to OFMDFM HR full documentation, including job descriptions, appropriate to the agreed route and timetable.
- 52 The Inquiry Secretary will be responsible for ensuring that processes, procedures and panel composition reflect good practice, including all matters in relation to equal opportunities.

Managing staff

- 53 Within the arrangements approved by OFMDFM, the Inquiry shall be responsible for managing and motivating its staff. To this end the Inquiry Secretary shall ensure that:
- the Inquiry's rules for the management of staff create an inclusive culture in which diversity is fully valued and where there is no discrimination on grounds of gender, marital status, domestic circumstances, sexual orientation, race, colour, ethnic or national origin, religion, disability, community background or age;
 - the level and structure of the Inquiry's staffing, including grading and numbers of staff, are appropriate to its functions and the requirements of efficiency, effectiveness and economy;

- the performance of the Inquiry's staff at all levels is satisfactorily appraised;
- the Inquiry's staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the Inquiry's objectives;
- proper consultation with staff takes place on key issues affecting them;
- appropriate and adequate grievance, disciplinary and attendance management procedures are in place;
- whistle blowing procedures consistent with the Public Interest (Northern Ireland) Order 2003 and adherence to DAO (DFP) 02 15 are in place;(see para 46 above)
- staff are aware of the implications of the Act and the Rules;
- a code of conduct for staff is in place and that this includes conduct in relation to victims and survivors and witnesses, including the need to protect privacy and maintain confidentiality; and
- staff are aware of their responsibilities under the Official Secrets Act 1989.

Health and safety

- 54 The Inquiry Secretary must ensure that all necessary risk assessments are carried out and that all necessary health and safety and fire safety policies, procedures, practices and arrangements are in place. In so doing he will consult OFMDFM, the Health and Safety Executive and others as necessary.
- 55 The Inquiry Secretary will continue to engage with Carecall as required on counselling arrangements for Inquiry staff, including introductory interviews as part of the induction programme, and will encourage staff to use the service. Welfare Services will also be available for NICS staff.

- 56 The Inquiry Secretary will ensure staff avail of advice and training which will contribute to their health and safety and to that of those coming to the Inquiry.

Security and criminal record checks

- 57 The Inquiry Secretary will ensure that all staff and panel members (and if necessary Counsel) have the required security and criminal records check including AccessNI clearance.

DATA, RECORDS AND INFORMATION

Data protection and security

- 58 The Inquiry will ensure that data security policies are in place and that it adheres to relevant provisions of the Act and the Rules, the Public Record Act (NI) 1923 and the Data Protection Act 1998.
- 59 The only electronic equipment that should be used in relation to the Inquiry is that issued by OFMDFM or Enterprise Shared Services. Under no circumstances should personal computers or other unauthorised electronic equipment be used for this work.

Restriction Orders

- 60 The Act bestows on the Chairperson the power to make Orders imposing restrictions on the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry. It bestows on OFMDFM, after the end of the Inquiry, the power to revoke any such Orders which are still in force, or to remove or relax any of their restrictions.
- 61 Before the end of the inquiry, the Inquiry Solicitor must provide to OFMDFM a list of all Restriction Orders which will remain in force after the end of the Inquiry, together with an indication of why the disclosure restrictions should remain in force and when they should be reviewed.

INQUIRY CONDUCT AND PROCEDURE

- 62 The Inquiry will discuss as early as practicable with OFMDFM any plans to advertise or hold hearings in another jurisdiction. OFMDFM will liaise as appropriate with other authorities to

help ensure protocol is observed, to garner support and to facilitate the work of the Inquiry.

MEETINGS

- 63 The Head of the Sponsor Branch will continue bi-monthly meetings with the Inquiry Secretary to keep abreast of the Inquiry's plans, progress and expenditure including variance reports as per paragraph 33; and to address issues arising from the Inquiry's Terms of Reference, legislation or financial approvals.
- 64 The Head of the Sponsor Branch will ensure that an appropriate record of the meeting is made and agreed with the Inquiry Secretary.

