

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

Inquiry into Historical Institutional Abuse Bill (NIA 7/11-15)

**Report on the Outcome of Consideration by Statutory Committees
Together with Proceedings of the Committee Relating to the Report**

**Ordered by the Committee for the Office of the First Minister and deputy First Minister
to be printed 24 October 2012
Report: NIA 79/11-15**

Membership and Powers

Powers

The Committee for the Office of the First Minister and deputy First Minister is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Office of the First Minister and deputy First Minister and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the First Minister and deputy First Minister.

Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

- Mr. Mike Nesbitt (Chairperson)
- Mr. Chris Lyttle (Deputy Chairperson)
- Mr. Colum Eastwood
- Miss Megan Fearon¹
- Mr. Paul Givan²
- Mrs. Brenda Hale³
- Mr. Alex Maskey
- Mr. John McCallister⁴
- Ms. Bronwyn McGahan⁵.
- Mr. Stephen Moutray⁶
- Mr. George Robinson

1 With effect from 10 September 2012 Ms Megan Fearon replaced Mr Francie Molloy

2 With effect from 01 October 2012 Mr Paul Givan replaced Mr Tom Buchanan

3 With effect from 01 October 2012 Mrs Brenda Hale replaced Mr Trevor Clarke

4 With effect from 15 October 2012 Mr John McCallister replaced Mr Danny Kinahan

5 With effect from 10 September 2012 Ms Bronwyn McGahan replaced Ms Cairtriona Ruane

6 With effect from 01 October 2012 Mr Stephen Moutray replaced Mr William Humphrey

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List of Abbreviations

ACAL	Association of Child Abuse Lawyers
CAMHS	Child and Adolescent Mental Health Services
CASI	Computer Assisted Self Interview
CEO	Chief Executive Officer
CLC	Children’s Law Centre
DALO	Departmental Assembly Liaison Officer
DE	Department of Education
DHSSPS	Department of Health, Social Services and Public Safety
DOE	Department of the Environment
DUP	Democratic Unionist Party
ECHR	European Convention on Human Rights
ECt.HR	European Court of Human Rights
EFM	Explanatory and Financial Memorandum
FM and DFM	First Minister and deputy First Minister
GB	Great Britain
HIA	Historical Institutional Abuse
HRA	Human rights Act
HRC	Human Rights Commission
HSCB	Health and Social Care Board
ICCPR	International Covenant on Civil and Political Rights
LAC	Looked After Child
MLA	Member of Legislative Assembly
MOU	Memorandum of Understanding
NI	Northern Ireland
NIHRC	Northern Ireland Human Rights Commission
NIO	Northern Ireland Office
NIA	Northern Ireland Assembly
NSMC	North South Ministerial Council
NISCC	Northern Ireland Social Care Council
OFMDFM	Office of the First Minister and deputy First Minister
POCVA	Protection of Children and Vulnerable Adults
PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
RQIA	Regulation and Quality Improvement Authority
SAVI	Sexual Abuse and Violence in Ireland
SAVIA	Survivors and Victims of Institutional Abuse
SDLP	Social Democratic and Labour Party
SVGO	Safeguarding Vulnerable Groups Order 2007
UK	United Kingdom
UN	United Nations
UNCAT	United Nations Committee Against Torture
UNCRC	United Nations Convention on the Rights of the Child

Section 1: Introduction

Background

1. The Executive announced on 29 September 2011 that there would be an investigation and inquiry into historical institutional abuse. The Inquiry into Historical Institutional Abuse Bill (NIA 7/11-15) (the Bill) was introduced to the Assembly on 12 June 2012 and referred to the Committee for the Office of the First Minister and deputy First Minister for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 25 June 2012. At introduction the Ministers of the Office of the First Minister and deputy First Minister made the following statement under Section 9 of the Northern Ireland Act 1998:

“In our view the Inquiry into Historical Institutional Abuse Bill would be within the legislative competence of the Northern Ireland Assembly”

2. The Inquiry into Historical Institutional Abuse Bill, states its overall purpose as “A Bill to make provision relating to an inquiry into institutional abuse between 1945 and 1995”. The Bill and its Explanatory and Financial Memorandum can be accessed at

<http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/>

3. The inquiry’s terms of reference and announcement of the inquiry chair and four inquiry panel members were set out in a written statement to the Assembly on 31 May 2012. A copy of the written statement is at appendix 5.
4. The terms of reference provide that the inquiry is to make findings and recommendations on whether there were systemic failings by the state or institutions in their duties towards those children under 18 for whom they provided residential care between 1945 and 1995 (both years inclusive). An institution is any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which provided residential accommodation and took decisions about and made provision for the day to day care of children.
5. The inquiry is also to make recommendations and findings on an apology (by whom and the nature of the apology); an appropriate memorial or tribute to those who suffered abuse; and the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims. However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the inquiry and investigation report. The inquiry is expected to conclude with a period of two years, six months following the commencement of the legislation with the chairperson’s report to follow within six months of the inquiry’s investigations concluding.

Second Stage of the Inquiry into Historical Institutional Abuse Bill

6. Junior Minister Bell’s opening statement to the Assembly, in moving the Second Stage of the Bill on 25 June 2012, highlighted the work that was undertaken by the Executive in bringing the Bill to the Assembly, this included the establishment, in December 2010, of an interdepartmental taskforce to consider the nature of an inquiry and to recommend how it could be taken forward. The task force consulted victims and survivors, including at open meetings in Belfast, Derry/Londonderry and Armagh. Junior Minister Bell advised the House that having considered the task force report, the Executive announced in September 2011 that an inquiry would be set up.

7. Junior Minister Bell set out that the inquiry will have two main elements, an acknowledgement forum and the judicial inquiry process and that the inquiry will make findings and recommendations on four issues.
 - (i) Whether there were systemic failings by the state or institutions in their duties towards those children under 18 for whom they provided residential care between 1945 and 1995, both years inclusive.
 - (ii) The inquiry will make findings and recommendations on an apology; that is, who should make the apology and what the nature of the apology should be.
 - (iii) An appropriate memorial or tribute to those who suffered abuse.
 - (iv) The requirement or desirability for redress to be provided by either the institutions or the Executive to meet the particular needs of victims.
8. Junior Minister Bell highlighted the importance of the confidential acknowledgement forum in providing an opportunity for victims and survivors to talk about their childhoods in the institutions, how they were treated and what they endured.
9. The Chairperson of the Committee for the Office of the First Minister and deputy First Minister welcomed the Bill and highlighted to the Assembly the arrangements that the Committee had made to receive and take evidence on the clauses of the Bill during Committee Stage. The Chairperson also highlighted that the Committee had only had a limited opportunity to consider the Bill up to that point and that the Committee facilitated a briefing on the Bill from Departmental officials at short notice, on 6 June 2012.

Pre-Introduction Committee Scrutiny

10. Prior to the introduction of the Bill, the Committee received one briefing from Departmental officials on the draft Bill on 6 June 2012. The briefing focused on the terms of reference, the appointment of the Chair and the draft Bill. The Minutes of Evidence from this and other briefings and evidence sessions can be found at
<http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/>
11. During the briefing session, the Committee raised a number of issues with officials including the scope of the Bill, changes to the terms of reference and the length of the inquiry.

Committee Stage Scrutiny of the Inquiry into Historical Institutional Abuse Bill

12. The Committee had before it the Inquiry into Historical Institutional Abuse Bill (NIA 7/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill.
13. During the period covered by this Committee Stage Report on the Bill, the Committee considered the Bill and related issues at 10 of its meetings. The relevant extracts from the minutes of proceedings for the meetings, as appropriate, are included at appendix 1.
14. On referral of the Bill to the Committee after Second Stage, the Committee wrote on 18 June 2012 (see appendix 5) to key stakeholders and inserted signposting notices in the Belfast Telegraph, Irish News and News Letter seeking written evidence by 27 July 2012. The Committee also requested submissions on the Bill from the Committee for Justice, the Committee for Education and the Committee for Health, Social Services and Public Safety.
15. A total of 19 submissions were received by the Committee, copies of the submissions are included at appendix 3.

Extension of the Committee Stage of the Bill

16. At its meeting of 5 September 2012, the Committee agreed a draft motion to extend the Committee Stage of the Bill to 26 October 2012. On 17 September 2012, the Assembly agreed to extend the Committee Stage of Bill to 26 October 2012. The Hansard record of this is available at

<http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/Minutes-of-Evidence/>

Committee's Approach to the Committee Stage Scrutiny of the Bill

17. Stakeholders were asked to structure written submissions to address specific clauses of the Bill. While the Committee was waiting for submissions it sought and took a briefing from officials on 26 June 2012 on the Department's consultation undertaken in preparing the Bill. At the same meeting the Committee was briefed by Assembly Research and Information Services and considered a research paper on the Bill.
18. On 4 July 2012, the Committee sought and took a briefing from the Chair of the Inquiry Panel, Sir Anthony Harte, who was accompanied by Ms Norah Gibbons, Member of the Acknowledgment Panel and Mr Andrew Browne, Secretary to the Inquiry. Sir Anthony Harte gave the Committee his initial thoughts on how he saw the inquiry progressing and how it would be commencing its work.
- <http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/Minutes-of-Evidence/>
19. At its meetings on 5, 12 and 19 September 2012, the Committee took oral evidence from stakeholders who had made written submissions. A list of those who gave oral evidence is at appendix 4.
20. Following each of the evidence sessions, the Committee agreed to request the Department's view on the issues raised both in the written submissions and in oral evidence to the Committee. All written submissions were shared with the Department. The Committee also agreed to share all written submissions with the Inquiry Chairperson in order to seek his views on some of the issues raised.
21. On 26 September 2012, the Committee was briefed separately by the Department and by the Inquiry Chairperson, who responded to the issues that were raised in submissions and during oral evidence sessions.
22. To assist the Committee with its scrutiny of the Bill, the Committee received advice from the Assembly's Examiner of Statutory Rules and advice on several subjects from the Assembly's Legal Services. The Assembly's Research and Information Service provided the Committee with a Research Paper on the Bill.
23. The Committee undertook informal clause by clause deliberations at its meeting on 10 October 2012, considered the Department's response to Committee requests for amendments at its meeting on 10 October, and commenced its formal clause-by-clause scrutiny of the Bill on 17 October 2012.
24. The Minutes of Evidence of all the evidence sessions can be found at appendix 2. The Minutes of Proceedings of each meeting at which the Bill was considered are at appendix 1.
25. The Committee approved the Appendices to this Report on the Bill at its meeting on 24 October 2012. At its meeting on 24 October 2012, the Committee agreed its Report on the Bill and agreed that it should be printed.

Section 2: Consideration of the Bill

The Long Title – A Bill to make provision relating to an inquiry into institutional abuse between 1945 and 1995.

26. The Committee received considerable evidence in relation to the 1945 - 1995 period that the inquiry covers. In relation to the 1945 date, a significant number of submissions indicated that the inquiry should be able to investigate abuse that occurred in institutions pre-1945. There were also some responses that made a case for the removal of the 1995 date.
27. The Inquiry Chairperson stated that he had no issues with the 1945 date being rolled back but warned of time and resource implications if the 1995 date was moved forward. The Department also advised that Ministers were “*very sympathetic to the removal of that (1945) parameter*”.
28. The Committee at its meeting on 3 October 2012, agreed to request that the Department bring forward an amendment to replace the 1945 date with 1922. At the Committee meeting on 10 October the Department provided the Committee with draft Departmental amendments to the Bill to address this and an amended Terms of Reference which would be issued to give effect to the change from ‘1945’ to ‘1922’. First Minister and deputy First Minister issued a written ministerial statement on 18 October 2012 containing amended terms of reference reflecting this change.