PART 2 - FINANCIAL MATTERS

INTRODUCTION

- 65 This Part of the Memorandum of Understanding sets out certain aspects of the financial framework within which the Inquiry is required to operate.
- 66 The terms and conditions set out in the combined Memorandum of Understanding may be supplemented by guidelines or directions issued by OFMDFM.
- 67 The Inquiry shall satisfy the financial conditions and requirements set out in the Memorandum of Understanding, together with such other conditions as OFMDFM may impose.

The Departmental Expenditure Limit (DEL)

- 68 The Inquiry's current and capital expenditure form part of OFMDFM's Resource Departmental Expenditure Limits (DEL) and Capital DEL respectively.

Budgeting procedures

- 69 The Inquiry will review its' 3 year outline plan and resource profile following OBC 2 addendum formal approval and resubmit to the OFMDFM for the achievement of the Inquiry Terms of Reference.
- 70 By an agreed date each year, the Inquiry will propose to OFMDFM its annual business plan for agreement and a proposed expenditure profile for the coming year, paragraph 36 refers.
- 71 OFMDFM will provide to the Inquiry a formal statement of the budget which has been allocated to the Inquiry for implementation of its agreed business plan over the coming year. OFMDFM has been allocated no resource funding for the Inquiry. OFMDFM will bid for this funding in the in-year monitoring rounds following direct liaison/agreement with the Inquiry on its funding requirements. OFMDFM will confirm the outcome of the monitoring round to the Inquiry.

- 72 In determining the Inquiry's budget, OFMDFM will consider the Inquiry's proposed business plan in the context of competing priorities across OFMDFM.

General conditions for authority to spend

- 73 Once the Inquiry's budget has been agreed by OFMDFM, the Inquiry shall have authority to incur expenditure approved in the budget.
- 74 OFMDFM has delegated to the Inquiry the authority to spend in relation to certain categories of expenditure and within certain limits. These delegated limits are at Annex A.
- 75 The Inquiry must not, without prior written approval from OFMDFM and if necessary DFP, enter into any undertaking to incur any expenditure which falls outside any delegations to the Inquiry or which is not provided for in the Inquiry's annual budget as approved by OFMDFM.
- 76 Inclusion of any planned and approved expenditure in the Inquiry's budget shall not remove the need to seek formal departmental and where necessary, DFP approval.
- 77 The Inquiry must obtain the approval of OFMDFM and DFP, before:
- committing to any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications, including on staff benefits;
 - making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the OFMDFM; and
 - making any change of policy or practice which has wider financial implications (e.g. because it might prove repercussive among other public sector bodies) or which might significantly affect the future level of resources required. (OFMDFM will advise on what constitutes "significant" in this context).
- 78 The Inquiry has no delegated authority to reclassify expenditure between any of the three main classifications of expenditure, i.e. Administration, Programme and Capital.

Monitoring and reporting expenditure

- 79 Each month once data is available on COGNOS, the Inquiry will provide to OFMDFM the information it needs in order to monitor the Inquiry's expenditure on costs centres 08053 and 08059, including revised profiles, variance reports +/- 1.5% tolerance levels, accruals, prepayments, prompt payments, cash management and forecast by resource heading; also other data required for the DFP Outturn and Forecast Outturn Return. Any other monthly financial returns required from the Inquiry by Retained Finance Function and EqSD will be channelled through the Sponsor Branch.
- 80 The Inquiry will provide to OFMDFM all relevant information and financial data required to inform the Monitoring Rounds process.
- 81 The Inquiry will provide to OFMDFM such information about its operations, performance, individual projects or other expenditure as OFMDFM may reasonably require, as detailed in paragraphs 79-80 above.
- 82 In the context of its wider financial oversight responsibilities, the OFMDFM Board will consider quarterly reports about the Inquiry's progress and expenditure.