Clause 1 – The inquiry

29. This clause authorises the First Minister and deputy First Minister acting jointly to set up an inquiry into historical institutional abuse between 1945 and 1995, the terms of reference for which were announced to the Assembly on 31 May 2012 and which the Ministers acting jointly may amend.
30. Clause 1(2) refers to the Terms of Reference which sit outside the Bill. The Committee received a number of submissions recommending that the Terms of Reference be placed within the Bill. During his evidence on 26 September 2012, the Inquiry Chairperson expressed concern that bringing the terms of reference into the Bill would mean it would take longer to amend them if that proved necessary. There was no consensus within the Committee for bringing the Terms of Reference within the Bill.
31. Clause 1 (3) provides for the First Minister and deputy First Minister acting jointly to amend the Terms of Reference. This was an issue raised in a number of submissions and in evidence to the Committee and specifically highlighted by the Examiner of Statutory Rules in his advice to the Committee on delegated powers. NIHR raised the lack of any provision for consultation with victims in relation to any amendment of the terms of reference. The Department’s position was that the normal principles governing consultation provide adequate guarantees of consultation.
32. At the meeting on 26 September 2012, the Department advised that it would be bringing forward an amendment to provide for changes to the Terms of Reference to be made by way of order subject to draft affirmative resolution of the Assembly. The Committee welcomed this decision and its meeting on 10 October 2012 considered and was satisfied with the proposed Departmental amendments to give effect to this change.
33. Clause 1(4) states the name of the inquiry, including the 1945 – 1995 period. On 10 October 2012 the Committee considered and was satisfied with a proposed Departmental amendment to change ‘1945’ to ‘1922’.
34. Clause 1 (5) makes it clear that the Inquiry Panel must not rule on and has no power to determine any person’s civil or criminal liability. The Department provided clarification that the “statutory framework requires that, where allegations of child abuse come to light, these

must be reported immediately to PSNI and social services for investigation.” The inquiry panel “is not intended to replace the PSNI or the courts in investigating criminal activity.” The Inquiry Chairperson advised that he is working with the PSNI to establish protocols to address these issues.

Clause 2 – Appointment of members

35. This clause enables the Ministers acting jointly, after consulting the presiding member, to make further appointments, either to fill vacancies which arise or, if necessary, to increase the number of panel members.
36. There were no issues raised in relation to this clause during the Committee’s consultation.

Clause 3 – Duration of appointment of members

37. Clause 3 deals with the duration of inquiry members’ appointment, including First Minister & deputy First Minister’s power, acting jointly, to terminate such appointments. A number of submissions to the Committee suggested that this power undermined the inquiry’s independence. The Department emphasised the reasonable grounds which Ministers’ required in order to terminate (and that these could not threaten independence). The Department also highlighted the requirement to consult the inquiry chairperson before ending the appointment of other inquiry panel members. The Committee was broadly content with this provision in light of reassurances from the Department.

Clause 4 – Assessors

38. Clause 4 allows for assessors to be appointed to provide the inquiry with the expertise it needs to fulfil its terms of reference.
39. There were no issues raised in relation to this clause during the Committee’s consultation.

Clause 5 – End of the inquiry

40. Subsection (1) of Clause 5 provides that the inquiry ends when its report has been submitted and its terms of reference fulfilled. Subsection (2) provides for First Minister and deputy First Minister acting jointly, after consulting the presiding member, to bring the inquiry to an end by giving written notice to the Inquiry Chairperson setting out the reasons for the decision and laying that notice in the Assembly as soon as is reasonably practicable.
41. During the Committee’s consideration of the Bill, this issue was raised in a number of submissions and by witnesses who gave oral evidence to the Committee. The Department advised that it sees this clause as a safeguard for unforeseen circumstances.
42. The Committee considered the possibility of an amendment to require an affirmative resolution in the Assembly when Ministers have taken the decision to close the inquiry.
43. At its meeting on 3 October 2012, the Committee requested Assembly Research to provide the Committee with a briefing paper on the mechanisms for bringing inquiries to an end which have been used in other situations. The Committee considered the briefing paper at its meeting on 10 October and noted that clause 5(1)(b) of the Bill mirrors a similar provision in section 14 of the Inquiries Act 2005. The section 14 power to give notice was considered by the Northern Ireland Court of Appeal which said ‘We have reached the view that the independence of the inquiry could not be said to have been compromised by section 14 of the 2005 Act.’
44. While most members of the Committee expressed themselves content with clause 5 at the meeting on 10 October 2012, some members indicated a preference for Ministers’ power to end the inquiry be exercisable subject to affirmative resolution of the Assembly. During the Committee’s final clause by clause decision making on 17 October 2012 a Member proposed an amendment to that effect which was defeated by eight votes to two.

Clause 6 – Evidence and Procedure

45. Clause 6 deals with evidence and procedure and provides that the chairperson *‘In making any decision as to the procedure or conduct of the inquiry ... must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)’*.
46. Submissions from the perspective of both victims and institutions raised concerns that the duty to have regard to the need to avoid unnecessary cost, particularly around legal representation, could adversely affect the inquiry’s effectiveness. While most members of the Committee were content on this issue some members still had reservations.
47. The Committee sought clarification from the Department whether the estimated costs of the inquiry in the Financial and Explanatory Memorandum, some £7.5m-£9m, remained accurate. Officials advised that the estimated costs have been revised upwards to £15m-£19m to take into account the complexities of the inquiry and estimated legal costs. Departmental officials assured the Committee that the necessary funds would be made available despite the absence of a current budget line for the expenses of the inquiry.
48. On 10 October 2012 officials briefed the Committee on proposed Departmental amendments to clause 6 to provide that statements from witnesses to the inquiry, on oath and by live television link, would be treated for the purposes of Article 3 the Perjury (Northern Ireland) Order 1979 as having been made in Northern Ireland. Members raised no issues in relation to these proposed amendments.

Clause 7 – Public access to inquiry proceedings and information

49. Clause 7 requires the inquiry chairperson to take whatever steps he judges reasonable to ensure that the public can attend the inquiry or see and hear a transmission of it, and can access evidence available to it.
50. There were no issues raised in relation to this clause during the Committee’s consultation or deliberations. Just before its final clause by clause decisions on the Bill on 17 October 2012, the Committee received proposed Departmental amendments to make it clear that the proceedings of the Acknowledgement Forum element of the inquiry are to be held in private and that references to the ‘inquiry’ in Clause 7 do not include the Acknowledgement Forum. Officials spoke to these proposed amendments and Members were content with them.

Clause 8 – Restrictions on public access, etc.

51. Clause 8 enables the Inquiry Chairperson to make restriction orders in relation to attendance at all or part of the inquiry and in relation to the disclosure or publication of any evidence or documents provided to the inquiry.
52. The Northern Ireland Human Rights Commission’s submission raised a concern that the Bill did not provide for representations to be made by interested parties prior to an order being granted. The Department clarified that, under normal legal principles, anyone adversely affected by the making of a restriction order should be given the opportunity to make a case against the making of an order.
53. The Department confirmed that the rules to be made governing procedure would be subject to public consultation.
54. At its meeting on 10 October 2012, the Committee considered a proposed Departmental amendment to clause 8 to provide that a restriction order might also be made in respect of the ‘disclosure or publication of the identity of any person’. Members raised no issues in relation to this proposed amendment.

Clause 9 – Powers to require production of evidence

55. Clause 9 provides the chairperson of the inquiry with a broad power to serve notices requiring the production of evidence, including the attendance of persons and provision of documents,
56. There were no issues raised in relation to this clause during the Committee's consultation.

Clause 10 – Privileged information, etc.

57. Clause 10 provides that witnesses before the inquiry may not be required by notice under clause 9 to give evidence or produce documents if they could not be required to do so in civil proceedings in a court in Northern Ireland. The Inquiry Chairperson advised that the inquiry would not compel anyone who refused to answer a question on the basis that it might incriminate him or her.
58. There were some submissions that raised issues in relation to provision for disclosure, specifically access for institutions under investigation to information and records relevant to the case they would have to meet. The Chair advised that the inquiry will make available to individuals/ institutions under investigation all material relating to them and allow reasonable time in which to consider all such material and prepare what they wished to say to the inquiry, before moving to a public hearing.
59. A concern was also raised in relation to the use in subsequent legal proceedings of documents which come into existence in the course of the inquiry, and whether the anticipated adversarial nature of the inquiry proceedings created any specific difficulties. Having considered advice on these issues, the role of the inquiry chairperson in ordering the inquiry's proceedings, including his duty to act with fairness, and the privilege afforded to witnesses by clause 10, the Committee was broadly satisfied.

Clause 11 – Expenses of witnesses, etc.

60. Clause 11 provides that OFMDFM may award such amounts as it thinks reasonable to a person in respect of compensation for loss of time and in respect of expenses incurred, including legal expenses.
61. During evidence, there were a number of concerns raised in relation to the payment of legal costs for witnesses and choice of legal representation. The Department confirmed that the Bill enables OFMDFM to make rules subject to negative resolution, which will be subject to consultation. Just before its final clause by clause decisions on the Bill on 17 October 2012 the Committee received proposed Departmental amendments to Clause 11 and officials spoke to them. The amendments included clarification of the respective roles of the Inquiry Chairperson and OFMDFM in relation to decisions about expenses. Members indicated that they were content with the proposed amendments.

Clause 12 – Payment of inquiry expenses by OFMDFM

62. This clause requires OFMDFM to meet the expenses of the inquiry and delineates the circumstances in which these will not be paid. OFMDFM may give notice to the inquiry chairperson certifying that certain matters are outside the inquiry's terms of reference and will not pay expenses relating to them (from the date that notice is given).
63. In written submissions and oral evidence the Northern Ireland Human Rights Commission and Amnesty International raised concerns in relation to the impact of this power on the independence of the inquiry. The Department advised that the withdrawal of funds would only happen in the highly unlikely event that the Inquiry persisted in activities that were outside the Terms of Reference.
64. The Committee took advice regarding the Northern Ireland Human Rights Commission's view that the Bill does not meet the required level of protection under the European Convention on Human Rights. The NIHRC's concerns focussed on the independence of the inquiry and the

impact on independence of a range of powers including the power in clause 12 in relation to not paying the inquiry's expenses. Other powers highlighted by the NIHRC included OFMDFM's power to amend the terms of reference, to serve notice bringing the inquiry to an end (clause 5), and power to terminate the appointments of inquiry members (clause 3). The NIHRC also raised concerns regarding the lack of provision for consultation with those who would be affected by changes to the terms of reference and the reduced time limit for judicial review.

65. Advice to Committee, regarding those issues raised by NIHRC which touch on the independence of the inquiry, indicated they relate to discretionary powers which cannot, under section 24 of the Northern Ireland Act 1998, be exercised by Ministers in a way which is incompatible with the ECHR.
66. In the overall context of the inquiry's independence, the Committee was also reassured by Ministers agreement to bring forward a Departmental amendment to provide that changes to the inquiry's terms of reference would be subject to affirmative resolution of the Assembly.
67. Just before its final clause by clause decisions on the Bill on 17 October 2012 the Committee received a proposed Departmental amendment to Clause 12 which inserted a specific obligation on OFMDFM to pay any amounts awarded under Clause 11 – "Expenses of witnesses, etc". Members indicated that they were content with this amendment.

Clause 13 – Offences

68. Clause 13 makes non-compliance with notices served under Clause 9 or Clause 8 an offence. It creates offences in relation to intentionally distorting or altering evidence produced to the inquiry or preventing evidence coming before the inquiry, as well as offences in relation to the intentional concealing or destruction of relevant documents.
69. There were no issues raised in relation to this clause during the Committee's consultation. Just before its final clause by clause decisions on the Bill on 17 October 2012 the Committee received a proposed Departmental amendment to Clause 13 details of which can be found at paragraph 147 below. Officials spoke to the proposed amendment at the meeting on 17 October and Members indicated that they were content with it.

Clause 14 – Enforcement by the High Court

70. Clause 14 provides that where a person breaches a restriction order or a notice issued under Clause 9, or threatens to do so, the inquiry chairperson may certify the matter to the High Court, which can then take steps to enforce the order.
71. There were no issues raised in relation to this clause during the Committee's consultation. Just before its final clause by clause decisions on the Bill on 17 October 2012 the Committee received a proposed Departmental amendment to Clause 14 details of which can be found at paragraph 148 below. Officials spoke to the proposed amendment at the meeting on 17 October 2012 and Members indicated they were content with it.

Clause 15 – Immunity from suit

72. Clause 15 provides immunity for the inquiry panel, the inquiry's legal advisers, assessors, staff and anyone else engaged to assist it from any civil action for anything done or said in the course of carrying out their duty to the inquiry.
73. During evidence sessions, some institutions raised concerns in relation to the accounts which victims will provide to the Acknowledgement Forum, namely that victims' accounts of abuse would be accepted without the robustness of what may be damaging allegations being tested.
74. The Department clarified that the Acknowledgement Forum will proceed in private and will feed into the judicial aspect of the inquiry. The investigation and inquiry panel will test the

robustness of the evidence. The Department considers that these processes are a matter for the inquiry chairperson.

75. The Chair commented that any inquiry into a matter of public interest, sitting in public, inevitably involves the risk of unsubstantiated allegations being raised and inquired into. It will be the duty of the inquiry to ensure that only allegations that appear to be of substance are proceeded with and the inquiry would make it clear when these are justified and when they are unjustified.

Clause 16 – Time limit for judicial review

76. Clause 16 of the Bill provides for a time limit of 14 days for bringing applications for judicial review of decisions of OFMDFM in relation to the inquiry or decisions of inquiry panel members, subject to the 14 day limit being extended by the High Court.
77. Written submissions and oral evidence to the Committee raised concerns in relation to the shortening of the timescale for applying for judicial review. The Committee sought advice on this issue. The Inquiry Chairperson's evidence to the Committee was quite emphatic that a 14 day limit would present no difficulty to competent legal practitioners. In light of its advice and the evidence of the Inquiry Chairperson, the Committee was broadly content with clause 16.

Clause 17 – Power to make supplementary, etc. provision

78. Clause 17 provides the power to make supplementary provision.
79. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill. The Committee, having considered the advice from the Examiner of Statutory Rules, raised no issues in relation to this clause.

Clause 18 – Rules

80. Clause 18 enables OFMDFM to make rules subject to negative resolution in relation to the evidence and procedure under Clause 6, the return or keeping of documents under Clause 9 and in particular to the award of witness expenses under Clause 16.
81. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill. The Committee, having considered the advice from the Examiner of Statutory Rules, raised no issues in relation to this clause.
82. Just before its final clause by clause decisions on the Bill on 17 October 2012 the Committee received a proposed Departmental amendment to Clause 18 allowing for rules to be made to provide that evidence given for the purposes of any particular part of the inquiry must not be disclosed (i) in the proceedings of any other part of the inquiry unless the chairperson so orders: or (ii) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of Convention rights (within the meaning of the Human Rights Act 1998). The heading of the draft amendment received indicated that the intention behind the amendment was to protect the Acknowledgement Forum's documents. However, officials informed the Committee that the proposed amendment would enable rules to be made in relation to other elements of the inquiry, not just the Acknowledgement Forum. Having heard from officials Members indicated that they were content with the proposed amendment.
83. Two further proposed Departmental amendments to Clause 18 were received at the same time relating to the envisaged role of the inquiry panel in the assessment of awards under Clause 11 and transferring that responsibility to the Inquiry Chairperson. Having heard from officials Members indicated that they were content with the proposed amendment.

Clause 19 – Application to the Crown

84. This clause binds the Crown so that the powers conferred by this Bill can be exercised in relation to Departments.

85. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill.
86. At its meeting on 10 October 2012, the Department advised the Committee that it is considering bringing forward an amendment to modernise the language used in this clause but this was not available for the Committee to consider.

Clause 20 – Consequential amendments

87. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill and the Committee raised no issues in relation to it.

Clause 21 – Interpretation

88. Concerns regarding the lack of a definition of ‘abuse’ and ‘institution’ (in the terms of reference) are considered below.
89. The Committee requested the Department bring forward the necessary amendments so that the chairperson of the inquiry would be referred to in the Bill as the inquiry ‘chairperson’ instead of ‘presiding member’.
90. At its meeting on 10 October 2012 the Committee considered proposed Departmental amendments to give effect to this change and raised no issue in relation to them.
91. At its meeting on 10 October 2012 the Committee also considered another proposed Departmental amendment to clause 21, inserting a definition of ‘harm’ to make clear that ‘harm’ includes ‘death and injury’. This amendment was deemed necessary in relation to ‘harm’ for the purposes of clause 8(4)(b) – where “any risk of harm or damage that could be avoided or reduced ...” is one of the matters which the chairperson must have regard to when considering making a restriction order under clause 8.
92. The Committee raised no issues in relation to this proposed amendment.

Clause 22 – Commencement, etc.

93. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill and the Committee raised no issues

Clause 23 – Short title

94. No issues were raised in relation to this clause in the submissions or evidence to the Committee on the Bill and the Committee raised no issues

Terms of Reference

95. Many of the written submissions to the Committee on the Bill related to issues dealt with by the Terms of Reference and a number of submissions suggested that the terms of reference be brought within the Bill itself rather than remaining in a Ministerial statement. While the Committee considered the inclusion of the terms of reference in the Bill itself the Committee did not agree to do so. The Committee’s consideration on a number of issues arising from the terms of reference is set out below.

Inquiry’s power to make findings and recommendations

96. A key issue raised during evidence was whether the inquiry would be able to make recommendations about changes to law, practice and procedure to prevent future abuse. Many of the submissions received believed that the terms of reference did not provide for such recommendations.
97. The Department indicated that it felt the terms of reference were broad enough to include such recommendations. The Chair believed the power to make such recommendations

was implicit in the terms of reference but considered it would be helpful by way of allaying concerns for this to be made explicit.

98. The Committee agreed to request that Ministers consider an appropriate amendment to make the inquiry's power in this regard explicit.

99. On 10 October 2012 officials provided the Committee with proposed revised terms of reference for the inquiry including the insertion of the text in bold italics in the following section of the terms of reference

*On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. **Bearing in mind the need to prevent future abuse**, the report will make recommendations and findings on the following matters:*

- *An apology - by whom and the nature of the apology;*
- *Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;*
- *Recommendations as to an appropriate memorial or tribute to those who suffered abuse;*
- *The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.*

100. The Committee considered this proposed change to the terms of reference and agreed to write to the Department to request that Ministers consider the addition of a specific fifth bullet point to the list to provide for 'Recommendations on changes to law, practice and procedure to prevent future abuse'. At its meeting on 17 October 2012, the Department advised that it would not be making any further amendments to the Terms of Reference in this regard. Most Members were satisfied with the amendment to the terms of reference in conjunction with the Inquiry Chairperson's evidence to the Committee on 4 July 2012 that he was satisfied that he could address this issue.

"I see our role as making findings about what happened; that is clear from our terms of reference. If it becomes apparent to us — particularly as we look at the latter part of our period, up to 1995 — that there is reason to believe that some practices and procedures may still be continuing, I see no difficulty in making appropriate recommendations for further work or consideration."

101. During the Committee's final clause by clause decisions on the Bill a Member proposed an amendment to insert in Clause 1 a provision that '*The Inquiry may report recommendations on changes to law, practice and procedure to prevent future abuse.*' The amendment was defeated by eight votes to two.

Redress, delay, elderly victims and survivors

102. Another key issue in the Terms of Reference raised during the Committee's evidence gathering was the nature of the redress which the inquiry may recommend, the length of time it would take for the inquiry to report and for the Executive to discuss and agree any potential redress (possibly 2016 or after) and the impact of that delay on elderly victims and survivors.

103. Many submissions highlighted this issue and some suggested the possibility of an interim report on redress/reparation to enable thinking on this issue to be progressed without waiting for the final report.

104. The Department's position was that redress is an issue for the Executive to decide upon receipt of the inquiry report. The Inquiry Chairperson stated that he thought it would be difficult to provide an interim report and make recommendations on redress without having heard all the evidence.

105. Some Members expressed concern regarding this issue and during its final clause by clause decisions on the Bill the Committee considered, but rejected, a Member's proposed amendment to provide that the inquiry may publish an interim report on the requirement or desirability for redress.

Recommendation: The Committee recommends that First Minister and deputy First Minister facilitate and expedite Executive discussion and agreement on the nature and extent of potential redress upon receipt of the Inquiry's recommendations in that regard.

Nature of Reparation/Redress

106. There were a number of submissions which sought clarity around the nature of the redress on which the inquiry is to make recommendations – The Terms of Reference states:

“the requirement or desirability for redress to be provided by the institution and/or Executive to meet the particular needs of victims.”

107. The Department advised that it is for the Executive to decide in light of the inquiry's recommendations. The Inquiry Chairperson didn't consider it appropriate to voice an opinion and indicated that this was an issue that the panel would look at with victims and everyone else.

Definition of “Institution” and scope of the Bill

108. The Committee also received a number of submissions highlighting the limitations on scope of the inquiry to “Institutions” as defined and indicating a need for the scope of the inquiry to be expanded to cover abuse outside institutions.

109. Other witnesses supported the scope of the present inquiry but emphasised that action is required to acknowledge and meet the needs of victims who suffered abuse outside of ‘institutions’.

110. The Department indicated that

“... the categories to be covered by the inquiry and investigation were selected because of the very particular vulnerable nature of this type of residential care.”

“The experiences in other jurisdictions have also indicated that the profile of victims of institutional abuse is different from those who have suffered clerical abuse in other contexts. Consequently, designing a process that aims to bring closure to both categories of victim would be extremely challenging and may result in a framework that falls short of meeting the needs of both groups.”

111. The Inquiry Chairperson indicated that widening the scope would require a complete restructuring of the inquiry and significantly affect resources and the time needed to produce its Report.

112. The Committee acknowledges that there are victims and survivors of abuse who fall outside the scope of the Inquiry into Historical Institutional Abuse and will engage further with OFMDFM on this issue.

Definition of Abuse

113. Another issue raised in a number of submissions was whether ‘abuse’ should be a defined term within the legislation or terms of reference – particularly in light of other inquiries such as *Ryan* and relevant international conventions/guidance.

114. The Department suggested that “abuse” was clear from the Terms of Reference, namely:

“... failings by institutions or the state in their duties towards those children in their care ...”

The Inquiry Chairperson stated that if a definition of abuse was placed in the Bill it may prove to be restrictive and unhelpful.

Duration of Inquiry

115. There were a number of submissions around the anticipated two year, 6 month, duration of the inquiry and the perception that the inquiry chairperson's right to request an extension of time related only to the 6 month period following the inquiry's conclusion.

116. The Inquiry Chairperson expressed the view that it may be helpful if he had a formal right to request an extension.

117. The Department has clarified that the extension provision in the Terms of Reference applies to the whole of the lifetime of the inquiry - not just the report writing stage but the inquiry and investigation stage of the process.

Publication of the Inquiry Report

118. There were a number of submissions received on the arrangements for publication of the inquiry report. The terms of reference are silent on the arrangements for publication but submissions indicated a concern about where the authority to publish lay, the timing of publication and whether publication would be in full or in part.

119. The Department's response states that the inquiry's report will be published once it has been concluded and that Ministers have no intention of delaying publication or withholding parts. It also clarified that there would be a report from the Acknowledgement Forum.

120. The Inquiry Chairperson stated:

“To allay any public concern there may be about that, I think that there is much to be said for the chairman of any inquiry being the person who is responsible for the publication of the report.”

121. On 3 October 2012 the Committee agreed to request that Ministers consider an amendment to make explicit the inquiry chairperson's authority to publish the inquiry report.

122. At its meeting on 10 October 2012 the Committee considered draft amendments from the Department on this issue and was briefed by officials. These involved the insertion in the Bill of two new clauses after clause 10. The first requiring the inquiry chairperson to deliver the report of the inquiry to Ministers two weeks before publication. The second providing that the inquiry chairperson must make arrangements for the report to be published and related provisions. A third proposed new clause would require Ministers to lay the inquiry report before the Assembly at the time of publication or as soon afterwards as is reasonably practicable.

123. The Committee raised no issues in relation to these proposed new clauses.

Delegated Powers

124. The Committee's consideration of delegated powers is set out under the relevant clauses of the Bill above.

Section 3: Final Decisions on Clause by Clause Scrutiny of the Bill

Introduction

125. Section 2 of this report contains the details of the Committee’s “Consideration of the Bill”. What follows are the final decisions on the Committee’s scrutiny of the Clauses of the Bill. Members and other readers of this report may wish to refer back to the relevant paragraphs in Section 2 of the report to gain a full understanding of the Committee’s consideration on the individual Clauses, alongside the final decisions set out below.

CLAUSE 1 – The inquiry

126. The Committee agreed that it was content with the Department’s proposed amendments. The amendments change the 1945 date to 1922, place a requirement for changes to the Terms of Reference to be approved by resolution of the Assembly and change the term “presiding member” to “chairperson”. The amendments are as follows:

Clause 1, Page 1, Line 7

Leave out ‘31st May’ and insert ‘[new date xxxxxxxxxxxxxxxx]’

Clause 1, Page 1, Line 8

Leave out ‘amend the terms of reference of the inquiry at any time’ and insert ‘at any time amend the terms of reference of the inquiry by order’

Clause 1, Page 1, Line 9

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 1, Page 1, Line 10

At end insert ‘if a draft of the order has been laid before, and approved by resolution of, the Assembly’

Clause 1, Page 1, Line 12

Leave out ‘1945’ and insert ‘1922’

127. Mr Eastwood proposed the following amendments to provide that the Inquiry may report recommendations on changes to law, practice and procedure to prevent future abuse.