Best value for money

- 83 The Inquiry is responsible for procurement up to the £30,000 threshold set out in the delegated limits (Annex A). The Inquiry will be responsible for ensuring that it demonstrates that value for money has been secured for each procurement exercise.
- 84 All procurement above the £30,000 threshold will be taken forward by OFMDFM on behalf of the Inquiry. Procurement by OFMDFM on the Inquiry's behalf of works, supplies and services shall be based on best value for money, i.e. the optimum combination of whole life cost and quality (or fitness for purpose) to meet the Inquiry's requirements. Where appropriate, a full option appraisal shall be carried out before procurement decisions are taken.

Timeliness in paying bills

- 85 The Inquiry shall collect receipts and pay all matured and properly authorised invoices in accordance with the terms of contracts or within 10 days as set out in Annex 4.5 and 4.6 of *Managing Public Money Northern Ireland* and any relevant guidance issued by DFP or by OFMDFM.

Risk management

- 86 The Inquiry shall ensure that the risks it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance. It shall implement and maintain a risk management strategy, including contingency planning to ensure business continuity, in accordance with the Treasury guidance *Management of Risk: A Strategic Overview* (The "Orange Book").

Fraud and theft

- 87 The Inquiry shall adopt and implement policies and practices to safeguard itself against fraud and theft, in line with DFP's guide *Managing the Risk of Fraud*.
- 88 The Inquiry shall take proportionate and appropriate steps to assess the financial and economic standing of any organisation or other body with which it intends to enter into a contract.
- 89 All cases of attempted, suspected or proven fraud shall be reported to the OFMDFM as soon as they are discovered, irrespective of the amount involved. OFMDFM shall immediately report such incidents to DFP and the Comptroller and Auditor General. Paragraphs 44 and 45 refer.

Staff costs

- 90 Staffing numbers and grades, and the start date and duration of each post have been approved by OFMDFM and DFP. Any variation to these arrangements must be agreed by OFMDFM, and if necessary DFP. The Inquiry shall ensure that the creation of any additional posts does not incur forward commitments which will exceed its ability to pay for them.

Pay and conditions of service for Inquiry staff

- 91 Civil servants working for the Inquiry shall be employed by, or be on loan to, OFMDFM. Their remuneration and terms and conditions (including superannuation) are within the general Northern Ireland Civil Service (NICS) pay structure. NICS terms and conditions will apply other than where separate terms and conditions exist.
- 92 Other public servants working for the Inquiry shall be seconded to OFMDFM on remuneration and terms and conditions (including superannuation) pertaining to their employer.
- 93 Agency workers' terms and conditions will be as set out in their contract with the Agency.
- 94 Travel expenses and subsistence will be reimbursed according to NICS rules and rates. Any OFMDFM policies will apply.
- 95 The Inquiry has no power to vary terms and conditions.

Panel members' contracts

- 96 The Chairperson and Panel Members have each received Letters of Appointment setting out their respective terms and conditions, including their remuneration and allowances. Any amendments to the terms and conditions will be reflected in revised Letters of Appointment.

Appointments by the Chairperson

- 97 Section 4 (1) of the Act provides that the Chairperson may appoint one or more persons to act as assessors to assist the inquiry panel. The Chairperson may also appoint Counsel to the inquiry.
- 98 Such appointments do not fall under the terms of FD (DFP) 07/12 (use of professional services including consultants) nor are they subject to normal procurement considerations.
- 99 Any such appointments must, however, be within financial approvals and profiles.
- 100 Sponsor Branch will ensure Chair and Panel Member's contracts comply with DAO (DFP) 09/13.
- 101 Prior to the appointment of assessor(s) the Inquiry must set out its procedures for ensuring that the process for appointment is transparent and that it complies with good practice in respect of VFM and proprietary considerations.
- 102 Assessors must be appointed in writing. The appointment documentation must detail the Inquiry's requirements and set out the terms and conditions of the appointment, including the fees and expenses payable. Where the Inquiry wishes to seek expert advice on a one-off basis or seek advice from a relevant practitioner in another jurisdiction, it will follow this process and make the appointment in writing based on VFM considerations setting out any fees or expenses that will be payable.
- 103 Under their terms and conditions they must be required to adhere to OFMDFM requirements in respect of gifts and hospitality. Travel expenses and subsistence will be reimbursed according to NICS rules and rates and any OFMDFM policies will apply.
- 104 Where necessary, Sponsor Branch will assist the Inquiry by seeking DSO or Finance Division advice on terms and conditions.