Clause 1, page 1, line 5

At beginning insert—

‘Subject to this section,’

Clause 1, page 1, line 7

At end insert—

‘(2A) The inquiry may report recommendations on changes to the law, practice and procedure to prevent future abuse.’

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle.

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

128. Mr Eastwood proposed the following amendment in relation to the Power of the inquiry to issue an interim report on the requirement or desirability of redress.

Clause 1, page 1, line 16

At end insert—

‘(6) Without prejudice to any finding it may make in its final report, the inquiry panel may publish an interim report on the requirement or desirability for redress to be provided by the Executive to victims of historical institutional abuse.’

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle.

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

129. The Chairperson proposed that the Committee is content with Clause 1 subject to the proposed Departmental amendments set out above.

The Committee divided:

Ayes: Miss Fearon, Mr Givan, Mrs Hale, Mr Lyttle, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

Noes: None

Abstention: Mr Eastwood

130. Agreed: The Committee is content with Clause 1 subject to the Department’s proposed amendments as set out above.

CLAUSE 2 – Appointment of members

131. Agreed: the Committee is content with Clause 2 subject to proposed Departmental amendments to change the term “presiding member” to “chairperson” as follows:

Clause 2, Page 1, Line 21

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 5

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 8

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 9

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 10

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 3 – Duration of appointment of members

132. Agreed: the Committee is content with Clause 3 subject to proposed Departmental amendments to change the term “presiding member” to “chairperson” as follows:

Clause 3, Page 2, Line 41

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 3, Page 2, Line 42

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 4 – Assessors

133. Agreed: the Committee is content with Clause 4 subject to proposed Departmental amendments to change the term “presiding member” to “chairperson” as follows:

Clause 4, Page 3, Line 11

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 4, Page 3, Line 13

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 4, Page 3, Line 16

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 5 – End of inquiry

134. The Committee agreed that it was content with the Department’s amendments. The amendments change the term “presiding member” to “chairperson” and are as follows:

Clause 5, Page 3, Line 21

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 5, Page 3, Line 23

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 5, Page 3, Line 28

Leave out ‘presiding member’ and insert ‘chairperson’

135. Mr Eastwood proposed the following amendment to provide that Ministers’ power to bring the Inquiry to an end by giving notice to the Inquiry Chairperson should be exercisable by way of order subject to affirmative resolution of the Assembly:

Clause 5, page 3, line 23

Leave out from “a notice” to the end of line 24 and insert—

‘an order made by the First Minister and deputy First Minister acting jointly’.

Clause 5, page 3, line 25

Leave out “a notice” and insert “an order”.

Clause 5, page 3, line 26

Leave out “notice is sent” and insert “order is made”.

Clause 5, page 3, line 29

Leave out “give a notice” and insert “make an order”.

Clause 5, page 3, line 31

Leave out “set out in the notice” and insert “publish”

Clause 5, page 3

Leave out lines 32 and 33.

Clause 5, page 3, line 33

At end insert—

‘(5) No order shall be made under subsection (1)(b) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.’

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle.

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

136. The Chairperson proposed that the Committee is content with Clause 5 subject to the proposed Departmental amendments set out above.

The Committee divided:

Ayes: Miss Fearon, Mr Givan, Mrs Hale, Mr Lyttle, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

Noes: None

Abstention: Mr Eastwood

137. Agreed: the Committee is content with Clause 5 subject to the Department’s proposed amendments changing ‘presiding member’ to ‘chairperson’ set out above.

CLAUSE 6 – Evidence and procedure

138. Agreed: The Committee is content with Clause 6 subject to the Department’s proposed amendments in relation to the use of live TV links, the application of the Perjury (Northern Ireland) Order 1979 and changing the term “presiding member” to “chairperson” as follows:

Clause 6, Page 3, Line 37

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 6, Page 3, Line 39

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 6, Page 3, Line 40

At end insert

‘(2A) Subject to any provision of rules under section 18, a statement made to the inquiry on oath by a person outside Northern Ireland through a live link is to be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in Northern Ireland.’

Clause 6, Page 4, Line 2

Leave out 'presiding member' and insert 'chairperson'

Clause 6, Page 4, Line 3

At end insert

'(4) In this section "live link" means a live television link or other arrangement whereby a person, while absent from the place where the inquiry is being held, is able to see and hear, and be seen and heard by, a person at that place.

(5) For the purposes of subsection (4) any impairment of sight or hearing is to be disregarded.'

CLAUSE 7 – Public access to inquiry proceedings and information

139. Agreed: The Committee is content with Clause 7 subject to the Department's proposed amendments to change the term "presiding member" to "chairperson" and provide for the privacy of the proceedings of the Acknowledgement Forum as follows:

Clause 7, Page 4, Line 5

After 'Subject to' insert 'subsection (3) and'

Clause 7, Page 4, Line 6

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 14

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 15

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 16

At end insert

'(3) The proceedings of that part of the inquiry described in its terms of reference as the Acknowledgment Forum are to be held in private and references to the inquiry in subsection (1) do not include that part of the inquiry.'

CLAUSE 8 – Restrictions on public access, etc.

140. Agreed: The Committee is content with Clause 8 subject to the Department's proposed amendments in relation to protecting witness's identity and changing the term "presiding member" to "chairperson" as follows:

Clause 8, Page 4, Line 21

At end insert -

'(c) disclosure or publication of the identity of any person'

Clause 8, Page 4, Line 23

Leave out 'presiding member' and insert 'chairperson'

Clause 8, Page 4, Line 27

Leave out 'presiding member' and insert 'chairperson'

Clause 8, Page 5, Line 1

Leave out 'presiding member' and insert 'chairperson'

CLAUSE 9 – Powers to require production of evidence

141. Agreed: The Committee is content with Clause 9 subject to the Department's proposed amendments to change the term "presiding member" to "chairperson" as follows:

Clause 9, Page 5, Line 19

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 5, Line 27

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 6, Line 1

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 6, Line 4

Leave out 'presiding member' and insert 'chairperson'

CLAUSE 10 – Privileged information, etc.

142. Agreed: The Committee is content with Clause 10 as drafted.

New clauses

143. The Department proposed the insertion of new clauses in the Bill in relation to the publication of Inquiry reports, the submission of Inquiry reports to the First Minister and deputy First Minister and the laying in the Assembly of Inquiry Reports by the First Minister and deputy First Minister, as follows:

New Clause

After Clause 10 insert-

'Reports

Submission of reports

**.—(1) The chairperson must deliver the report of the inquiry to the First Minister and deputy First Minister at least two weeks before it is published (or such other period as may be agreed between the First Minister and deputy First Minister acting jointly and the chairperson).*

(2) In this section "report" includes an interim report.'

New Clause

After Clause 10 insert-

'Publication of reports

**.—(1) The chairperson must make arrangements for the report of the inquiry to be published.*

(2) Subject to subsection (3), the report of the inquiry must be published in full.

(3) The chairperson may withhold material from publication to such extent—

(a) as is required by any statutory provision, enforceable EU obligation or rule of law, or

(b) as the chairperson considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which withholding material might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by withholding any material;

(c) any conditions as to confidentiality subject to which a person acquired information which that person has given to the inquiry.

(5) Subsection (4)(b) does not affect any obligation of a public authority that may arise under the Freedom of Information Act 2000.

(6) In this section—

“public authority” has the same meaning as in the Freedom of Information Act 2000;

“report” includes an interim report.’

New Clause

After Clause 10 insert-

‘Laying of reports before the Assembly [J26]

*. Whatever is required to be published under section (publication of reports) must be laid before the Assembly by the First Minister and deputy First Minister acting jointly, either at the time of publication or as soon afterwards as is reasonably practicable.’

144. Agreed: The Committee is content with the new Clauses proposed by the Department as set out above.

CLAUSE 11 – Expenses of witnesses, etc.

145. Agreed: The Committee is content with Clause 11 subject to the Department’s proposed amendments regarding the respective roles of the Inquiry Chairperson and OFMDFM in relation to awards of expenses as follows:

Clause 11, Page 6, Line 21

Leave out ‘OFMDFM may award such amounts as it thinks reasonable’ and insert ‘The chairperson may, with the approval of OFMDFM, award reasonable amounts’

Clause 11, Page 6, Line 26

After ‘where’ insert ‘the chairperson with the approval of’

Clause 11, Page 6, Line 30

Leave out ‘attending the inquiry to give evidence or’ and insert ‘giving evidence to the inquiry or attending the inquiry

Clause 11, Page 6, Line 32

Leave out ‘OFMDFM’ and insert ‘the chairperson’

Clause 11, Page 6, Line 35

After ‘OFMDFM’ insert ‘and notified by OFMDFM to the chairperson’

CLAUSE 12 – Payment of enquiry expenses by OFMDFM

146. Agreed: The Committee is content with Clause 12 subject to the Department’s proposed amendments in relation to OFMDFM’s responsibility for paying awards under clause 11 and changing the term “presiding member” to “chairperson” as follows:

Clause 12, Page 7, Line 1

At end insert

‘(1A) OFMDFM must pay any amounts awarded under section 11.’

Clause 12, Page 7, Line 8

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 13 – Offences

147. Agreed: The Committee is content with Clause 13 subject to the Department’s proposed amendments in relation to the contravention of a restriction order and changing the term “presiding member” to “chairperson” as follows:

Clause 13, Page 7, Line 22

Leave out from ‘fails’ to the end of line 24 and insert ‘without reasonable excuse-

(a) contravenes a restriction order; or

(b) fails to do anything which that person is required to do by a notice under section 9,

is guilty of an offence.’

Clause 13, Page 7, Line 39

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 13, Page 8, Line 1

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 13, Page 8, Line 3

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 14 – Enforcement by the High Court

148. Agreed: The Committee is content with Clause 14 subject to the Department’s proposed amendments in relation to the contravention of a restriction order and changing the term “presiding member” to “chairperson” as follows:

Clause 14, Page 8, Line 13

Leave out ‘a notice under section 9 or a restriction order’ and insert ‘, or acts in breach of, a notice under section 9 or an order made by the chairperson’

Clause 14, Page 8, Line 15

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 15 – Immunity from suit

149. Agreed: The Committee is content with Clause 15 as drafted.

CLAUSE 16 – Time limit for judicial review

150. Agreed: The Committee is content with Clause 16 as drafted.

CLAUSE 17 – Power to make supplementary, etc. provision

151. Agreed: The Committee is content with Clause 17 as drafted.

CLAUSE 18 – Rules

152. Agreed: The Committee is content with Clause 18 subject to the Department’s proposed amendments providing for rules in relation to protecting witness’s identity, the disclosure of evidence to the inquiry and substituting the chairperson for the inquiry panel in the assessment of awards under clause 11, as follows:

Clause 18, Page 9, Line 24

At end insert -

‘(1A) Rules under subsection (1)(a) may in particular-

(a) provide that evidence given for the purposes of any particular part of the inquiry must not be disclosed -

(i) in the proceedings of any other part of the inquiry unless the chairperson so orders; or

(ii) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of Convention rights (within the meaning of the Human Rights Act 1998);

(b) make provision for orders similar to witness anonymity orders within the meaning of section 86 of the Coroners and Justice Act 2009;

Clause 18, Page 9, Line 28

Leave out ‘inquiry panel’ and insert ‘chairperson’

Clause 18, Page 9, Line 28

Leave out ‘panel’ in the second place where it occurs and insert ‘chairperson’.

CLAUSE 19 – Application to the Crown

153. Agreed: The Committee is content with Clause 19 as drafted.

CLAUSE 20 – Consequential amendments

154. Agreed: The Committee is content with Clause 20 as drafted.

CLAUSE 21 – Interpretation

155. Agreed: The Committee is content with Clause 21 subject to the Department’s proposed amendments to change the term “presiding member” to “chairperson”, to clarify that “member” includes chairperson, to provide for the interpretation of harm and remove the definition of ‘presiding member’, as follows:

Clause 21, Page 10, Line 11

At end insert

‘ “chairperson” means chairperson of the inquiry;’

Clause 21, Page 10, Line 12

At end insert -

‘ “harm” includes death or injury;’

Clause 21, Page 10, Line 15

At end insert

‘ “member” includes chairperson;’

Clause 21, Page 10

Leave out line 18

Clause 21, Page 10, Line 22

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 22 – Commencement

156. Agreed: The Committee is content with Clause 22 as drafted.

CLAUSE 23 – Short title

157. Agreed: The Committee is content with Clause 23 as drafted.

Long title

158. Agreed: The Committee is content with the Long title subject to the Department’s proposed amendment to change the 1945 start date to 1922 as follows:

Long title

Leave out ‘1945’ and insert ‘1922’



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Wednesday 6 June 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Trevor Clarke
Mr Colum Eastwood
Mr William Humphrey
Mr Danny Kinahan
Mr Alex Maskey
Mr Francie Molloy
Mr George Robinson
Ms Caitríona Ruane

Apologies: None

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.02pm The meeting opened in public session.

2.08pm Mr Eastwood left the meeting.

2.08pm Mr Clarke joined the meeting.

3.26pm Ms Ruane left the meeting.

6. The Historical Institutional Abuse Inquiry

3.27pm Departmental officials joined the meeting.

3.51pm Mr Clarke left the meeting.

3.56pm Mr Humphrey left the meeting.

Departmental officials Ms Maggie Smith, Mr Jim Breen and Mrs Cathy McMullan briefed the Committee on the Terms of Reference and the draft Bill for the Historical Institutional Abuse Inquiry. A question and answer session followed.

4.35pm Departmental officials left the meeting.

Agreed: The Committee agreed that the Clerk would prepare a draft timetable for Committee consideration of the Bill and a list of key stakeholders for consideration at next week's meeting.

4.20pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 20 June 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Colum Eastwood
Mr William Humphrey
Mr Danny Kinahan
Mr Alex Maskey
Mr Francie Molloy
Mr George Robinson
Ms Caitríona Ruane

Apologies: None

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)
Mr Aidan Stennett (Researcher) Item 6 only

2.04pm The meeting opened in public session.

5. The Historical Institutional Abuse Inquiry

3.01pm Mr Robinson left the meeting.

Agreed: The Committee agreed that it had not had sufficient time to determine a Committee position on the Bill prior to the Second Stage.

3.06pm Ms Ruane left the meeting.

4.44pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 26 June 2012

Room 30, Parliament Buildings

Present: Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Mr William Humphrey
Mr Alex Maskey
Mr Francie Molloy
Mr George Robinson
Ms Caitríona Ruane

Apologies: Mr Thomas Buchanan
Mr Mike Nesbitt

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)
Ms Jane Campbell (Researcher) Item 5 only

9.37am The meeting opened in public session.

5. The Inquiry into Historical Institutional Abuse Bill

The Committee received a briefing from the Assembly's Research and Information Service on the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

9.58am Ms Ruane left the meeting.

10.02am Mr Molloy joined the meeting.

10.04am Departmental officials joined the meeting.

10.26am Mr Molloy left the meeting.

Departmental officials, Ms Maggie Smyth, Mrs Cathy McMullan and Mr Michael Harkin briefed the Committee on the consultation that took place in relation to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

10.48am Departmental officials left the meeting.

10.49am The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 4 July 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Thomas Buchanan
Mr William Humphrey
Mr Danny Kinahan
Mr George Robinson
Ms Caitríona Ruane

Apologies: Mr Colum Eastwood
Mr Alex Maskey

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.05pm The meeting opened in public session.

5. The Inquiry into Historical Institutional Abuse Bill

2.28pm Sir Anthony Hart, Mrs Norah Gibbons and Mr Andrew Bowne joined the meeting.

3.19pm Mr Buchanan left the meeting.

Sir Anthony Hart, Chair of the Panel, Mrs Norah Gibbons, Acknowledgment Panel member and Mr Andrew Bowne, Secretary to the Inquiry briefed the Committee on the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.28pm Sir Anthony Hart, Mrs Norah Gibbons and Mr Andrew Bowne left the meeting.

The Committee noted correspondence from the Department providing the Delegated Powers memorandum in relation to the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee agreed to share its list of stakeholders with the Inquiry Panel.

Agreed: The Committee agreed in principle that it would seek an extension to the Committee Stage of the Bill to Friday 26 October 2012.

Agreed: The Committee agreed to write to a number of statutory committees to seek their views on the Bill.

4.24pm The Deputy Chairperson took the Chair.

4.24pm Mr Nesbitt left the meeting.

4.46pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 5 September 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Trevor Clarke
Mr Colum Eastwood
Mr Danny Kinahan
Mr Alex Maskey
Mr Francie Molloy
Mr George Robinson
Ms Caitríona Ruane

Apologies: Mr Thomas Buchanan
Mr William Humphrey

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.05pm The meeting opened in public session.

5. The Inquiry into Historical Institutional Abuse Bill

2.36pm The Northern Ireland Human Rights Commission joined the meeting.

2.45pm Ms Ruane joined the meeting.

Professor Michael O'Flaherty and Ms Rhiannon Blythe from the Northern Ireland Human Rights Commission briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.16pm The Northern Ireland Human Rights Commission left the meeting.

3.16pm Representatives from SAVIA joined the meeting.

Mr Jon McCourt and Ms Margaret McGuckin, representatives from SAVIA briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.45pm Representatives from SAVIA left the meeting.

The Committee considered correspondence from the Department providing further information in relation to the changes in care arrangements post 1995.

Agreed: The Committee agreed to forward the Department's correspondence in relation to changes in care arrangements post 1995 to the Children's Law Centre for comment and to request further information on occasions when the 1995 Order was not effective.

Agreed: The Committee agreed to write to the Department to request that it responds to the issues raised in today's evidence sessions with the NI Human Rights Commission and SAVIA and in relation to any amendments to the Bill which the Department is considering. The Committee also agreed to write to the Department to ask if in the context of the issues raised by the NI Human Rights Commission, whether the Attorney General was content that the Bill

as introduced provides the required level of protection under the European Convention on Human Rights.

Agreed: The Committee agreed that the Clerk would schedule evidence sessions over the coming weeks.

4.00pm Mr Molloy left the meeting.

4.01pm Ms Ruane left the meeting.

Agreed: The Committee agreed a motion to extend the Committee Stage of the Bill to Friday 26 October 2012.

Agreed: The Committee agreed to issue a press communication in relation to the Committee's work on the Bill.

Agreed: The Committee agreed to share with the Department the written submissions it has received on the Bill.

4.05pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 12 September 2012

Room 30, Parliament Buildings

Present: 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 Danny Kinahan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Apologies: None

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.05pm The meeting opened in public session.

1. Chairperson's Business

Press Release – Inquiry into Historical Institutional Abuse Bill

Agreed: The Committee agreed a press release providing further information on the Committee's work on the Inquiry into historical Institutional Bill.

Inquiry into Historical Institutional Abuse Bill

The Committee considered a late submission from Napier & Sons Solicitors on behalf of the De La Salle Order to the Committee's consideration on the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee agreed to accept the late submission as evidence and invite the De La Salle Order to give oral evidence at next week's meeting, if they are available to attend.

5. The Inquiry into Historical Institutional Abuse Bill

2.17pm Amnesty International joined the meeting.

2.30pm Mr Kinahan left the meeting.

2.32pm Mr Clarke joined the meeting.

Mr Patrick Corrigan from Amnesty International briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

2.45pm Amnesty International left the meeting.

2.46pm Representatives from Victim Support, the Nexus Institute and Contact/Lifeline joined the meeting.

Mrs Susan Reid from Victim Support, Mrs Pam Hunter from the Nexus Institute and Mr Fergus Cumiskey from Contact/Lifeline briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.18pm Representatives from Victim Support, the Nexus Institute and Contact/Lifeline left the meeting.

3.26pm Mr Ciaran McAteer joined the meeting.

Mr Ciaran McAteer from Ciaran McAteer & Co. Solicitors briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.53pm Mr Ciaran McAteer left the meeting.

3.53pm Mr Eastwood left the meeting.

3.53pm Mr Buchanan left the meeting.

Agreed: The Committee agreed to write to the Department to see further information on its intentions in relation to non-institutional abuse.

Agreed: The Committee agreed to write to the Department to request that it responds to the issues raised in the written submissions and oral evidence from in today's witnesses on the Bill. The Committee also agreed to seek clarification on whether fostering and adoption would come within the scope of the Bill.

Agreed: The Committee agreed to seek further clarification on the option of an interim report into redress. The Committee also agreed to write to ask if the estimated cost of the Inquiry, stated at paragraph 19 of the Explanatory and Financial Memorandum to be £7.5-£9 million, remains an accurate estimate of the costs of the Inquiry.

Agreed: The Committee agreed to invite the Chair of the Panel to brief the Committee at its meeting on 26 September 2012, the Committee agreed to share all submissions it has received on the Bill with the Chair of the Panel.

4.46pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 19 September 2012

Room 30, Parliament Buildings

Present: Mr Chris Lyttle (Deputy Chairperson)
Mr Trevor Clarke
Mr Colum Eastwood
Miss Megan Fearon
Mr William Humphrey
Mr Danny Kinahan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Apologies: Mr Thomas Buchanan
Mr Mike Nesbitt

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.08pm The meeting opened in public session.

The Clerk advised Members that the Chairperson was unable to attend today's meeting and the Deputy Chairperson would be late and therefore a temporary Chairperson would need to be appointed. The Clerk sought proposals.

Mr Maskey proposed Mr Kinahan and Mr Humphrey seconded the proposal. There were no other nominations.

Agreed: Mr Kinahan assumes the position of temporary Chairperson.

5. The Inquiry into Historical Institutional Abuse Bill

The Committee considered correspondence from Kevin Winters & Co and from the Committee for Education in relation to the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee agreed to forward the correspondence raising issues on the Bill to the Department for comment.

Agreed: The Committee agreed to write to Kevin Winters & Co to advise of the process the Committee is undertaking in relation to the Committee Stage of the Bill.

Agreed: The Committee agreed to provide the Chair of the Inquiry Panel with a list of issues raised in submissions to, and evidence sessions with, the Committee.

Agreed: The Committee agreed to seek legal advice from the Assembly's Legal Services in relation to of the Human Rights Commission's concern that the Bill does not meet the required level of protection under the ECHR and on the 14 day time limit in the Bill for judicial reviews.

Agreed: The Committee agreed to hold a short closed session at the beginning of next week's meeting in relation to issues raised.

2.21pm Barnardo's joined the meeting.

2.21pm Mr Clarke joined the meeting.

2.24pm Mr Eastwood joined the meeting.

Ms Lynda Wilson, Ms Sara Clarke and Mr Tom Burford from Barnardo's briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

2.51pm Barnardo's left the meeting.

2.52pm The Poor Sisters of Nazareth joined the meeting.

Sister Cataldus and Mr Fintan Canavan representing the Poor Sisters of Nazareth briefed the Committee on the Order's response to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.11pm The Poor Sisters of Nazareth left the meeting.

3.30pm The De La Salle Order joined the meeting.

Brother Francis Manning and Mr Joe Napier representing the De La Salle Order briefed the Committee on its response to the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee would seek advice in relation to potential issues arising from organisations' legal advisors giving evidence to the Committee.

Agreed: The Committee agreed to seek legal advice in relation to the evidence to the Inquiry being used in subsequent legal proceedings.

3.42pm The De La Salle Order left the meeting.

3.43pm Mr Lyttle joined the meeting.

4.31pm The Temporary Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 26 September 2012

Room 30, Parliament Buildings

Present: 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 Danny Kinahan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

In Attendance: Ms Roisin Fleetham (Assembly Clerk)
Ms Eilis Haughey (Bill Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.03pm The meeting opened in closed session.

1. Historical Institutional Abuse Bill

The Bill Clerk briefed the Committee on the process for consideration of the Bill. The Chairperson went through the issues that have been raised during the Committee's evidence sessions.

2.15pm Mr Lyttle joined the meeting.

2.18pm The meeting moved into public session.

2.13pm Mr Robinson joined the meeting.

5. The Inquiry into Historical Institutional Abuse Bill

2.28pm The Chair of the Inquiry Panel into Historical Institutional Abuse joined the meeting.

2.22pm Mr Humphrey joined the meeting.

2.45pm Mr Clarke joined the meeting.

2.57pm Mr Buchanan joined the meeting.