Capital expenditure

105 The Inquiry's budget does not include capital.

Economic appraisal

106 The Inquiry or OFMDFM, as appropriate, is required to apply the principles of economic appraisal, with appropriate and proportionate effort, to all decisions and proposals concerning spending or saving public money, including European Union (EU) funds, and any other decisions or proposals that involve changes in the use of public resources. For example, appraisal must be applied irrespective of whether the relevant public expenditure or resources:

- involve capital or current spending, or both;
- are large or small; or
- are above or below delegated limits.

107 Appraisal itself uses up resources. The effort that should go into appraisal and the detail to be considered is a matter for case-by-case judgement, but the general principle is that the resources to be devoted to appraisal should be in proportion to the scale or importance of the objectives and resource consequences in question. Judgement of the appropriate effort should take into consideration the totality of the resources involved in a proposal.

108 General guidance on economic appraisal that apply to Inquiries can be found in:

- DFP's on-line guide *The Northern Ireland Guide to Expenditure Appraisal and Evaluation* ("NIGEAE", 2009). See <http://www.dfpni.gov.uk/eag> and
- The HM Treasury Guide, *The Green Book: Appraisal and Evaluation in Central Government* (2003).

Lending, guarantees, indemnities, contingent liabilities and letters of comfort

109 The Inquiry shall not, without OMFDFM's and where necessary, DFP's prior written consent, lend money, charge any asset or security, give grants, give gifts, or give any

guarantee or indemnities or letters of comfort, or incur any other contingent liability (as defined in Annex 5.5 of Managing Public Money NI), whether or not in a legally binding form.

- 110 The Inquiry must not enter into Procurement procedures valued at over £30,000.
- 111 When necessary, OFMDFM will enter into procurement procedures on behalf of the Inquiry. In this event, the views of the Inquiry will be taken fully into account. The Inquiry Secretary will be fully apprised and involved in any procurement procedures and activity.
- 112 Where OFMDFM enters into procurement procedures in respect of the Inquiry, it will follow Departmental policies. These reflect the public procurement policy adopted by the Executive in May 2002 (refreshed May 2009); Procurement Guidance Notes; and other guidelines or guidance issued by DFP and the Procurement Board. Its procurement activity will be carried out in the context of its Service Level Agreement with Central Procurement Directorate. OFMDFM will consult DFP Supply as necessary.

Competition

- 113 Contracts shall be awarded on a competitive basis and tenders accepted from suppliers who provide best value for money overall.
- 114 Direct Award Contract is the process where a contract is awarded to an economic operator (i.e. supplier, contractor) without competition. In light of their exceptional nature, any Direct Award Contracts require the prior written approval of the OFMDFM Departmental Accounting Officer before any tender is awarded. If contemplating a Direct Award Contract, the first step must be to seek Departmental Accounting Officer advice.
- 115 The Inquiry must explain in its Quarterly Stewardship Report any contracts awarded during that quarter, in which it did not employ competitive tendering.

Leasing

- 116 The leases for property occupied by the Inquiry will be negotiated on behalf of OFMDFM in consultation with the Inquiry. OFMDFM will ensure that leases are held securely and provide the Inquiry with copies. The Inquiry will comply with the Terms of the leases.
- 117 Before entering into any service leasing agreements the Inquiry must demonstrate the leases offers better value for money than purchase, and it must obtain the prior written agreement of OFMDFM.