Sir Anthony Hart, Chair of the Inquiry Panel into Historical Institutional Abuse, accompanied by Mr Andrew Browne, Secretary to the Inquiry and Mr Patrick Butler, Solicitor to the Inquiry briefed the Committee on his response to issues raised during evidence sessions in relation to the scrutiny of the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.22pm The Chair of the Inquiry Panel into Historical Institutional Abuse left the meeting.

3.26pm Departmental officials joined the meeting.

Departmental officials Ms Maggie Smith, Mrs Cathy McMullan and Ms Patricia Carey briefed the Committee on the Department's response to issues raised during evidence sessions in relation to the Inquiry into Historical Institutional Abuse Bill. A question and answer session followed.

3.50pm Departmental officials left the meeting.

Agreed: The Committee agreed to write to the Department to seek clarification on the reason for the delay in receiving papers.

5.02pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 3 October 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Colum Eastwood
Miss Megan Fearon
Mr Paul Givan
Mr Danny Kinahan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Apologies: Mrs Brenda Hale
Mr Chris Lyttle

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Ms Eilis Haughey (Bill Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)
Mr Hugh Widdis (Director of Legal Services) Item 1 only
Mr Jonathan McMillen (Legal Adviser) Item 1 only

2.05pm The meeting opened in closed session.

1. Historical Institutional Abuse Bill

The Assembly's Legal Services briefed the Committee on a number of issues that were raised during the Committee's evidence gathering on the Inquiry into Historical Institutional Abuse Bill.

2.20pm Mr Robinson joined the meeting.

Agreed: The Committee would respond to correspondence from solicitors regarding the Bill.

6. The Inquiry into Historical Institutional Abuse Bill

2.56pm Departmental officials joined the meeting.

3.52pm Mr Kinahan left the meeting.

Departmental officials Ms Maggie Smith, Mrs Cathy McMullan and Mr Michael Harkin briefed the Committee on the Department's response to issues raised during evidence sessions in relation to the Inquiry into Historical Institutional Abuse Bill. The Committee undertook an informal clause-by-clause examination of the Bill in light of the issues raised in written and oral evidence to the Committee.

Departmental officials agreed to take back a number of issues to Ministers for consideration.

4.22pm Departmental officials left the meeting.

4.23pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 10 October 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Miss Megan Fearon
Mr Paul Givan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Apologies: Mrs Brenda Hale
Mr Danny Kinahan
Mr Stephen Moutray

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Ms Eilis Haughey (Bill Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)

2.07pm The meeting opened in public session.

5. The Inquiry into Historical Institutional Abuse Bill

The Committee considered correspondence from the Department in relation to the facilities for victims and survivors at the Inquiry's office. The Committee also considered a research paper on the termination of statutory inquiries.

2.29pm Departmental officials joined the meeting.

Departmental officials Ms Maggie Smith, Mrs Cathy McMullan and Mr Michael Harkin briefed the Committee on the amendments the Department will be bringing forward in response to the Committee's requests at last week's meeting. Departmental officials also briefed the Committee on other amendments it would be bringing forward.

Agreed: The Committee agreed to write to the Department to request that it consider providing for the Inquiry to make recommendations in relation to changes to law, practice and procedure to prevent future abuse, by way of a specific additional category of recommendation in the Terms of Reference.

Agreed: The Committee agreed to postpone formal clause-by-clause decision making on the Bill until 17 October 2012.

3.24pm Departmental officials left the meeting.

4.28pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 17 October 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Miss Megan Fearon
Mr Paul Givan
Mrs Brenda Hale
Mr John McCallister
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Apologies: Mr Alex Maskey

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Ms Eilis Haughey (Bill Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)
Ms Shauna Mageean (European Projects Manager) Item 8 only

2.04pm The meeting opened in closed session.

1. Historical Institutional Abuse Bill

The Committee considered an email from a member of the public in relation to the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee agreed a draft response to the email.

2.09pm Miss Fearon joined the meeting.

The Committee considered late correspondence from the Department providing details of further proposed Departmental amendments to the Inquiry into Historical Institutional Abuse Bill.

Agreed: The Committee agreed that it was content to consider the draft amendments at today's meeting.

2.42pm The meeting moved into public session.

6. The Inquiry into Historical Institutional Abuse Bill

The Committee noted a response from the Children's Law Centre in relation to the Committee's request for further information on evidence that the laws introduced in 1995 were not always effective.

2.21pm Departmental officials joined the meeting.

2.21pm Mr McCallister joined the meeting.

Departmental officials Ms Maggie Smith, Mrs Cathy McMullan and Mr Michael Harkin briefed the Committee on the Department's new amendments to the Inquiry into Historical Institutional Abuse Bill.

Mr Eastwood briefed the Committee on his proposed amendments to the Bill.

2.45pm Departmental officials left the meeting.

The Committee commenced its clause by clause scrutiny of the Bill.

CLAUSE 1 – The inquiry

Agreed: The Committee was content with the following proposed Departmental amendments:

Clause 1, Page 1, Line 7

Leave out '31st May' and insert '[new date xxxxxxxxxxxxxxxx]'

Clause 1, Page 1, Line 8

Leave out 'amend the terms of reference of the inquiry at any time' and insert 'at any time amend the terms of reference of the inquiry by order'

Clause 1, Page 1, Line 9

Leave out 'presiding member' and insert 'chairperson'

Clause 1, Page 1, Line 10

At end insert 'if a draft of the order has been laid before, and approved by resolution of, the Assembly'

Clause 1, Page 1, Line 12

Leave out '1945' and insert '1922'

[Long title - Leave out '1945' and insert '1922']

Mr Eastwood proposed an amendment to permit the Inquiry to publish an interim report on the requirement or desirability of redress.

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

Mr Eastwood proposed an amendment to provide that the Inquiry may report recommendations on changes to law, practice and procedure to prevent future abuse.

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

The Chairperson proposed that the Committee is content with Clause 1 subject to the Department's proposed amendments.

The Committee divided:

Ayes: Miss Fearon, Mr Givan, Mrs Hale, Mr Lyttle, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

Noes: None

Abstention: Mr Eastwood

Agreed: The Committee was content with Clause 1 subject to the Department's proposed amendments above

CLAUSE 2 – Appointment of members

Agreed: The Committee was content with Clause 2 subject to the proposed Departmental amendments replacing 'presiding member' with 'chairperson':

CLAUSE 3 – Duration of appointment of members

Agreed: The Committee was content with Clause 3 subject to the proposed Departmental amendments replacing 'presiding member' with 'chairperson'.

CLAUSE 4 – Assessors

Agreed: The Committee was content with Clause 4 subject to the proposed Departmental amendments replacing 'presiding member' with 'chairperson':

CLAUSE 5 – End of inquiry

Agreed: The Committee was content with the proposed Departmental amendments replacing 'presiding member' with 'chairperson'.

Mr Eastwood proposed an amendment to make Ministers power to bring the Inquiry to an end exercisable by order subject to affirmative resolution of the Assembly.

The Committee divided:

Ayes: Mr Eastwood, Mr Lyttle

Noes: Miss Fearon, Mr Givan, Mrs Hale, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

The amendment fell.

The Chairperson proposed that the Committee is content with Clause 5 subject to the Department's proposed amendments.

The Committee divided:

Ayes: Miss Fearon, Mr Givan, Mrs Hale, Mr Lyttle, Mr McCallister, Ms McGahan, Mr Moutray, Mr Nesbitt, Mr Robinson.

Noes: None

Abstention: Mr Eastwood

Agreed: The Committee was content with Clause 5 subject to the proposed Departmental amendments.

CLAUSE 6 – Evidence and procedure

Agreed: The Committee was content with Clause 6 subject to Departmental amendments changing 'presiding member' to 'chairperson' and the following additional Departmental amendments:

Clause 6, Page 3, Line 40

At end insert

'(2A) Subject to any provision of rules under section 18, a statement made to the inquiry on oath by a person outside Northern Ireland through a live link is to be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in Northern Ireland.'

Clause 6, Page 4, Line 3

At end insert

'(4) In this section "live link" means a live television link or other arrangement whereby a person, while absent from the place where the inquiry is being held, is able to see and hear, and be seen and heard by, a person at that place.

(5) For the purposes of subsection (4) any impairment of sight or hearing is to be disregarded.'

CLAUSE 7 – Public access to inquiry proceedings and information

Agreed: The Committee was content with Clause 7 subject to Departmental amendments changing 'presiding member' to 'chairperson' and the following additional Departmental amendments:

Clause 7, Page 4, Line 5

After 'Subject to' insert 'subsection (3) and'

Clause 7, Page 4, Line 16

At end insert

'(3) The proceedings of that part of the inquiry described in its terms of reference as the Acknowledgment Forum are to be held in private and references to the inquiry in subsection (1) do not include that part of the inquiry.'

CLAUSE 8 – Restrictions on public access, etc.

Agreed: The Committee was content with Clause 8 subject to Departmental amendments changing 'presiding member' to 'chairperson' and the following additional Departmental amendment:

Clause 8, Page 4, Line 21

At end insert -

'(c) disclosure or publication of the identity of any person'

CLAUSE 9 – Powers to require production of evidence

Agreed: The Committee was content with Clause 9 subject to Departmental amendments changing 'presiding member' to 'chairperson'.

CLAUSE 10 – Privileged information, etc.

Agreed: The Committee was content with Clause 10 as drafted.

New clauses

The Department suggested new clauses be placed in the Bill in relation to the publication of Inquiry reports, the submission of Inquiry reports to First Minister and deputy First Minister prior to publication and the laying in the Assembly of Inquiry reports by the First Minister and deputy First Minister.

New Clause

After Clause 10 insert-

'Reports

Submission of reports

**.—(1) The chairperson must deliver the report of the inquiry to the First Minister and deputy First Minister at least two weeks before it is published (or such other period as may be agreed between the First Minister and deputy First Minister acting jointly and the chairperson).*

(2) In this section “report” includes an interim report.'

New Clause

After Clause 10 insert-

'Publication of reports

**.—(1) The chairperson must make arrangements for the report of the inquiry to be published.*

(2) Subject to subsection (3), the report of the inquiry must be published in full.

(3) The chairperson may withhold material from publication to such extent—

(a) as is required by any statutory provision, enforceable EU obligation or rule of law, or

(b) as the chairperson considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which withholding material might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by withholding any material;

(c) any conditions as to confidentiality subject to which a person acquired information which that person has given to the inquiry.

(5) Subsection (4)(b) does not affect any obligation of a public authority that may arise under the Freedom of Information Act 2000.

(6) In this section?

“public authority” has the same meaning as in the Freedom of Information Act 2000;

“report” includes an interim report.'

New Clause

After Clause 10 insert-

'Laying of reports before the Assembly [J26]

**. Whatever is required to be published under section (publication of reports) must be laid before the Assembly by the First Minister and deputy First Minister acting jointly, either at the time of publication or as soon afterwards as is reasonably practicable.'*

Agreed: The Committee was content with the new clauses proposed by the Department set out above.

CLAUSE 11 – Expenses of witnesses, etc.

Agreed: The Committee was content with Clause 11 subject to the following Departmental amendments:

Clause 11, Page 6, Line 21

Leave out ‘OFMDFM may award such amounts as it thinks reasonable’ and insert ‘The chairperson may, with the approval of OFMDFM, award reasonable amounts’

Clause 11, Page 6, Line 26

After ‘where’ insert ‘the chairperson with the approval of’

Clause 11, Page 6, Line 30

Leave out ‘attending the inquiry to give evidence or’ and insert ‘giving evidence to the inquiry or attending the inquiry’

Clause 11, Page 6, Line 32

Leave out ‘OFMDFM’ and insert ‘the chairperson’

Clause 11, Page 6, Line 35

After ‘OFMDFM’ insert ‘and notified by OFMDFM to the chairperson’

CLAUSE 12 – Payment of enquiry expenses by OFMDFM

Agreed: The Committee was content with Clause 12 subject to Departmental amendment changing ‘presiding member’ to ‘chairperson’ and the following additional Departmental amendment:

Clause 12, Page 7, Line 1

At end insert

‘(1A) OFMDFM must pay any amounts awarded under section 11.’

CLAUSE 13 – Offences

Agreed: The Committee was content with Clause 13 subject to Departmental amendments changing ‘presiding member’ to ‘chairperson’ and the following additional Departmental amendment:

Clause 13, Page 7, Line 22

Leave out from ‘fails’ to the end of line 24 and insert ‘without reasonable excuse-

(a) contravenes a restriction order; or

(b) fails to do anything which that person is required to do by a notice under section 9,

is guilty of an offence.’

CLAUSE 14 – Enforcement by the High Court

Agreed: The Committee was content with Clause 14 subject to Departmental amendment changing ‘presiding member’ to ‘chairperson’ and the following additional Departmental amendment:

Clause 14, Page 8, Line 13

Leave out ‘a notice under section 9 or a restriction order’ and insert ‘, or acts in breach of, a notice under section 9 or an order made by the chairperson’

CLAUSE 15 – Immunity from suit

Agreed: The Committee was content with Clause 15 as drafted.

CLAUSE 16 – Time limit for judicial review

Agreed: The Committee was content with Clause 16 as drafted.

CLAUSE 17 – Power to make supplementary, etc. provision

Agreed: The Committee was content with Clause 17 as drafted.

CLAUSE 18 – Rules

Agreed: The Committee was content with Clause 18 subject to the following Departmental amendments:

Clause 18, Page 9, Line 24

At end insert -

‘(1A) Rules under subsection (1)(a) may in particular-

(a) provide that evidence given for the purposes of any particular part of the inquiry must not be disclosed -

(i) in the proceedings of any other part of the inquiry unless the chairperson so orders; or

(ii) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of Convention rights (within the meaning of the Human Rights Act 1998);

(b) make provision for orders similar to witness anonymity orders within the meaning of section 86 of the Coroners and Justice Act 2009;

Clause 18, Page 9, Line 28

Leave out ‘inquiry panel’ and insert ‘chairperson’

Clause 18, Page 9, Line 28

Leave out ‘panel’ in the second place where it occurs and insert ‘chairperson’.

CLAUSE 19 – Application to the Crown

Agreed: The Committee was content with Clause 19 as drafted.

CLAUSE 20 – Consequential amendments

Agreed: The Committee was content with Clause 20 as drafted.

CLAUSE 21 – Interpretation

Agreed: The Committee was content with Clause 21 subject to the following Departmental amendments:

Clause 21, Page 10, Line 11

At end insert

‘ “chairperson” means chairperson of the inquiry;’

Clause 21, Page 10, Line 12

At end insert -

‘ “harm” includes death or injury;’

Clause 21, Page 10, Line 15

At end insert

‘ “member” includes chairperson;’

Clause 21, Page 10

Leave out line 18

Clause 21, Page 10, Line 22

Leave out ‘presiding member’ and insert ‘chairperson’

CLAUSE 22 – Commencement

Agreed: The Committee was content with Clause 22 as drafted.

CLAUSE 23 – Short title

Agreed: The Committee was content with Clause 23 as drafted.

Long title

Agreed: The Committee was content with the Long Title subject to the following Departmental amendment:

Long title

Leave out ‘1945’ and insert ‘1922’

The Committee considered its draft report on the Inquiry into Historical Institutional Abuse Bill and agreed some amendments to the draft report.

4.04pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 24 October 2012

Room 30, Parliament Buildings

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Mr Paul Givan
Mr John McCallister
Ms Bronwyn McGahan
Mr George Robinson

Apologies: Miss Megan Fearon
Mrs Brenda Hale
Mr Alex Maskey
Mr Stephen Moutray

In Attendance: Mr Alyn Hicks (Assembly Clerk)
Mr Keith McBride (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mrs Marion Johnson (Clerical Officer)
Mr Tim Moore (Senior Researcher) Item 6 only

2.07pm The meeting opened in public session.

5. The Inquiry into Historical Institutional Abuse Bill

The Committee considered its report on the Inquiry into Historical Institutional Abuse Bill and agreed some amendments to the draft report.

Agreed: The Committee read and agreed Paragraphs 1 - 9 Introduction.

Agreed: The Committee read and agreed Paragraphs 10 - 11 Pre-Introduction Committee Scrutiny.

Agreed: The Committee read and agreed Paragraphs 12 - 15 Committee Stage Scrutiny of the Bill.

Agreed: The Committee read and agreed Paragraph 16 Extension of the Committee Stage of the Bill.

Agreed: The Committee read and agreed, Paragraphs 17 - 25 Committee Approach to Committee Stage Scrutiny of the Bill.

Agreed: The Committee read and agreed Paragraphs 26 - 124 Consideration of the Bill, subject to paragraph 112 of the draft report being amended as discussed and agreed.

Agreed: The Committee read and agreed Paragraphs 125 – 158 Final Decisions on Clause by clause Scrutiny of the Bill.

Agreed: The Committee agreed to include Appendices 1-6 in the Report.

Agreed: The Committee ordered the Report to be printed.

Agreed: The Committee agreed that an extract from the Minutes of Proceedings of today's meeting should be included in Appendix 1 of the report and that the Chairperson approve that extract for inclusion.

Agreed: The Committee agreed that it was content with the draft platform piece on the Committee's consideration of the Inquiry into Historical Institutional Abuse Bill subject to the amendment discussed and agreed.

4.26pm The Chairperson adjourned the meeting.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

6 June 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Trevor Clarke
 Mr William Humphrey
 Mr Danny Kinahan
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson

Witnesses:

Mr Jim Breen	<i>Office of the First</i>
Mrs Cathy McMullan	<i>Minister and deputy</i>
Ms Maggie Smith	<i>First Minister</i>

- The Chairperson:** This briefing, which is from Office of the First Minister and deputy First Minister (OFMDFM) officials, is on foot of last Thursday's written ministerial statement announcing the historical institutional abuse inquiry. We will be talking about the terms of reference, the chairperson and the draft Bill. Members should have received papers by e-mail as they became available. A full set in hard copy has been tabled alongside a covering note. We have three officials from the Department: Maggie Smith, Cathy McMullan and Jim Breen. Thank you for your patience. Maggie, please give us your presentation, and we will then go around the table for questions.
- Ms Maggie Smith (Office of the First Minister and deputy First Minister):** Thank you very much for having us here to talk to you about the Bill. We are conscious that this was not on the agenda, so we appreciate that you have slotted us in. When you get to Committee Stage, you will get to know Cathy McMullan and Jim Breen very well as we assist you.
- As you know, on Thursday 31 May, the Executive agreed the Bill for introduction to the Assembly. Also on Thursday, the First Minister and deputy First Minister, by way of a statement to the Assembly,
- made public the terms of reference for the inquiry, the name of the chairperson of the inquiry and the names of four of the committee members.
- The draft Bill is specific to the inquiry into historical institutional abuse. Before I talk to you about the Bill in particular, it might be useful to run over some of the information about the inquiry. I will then talk about how the Bill aims to facilitate the inquiry, and, lastly, if you still have time, I will say something about the timetable and the steps that are to be taken from here.
- As some of you will know, the issue of historical institutional abuse has been around for a while. The background to the inquiry is reports and allegations of abuse in children's homes here and that there was a major inquiry into historical institutional abuse in the South. The purpose of the inquiry is to assess whether there were systemic failings by the state or institutions in their duties towards children for whom they provided residential care between 1945 and 1995. The incidents that the inquiry will be concerned about will have occurred between those dates.
- The terms of reference of the inquiry define an "institution" as:

"any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland ... which ... provided residential accommodation and took decisions about and made provision for the day to day care of children".
- In practice, that refers to the type of institutions that were really behaving in the place of parents. We are really talking about places such as orphanages, children's homes, borstals and training schools — places where children were either placed by their parents or, if there were no parents or the parents did not take that decision themselves, the children would have

- been removed from the care of the family. The definition therefore excludes boarding schools. By “children” we mean anybody who was under 18 at the time. The definition of a child has varied a bit over time, but, for clarity, and to link it to what we understand as a child now, we are taking the definition as being under 18.
8. The inquiry will be concerned with making findings about systemic failings, but Ministers have also asked the inquiry to make findings and recommendations about three other things, the first of which is about an apology to the people who have been abused. They are asking the inquiry to think about who should make an apology and what form the apology should take. The Executive are also asking the inquiry to make findings and recommendations about an appropriate memorial or tribute to those who suffered abuse. Lastly, they are asking the inquiry to make findings and recommendations about the requirement or desirability for redress to be provided by either the institutions or the Executive to meet the particular needs of victims.
9. As the First Minister and deputy First Minister announced on Thursday, the inquiry will be chaired by Sir Anthony Hart, who is a recently retired High Court judge. The inquiry will have two main elements. First of all, there will be what we are calling an acknowledgement forum. That will be an opportunity for people who were in the institutions during those years and who suffered abuse to recount their experiences in confidence and be listened to by inquiry panel members. As well as listening to and acknowledging what happened, the inquiry will also produce an anonymised report describing what happened, so it will draw out the essence of what the acknowledgement forum hears from the people who come forward about their experiences. Clearly, the acknowledgement forum panel members who do that work have to be extremely experienced, extremely skilled and must have the qualities that it takes to do that kind of listening over a protracted period. The people who have been appointed to that work are all extremely experienced. They are Beverley Clarke, Norah Gibbons, Dave Marshall and Tom Shaw.
10. The second part of the inquiry is a judicial process, which will be led personally by the chairman, who will have two other panel members with him. That will use information from various sources, particularly from the acknowledgement forum, but also from research and other sources, to build up a picture of what happened in the institutions. That will then be investigated through a legal process of inquiry. The legal process of inquiry is designed to be, as far as possible, inquisitorial. At all times during the process of the inquiry, whether it is during the acknowledgement forum or the judicial process, concern about victims, their experiences and their needs are at the heart of the thinking.
11. I am conscious that you have had only a brief amount of time to look at the Bill, so I thought it might be useful to take you on a bit of a walk through the Bill, so that you can see what the clauses do, the purpose of the Bill and how it all hangs together and supports the inquiry. The Bill is relatively short; it has 23 clauses, of which 17 are substantive. OFMDFM is the sponsor Department for the inquiry, so the first thing that the Bill does is give OFMDFM the power to establish the inquiry. The Bill ties itself very clearly to the inquiry. It refers to the terms of reference that were announced on May 31 and makes clear that this is an inquiry and not about making findings of criminal or civil responsibility.
12. The power to set up the inquiry having been given in clause 1, clause 5, indicates when the inquiry will end. Clause 5 states that the inquiry will end once it has produced its report and fulfilled its terms of reference. Clearly, in legislation, we have to be thinking all the time about what could go wrong and about safeguards. Therefore clause 5 also contains a safeguard, which states that OFMDFM can end the inquiry before those two things are completed. However, that is only a safeguard.

13. **The Chairperson:** Maggie, would you mind taking questions as we go?
14. **Ms Smith:** I am happy to do that, if it would be helpful.
15. **The Chairperson:** Under that safeguard, the First Minister and deputy First Minister can say to the presiding officer, “Stop, it’s over.” Under such circumstances, it states that the First Minister and deputy First Minister must: *“lay a copy of the notice, as soon as is reasonably practicable, before the Assembly.”*
16. Why does it not say “immediately”?
17. **Ms Smith:** I think that “as soon as is reasonably practicable” means immediately, in practice. It means that it would be the next sitting day; it amounts to the same thing.
18. **The Chairperson:** OK.
19. **Ms Smith:** That is a safeguard; we do not have an example of when that might happen. It is purely a safeguard.
20. **Mr A Maskey:** A safeguard against what?
21. **Ms Smith:** By setting up the inquiry, OFMDFM is committing to support the inquiry and to provide it with public money, so there could arise circumstances in which the inquiry needs to be ended before it has provided its report and the chair has advised that the terms of reference are completed. It is highly unlikely, but it might be practical for the Ministers to decide to waive some aspect of the terms of reference, for example. However, it is highly unlikely that those circumstances will arise.
22. **Mr Humphrey:** Thank you for your presentation. The aim of the draft Bill is to make provision relating to the inquiry into institutional abuse between 1945 and 1995. Why are you stopping at 1995?
23. **Ms Smith:** We are stopping at 1995, because that was the date of the Children (Northern Ireland) Order. When that Order came in, it radically changed the way institutions were run and it built in a lot of safeguards. So, 1945 is really around the beginning of the welfare state, and 1995 was when the situation changed quite radically.
24. **Mr Humphrey:** In your view, did the safeguards eradicate the potential for abuse?
25. **Ms Smith:** They aim to.
26. **The Chairperson:** Is there a different process post-1995?
27. **Ms Smith:** I am sorry?
28. **The Chairperson:** If there was abuse in 1996, are you saying that there is a different, robust set of procedures to be followed?
29. **Ms Smith:** I cannot comment on that. We can find out more information for you about the way things operate under the Children Order, and we would be happy to come back to you with more detail.
30. **The Chairperson:** We would appreciate that.
31. **Ms Smith:** It is outwith our scope, but we would be more than happy to provide that to you.
32. Clauses 2 and 3 of the Bill deal with the appointment of members of the inquiry panel. Again, having appointed the members, the expectation is that the chair and the inquiry members will stay with the inquiry right the way through, but we have to build in safeguards. It is possible that, for whatever reason, somebody will not be able to continue, so there is scope for people to resign and for OFMDFM to terminate their membership of the panel in certain circumstances. Again, that is highly unlikely, because what these circumstances boil down to are things like conduct and conflict of interest, or it could be that someone, unfortunately, is ill or something like that and is not able to continue with the inquiry.
33. In the event that someone needs to step down from the inquiry, the Bill gives the scope for the First Minister and the deputy First Minister to appoint somebody to replace that person. It could be that, for some reason, there is a need to increase the number of people