Hospitality and gifts

- 118 The Inquiry, in consultation with OFMDFM, must ensure that a comprehensive set of guidelines on the provision and acceptance of hospitality is in place. Reference should be made to DAO (DFP) 10/06 (Revised).
- 119 The Inquiry its panel members and staff should not, as a rule, retain any' gifts, bequests, or similar donations. The Inquiry shall keep a written record of any such gifts, bequests and donations offered to the Inquiry, its panel members and staff, and of their estimated value and whether they are disposed of, declined or retained.
- 120 The Inquiry must not make any gifts, grants or donations.

Reimbursement of receipted travelling expenses and financial loss for victims and survivors giving testimony to the Acknowledgement Forum or the Statutory Inquiry

- 121 The Inquiry shall administer the reimbursement of receipted travelling expenses and financial loss (section 14(1)(a) of the Act) incurred by victims and survivors in giving testimony to the Acknowledgement Forum or to the Statutory Inquiry.
- 122 Where receipted travelling expenses are reimbursed in cash, the Inquiry will do this in strict adherence to the cash reimbursement procedure approved by OFMDFM Internal Audit.

- 123 Receipted expenses in terms of air travel and associated accommodation, where required, will be reimbursed through standard AccountNI procedures.

Use of consultants

- 124 The Inquiry shall adhere to the guidance issued by DFP, as well as any produced by OFMDFM in relation to the use of consultants.
- 125 The Inquiry will identify in its quarterly Stewardship Reports the status of any consultancies completed and/or started during that quarter.
- 126 Care should be taken to avoid actual, potential, or perceived conflicts of interest when employing consultants.

Commercial insurance

- 127 The Inquiry must not take out any insurance without the prior written agreement of OFMDFM and of DFP.

Loss and third party claim

- 128 The Inquiry will alert OFMDFM immediately to any event which is likely to involve loss or a third-party claim.
- 129 Losses shall not be written off until all reasonable attempts to make a recovery have been made and proved unsuccessful.
- 130 Write-offs and compensation payments or other special payments may be made only with the prior written agreement of OFMDFM.
- 131 In the case of a major loss or third-party claim OFMDFM shall liaise with the Inquiry about the circumstances in which an appropriate addition to budget out of OFMDFM's funds and/or adjustment to the Inquiry's budgets might be considered. OFMDFM will liaise with DFP Supply where required in such cases.

MANAGEMENT AND DISPOSAL OF ASSETS

Register of assets

- 132 The Inquiry shall maintain an accurate and up-to-date register of its IT assets and its equipment.

IT assets

- 133 Unless otherwise specified, all IT assets (including Blackberries) supplied to the Inquiry for use in either Microfocus House or Banbridge Courthouse, its panel and staff are the property of Enterprise Shared Services.
- 134 Users are responsible for the secure and safe keeping of IT Assets in line with NICS Policies.
- 135 Any loss or theft of, damage to or malfunction of IT assets must be reported immediately by the registered user to ITAssist on 0300 1234 155 or itassist@nigov.net.
- 136 All IT assets must be returned to Enterprise Shared Services at the end of the end of the Inquiry, or before that if they are no longer required.

Equipment and furniture

- 137 Unless otherwise stated, all equipment and furniture supplied for use in connection with the Inquiry is the property of OFMDFM.
- 138 Any loss or theft of, damage to or malfunction of such assets must be reported to OFMDFM.
- 139 All such assets must be returned to OFMDFM as part of the winding-up of the Inquiry or before that if they are no longer required.

COMPLIANCE WITH INSTRUCTIONS AND GUIDANCE

Relevant documents

- 140 The Inquiry shall comply with the following general guidance documents:

This Memorandum of Understanding;

Managing Public Money Northern Ireland (MPMNI)

Government Internal Audit Standards, issued by DFP

Managing the Risk of Fraud issued by DFP

The Treasury document The Government Financial Reporting Manual (FReM) issued by DFP

DFP's on-line guide The Northern Ireland Guide to Expenditure Appraisal and Evaluation ("NIGEAE", 2009). See <http://www.dfpni.gov.uk/eag>

The HM Treasury Guide, The Green Book: Appraisal and Evaluation in Central Government (2003).

Relevant DFP Dear Accounting Officer and Finance Director letters

CPD: Procurement Guidance Note PGN 04/12: Procurement Control Limits and Basis for Contract Awards

CPD: Procurement Guidance Note PGN 02/14: Implementation of Article 6 of the Energy Efficiency Directive

Regularity, Propriety and Value for Money, issued by Treasury

The Consolidation Officer Letter of Appointment, issued by DFP

Other relevant instructions and guidance issued by OFMDFM or DFP including Procurement Board and Central Procurement Division Guidance

Specific instructions and guidance issued by OFMDFM

Recommendations made by the Public Accounts Committee, or by other Assembly authority, which have been accepted by the government and which are relevant to the Inquiry

ANNEX A – DELEGATED LIMITS FOR PROCUREMENT

General

1. The delegated expenditure limits in this annex have been agreed by OFMDFM. Adherence to these limits will be verified through regular test drilling by OFMDFM.
2. All delegated limits operate under the procurement control limits set out in CPD's Procurement Guidance Note PGN 04/12.
3. The Inquiry must not enter into any contractual obligations which extend beyond the lifetime of the Inquiry without the prior approval of OFMDFM.

Exclusions

4. This Annex does not cover the appointment of Assessors or Counsel by the Inquiry Chairperson as these are not procurement processes. One-off appointments should also be regarded within the definition of assessors as defined in section 4(1) of the Act "the person has expertise that makes the person a suitable person to provide assistance to the inquiry panel".

Delegated limits

5. Inquiry procurement will not include Capital Purchases, IT Purchases, or purchases for Construction Works or Services.

Table 1 – Summary of Delegated Limits

	Goods and Services (£k)	Capital (£k)	IT Projects (£k)	Consultancy (£k)	DACs (£k)
HIA Inquiry	60*	0	0	0	5*

**These delegations are assigned to the Inquiry Secretary.*

Procurement of Goods, Services and Works

6. The HIA Inquiry has delegated authority with respect to purchasing as set out in Table 2 below.

Table 2 - Delegated Authority for the Purchase of Goods, Services and Works (All costs exclude VAT)

Threshold	Number / Type of Tender Required	Authorisation
Up to £5,000	The Inquiry must demonstrate that value for money has been secured. (Guidance is set out below)	The Secretary to the Inquiry
>£5,000 but less than £30,000	The Inquiry must take forward all procurement in this category in conjunction with CPD and using PGN 04/12.	The Secretary to the Inquiry
>£30,000		OFMDFM will handle all procurement above £30,000

Guidelines for purchases up to £5,000

7. Purchases under £5,000 will be classified as procurement expenditure but they are not subject to the full range of procurement rules. However, the Inquiry must ensure that all purchases below £5,000 are subject to normal value for money considerations and are in compliance with Managing Public Money Northern Ireland.
8. In meeting this requirement, the Inquiry must ensure that the:
- purchase is not covered by an existing framework, call-off arrangement, standing lists or e-catalogue;
 - purchase is a one-off requirement;
 - total spend, which must be less than £5,000, must cover the combined costs of all purchases associated with the initial requirement; and
 - requirement is clearly specified.

9. The Inquiry should carry out a price check (which could include internet price checks) with at least two suppliers to ensure value for money has been achieved. Price checks should be documented and retained on file for audit purposes.

Guidelines for purchases greater than £5,000 but less than £30,000

10. The Inquiry Secretary must ensure that any purchases greater than £5,000 but less than £30,000 are taken forward in conjunction with CPD; either through a tender process undertaken by CPD or in accordance with a Service Level Agreement (SLA) agreed with CPD.

Guidelines for purchases greater than £30,000

11. OFMDFM will take forward any procurement greater than £30,000 in conjunction with CPD. In so doing, OFMDFM will be supported by the Inquiry with the provision of a robust and complete specification in a timely manner to facilitate required procurement considerations and any internal approvals process.