- on the inquiry panel, and there is the scope within those clauses for the First Minister and deputy First Minister to do that. In making appointments, the First Minister and deputy First Minister would consult with the chair of the inquiry, and that is about making sure that the team that is undertaking the work has all the necessary skills required.
34. Clause 6 deals with procedure and evidence. That is a very interesting clause, because it really sets the tone for the inquiry to a certain extent. Clause 6 (1) requires the chairman to have concern throughout the inquiry for the principle of fairness and also to have due regard to the need to avoid unnecessary expense. That refers to unnecessary expense to the public purse, but, equally, it could be unnecessary expense to a witness or to anyone else. It could be unnecessary expense to somebody whom the inquiry is asking information of. That is important in helping the chair and the Department to control the cost of the inquiry, and it also means that fairness and cost are legitimate factors to be taken into account when the chairman is making and carrying out his plans for the inquiry. Clause 6 (2) gives the chair the opportunity to take evidence under oath.
35. Jumping ahead slightly, but staying with the relationship between OFMDFM and the inquiry, something that is going to be very important is what OFMDFM is liable to pay for. That is covered in clauses 11 and 12. Clause 11 is called “Expenses of witnesses, etc.”. It enables OFMDFM to compensate people for time lost if they are called to speak to the inquiry, to pay for their travelling expenses and to cover legal expenses. There can be further detail on that, because, under clause 11, there is the opportunity for OFMDFM to make rules about the witness costs. That would be subordinate legislation about the costs.
36. **The Chairperson:** Would it be standard procedure for OFMDFM to do that rather than the presiding member?
37. **Ms Smith:** To make the rules?
38. **The Chairperson:** Yes.
39. **Ms Smith:** Yes; in this case. There are some other places where the presiding member would make the rules. In this case, we are talking about subordinate legislation, which would be made by OFMDFM. This Committee will have the opportunity to scrutinise it. It will be subordinate legislation that will have the scrutiny of the Assembly.
40. Clause 12 deals with the expenses of the inquiry. It is really saying that OFMDFM can pay the legitimate expenses of running the inquiry. The very obvious things will be the costs of the panel members and the costs of the staff of the inquiry. There is an opportunity in the Bill for the presiding member or chairman to appoint to the inquiry assessors, who would help it because they have specialist knowledge. The clause is to cover those costs and the domestic expenses — the rent, the IT, the support and all those sorts of things. It also requires OFMDFM, at the end of the inquiry, to publish the sum total of the expenses that it has paid under that clause. It will all be in the public domain.
41. **Mr G Robinson:** Where will the inquiry take place?
42. **Ms Smith:** The inquiry is looking at the accommodation at the moment. The aim is to have two centres; one here in Belfast and one in Derry or Londonderry. The main work of the inquiry will be done in Belfast. There will be particular needs for the inquiry. Thinking about the acknowledgement forum, it is very important that when people come forward to talk about their experiences, they can do that in privacy and they can do that easily. Accommodation needs to be close to public transport and easy to find so that they can get in and out of the building without being in the glare of publicity or easily seen.
43. On the other hand, the Bill works on the assumption that the chairman will make public as much of the judicial process as possible. That will be a public inquiry, so it will have particular technical needs.

- In Belfast, we are looking for somewhere that is suitable for the acknowledgement forum and for the judicial part of the inquiry. Clearly, we want to reduce the travel as much as possible, so the idea is to also have a presence in the north-west to make it easier for people to go there.
44. **Mr Kinahan:** Will there be — I hope that there will be — the possibility of using other venues so that people cannot be identified by arriving at the venue?
45. **Ms Smith:** Yes. It is really about blending in. We are certainly not going to have a building with a big sign outside. It is about having somewhere that is on a thoroughfare, where people can be seen on that thoroughfare for many reasons and seen going into the building for more than one reason.
46. That was about the governance arrangements between the Department and the inquiry. Clearly, underneath the legislation, there will be lots of other detail that will be put in place, and we are working on that with the inquiry chair at the moment. The draft Bill makes sure that the inquiry has access to the information that it needs and also aims to protect the information that the inquiry holds. The chair of the inquiry will, when we come to the judicial part of the inquiry, invite people to come and talk to him or to give him information, in the same way that a Committee does. We hope and expect that, in most cases, people will comply with those invitations, but there will be people who will not want to comply with them, and there will be situations where people are very willing to comply but cannot, because there is some sort of confidentiality or restriction on the information, and they can only give it over to the inquiry when they have a formal court request from the inquiry. For both of those reasons, the Bill gives the chair of the inquiry the power to compel witnesses and evidence. It backs that up very strongly by making it an offence not to comply with those orders.
47. Clearly, it would be a bit much just to say that you can make an order to compel people and, if people do not comply, it will be an offence. There is actually a reasonableness clause built in, so, if the inquiry asks for the wrong information or asks for it within too short a time period, or something like that, which it could do in very good faith, but it is not possible for the people who are being asked, they can ask for the inquiry to have another look. If the chair thinks that their point is reasonable, he can vary or revoke the order.
48. **Mr G Robinson:** Is there a time limit on the inquiry?
49. **Ms Smith:** There is a time limit. The inquiry is expected to last three years. Those three years start from the day that the legislation is commenced, so, although the inquiry chair and four of the panel members are already working to prepare for the inquiry, the official start date is the commencement date of the legislation, which is the day after the legislation receives Royal Assent. There are two and a half years allowed for the inquiry to do its investigation and six months after that for the report to be written.
50. There are other offences as well. I should also say that, having obtained information, the chair can also restrict access to information. The chair will be able to issue what are called restriction notices. Those can either prevent access to a hearing of the inquiry or can prevent access to information that the inquiry holds. Depending on how those are written, the chair can write in an expiry date. Clearly, if it is about attendance at the inquiry, that will automatically expire at the end of the inquiry, but the notices about access to information held by the inquiry can actually go on after the end of the inquiry so that confidential information continues to be protected. In fact, there is a line in the Bill that allows OFMDFM, in the longer term, if things change, the power to vary or revoke a notice laid by the inquiry chair.
51. It will also be an offence to breach one of those restriction notices, as it will be to alter, conceal or destroy information

- either that the inquiry has asked for or that may be of interest to the inquiry. So, somebody who deliberately does that is committing an offence. That will not prevent redaction, though. We are conscious that some of the information that the inquiry will want to see may relate to individuals or institutions and may be in quite complicated sets of records. There may be information in such records that is not what the inquiry has asked for nor is any of its business, so the inquiry will be able to allow people to redact information that is not relevant to it.
52. The Bill provides for enforcement of penalties against people for such offences. The penalty for any of those offences can be a fine of level 3 on the standard scale – £1,000 – or six months imprisonment or both.
53. **Mr A Maskey:** I want to raise two points. The first is specifically on the offences. The Bill refers, in clause 13 (4), to a “relevant” document as mentioned in clause 13 (3). Does that suggest that a document is deemed relevant only if the presiding member is aware of its existence?
54. **Ms Smith:** No; it can be a relevant document that the presiding member is not aware of.
55. **Mr A Maskey:** Yes.
56. **Ms Smith:** Once the inquiry has started, that will prevent people hiding or destroying information, in the expectation that they may be asked for it.
57. **Mr A Maskey:** Why is subsection (4) there, then? To me, it reads like a proactive clause — the inquiry needs to be aware of a document’s existence, if you know what I mean. I would have just stated that any document, whether the presiding member is aware or not, is “relevant”, and it is an offence to destroy it. We have seen reports from the Public Accounts Committee stating that some of the Departments around here have destroyed documents in the middle of an inquiry, which, in my view, should obviously be an offence. Why does that need to be stated?
58. **Ms Smith:** It is really to spell it out. Sometimes, that is down to the way that things are expressed in legislation. I take your point completely that it is self-evident. However, it is laid out very clearly here, so I think that it is really a matter of how it is expressed in the legislation.
59. **Mr A Maskey:** So it is a standard legislative thing. I know that you can read it in different ways, and my grammar may not be perfect; I would add a couple of commas in there to make it read the way that you interpret it.
60. **Ms Smith:** Yes.
61. **Mr A Maskey:** The only other question that I have is more general. When the inquiry is in process, will there be counselling facilities or other support mechanisms in place for people who give evidence or who may have to sit through what may be quite traumatic hearings?
62. **Ms Smith:** Yes, absolutely; both for those coming forward and the inquiry staff. We are aware of how traumatic it will be for people who come forward to the acknowledgement forum or to the judicial part of the inquiry. We looked carefully at the experience in the South and that of a smaller inquiry in Scotland. In both cases we found that people were coming forward who had, perhaps, never spoken about this. Their family members did not know that they had those experiences. They did not know how to talk about them, so coming forward to the acknowledgement forum was challenging and emotional for them.
63. There will be people with the right skills who will be able to walk through the process with them. If they get in touch or ring up, they will get the right reception on the phone, will be met at the door and will be looked after right the way through. There will be somebody to hold their hand if they want somebody to go in with them when they recount their experiences. There will also be somebody afterwards to make sure they are OK before they leave or to

- signpost them if they need further help or guidance.
64. We are very conscious that, although the panel members doing the listening are experienced and professional, it will be stressful for staff as well to deal with people's emotions. It is also possible that people will disclose things to staff that may be difficult to deal with. So, the Department is putting in place professional counselling and support for all inquiry staff, and they can use that as necessary. They will have an early interview, support on the way through and an interview at the end.
65. **Mr G Robinson:** When is the anticipated commencement date?
66. **Ms Smith:** We are hoping that the Bill will go through the House before Christmas, but I am very conscious that that requires work by all of us in this room and is a matter for the Committee and the Committee Chair. However, we are very much at your service, and I assure you that we will do anything at all that we can to assist or support you in this process.
67. **The Chairperson:** We appreciate that. Have you more, Maggie?
68. **Ms Smith:** I think that we have more or less covered it. There are a couple of other points about immunity from suits, which means that people involved in the inquiry cannot be sued for doing their jobs. It also puts a limit on a time frame for a judicial review of a decision taken in relation to the inquiry, limiting it to two weeks from the time that the applicant knew about the decision.
69. **The Chairperson:** You have an acknowledgement forum and an inquiry panel. Will there be any overlap there?
70. **Ms Smith:** Yes. We talk about those as two elements, but it is one inquiry with those two parts, which are quite different in character. However, they are all under the chairmanship and direction of Sir Anthony Hart. Although the panel members will be appointed to work on the acknowledgement forum or the judicial part of the inquiry, that is a reflection of the different skills that are needed for those two different elements. However, Sir Anthony will be leading them as a team.
71. **The Chairperson:** Yes, I get you. I am just thinking of a different process, which was recommended by the Consultative Group on the Past for dealing with the past with regards to the Troubles. You will remember that it had various strands of activity proposed, one of which was basically looking for evidential leads. So, you would have a full investigative process ongoing. If that did not work, however, you went to the next phase, which they called information recovery, which was, perhaps, a process akin to an acknowledgement forum. However, the two were distinct, and you had to say effectively that you were finished with the investigative process first, whereas yours seem to run more in parallel rather than as alternatives.
72. **Ms Smith:** That is right, and because they are being clearly led by Sir Anthony, they are all working together and there will be cross-fertilisation. It is also important to say that the acknowledgement forum is about obtaining information. The fact that it is called an acknowledgement forum is very important, because the fact that these experiences are being acknowledged is, in itself, something that is seen as being very valuable, as is the opportunity that the people have for coming forward.
73. Some of our panel members have been involved in inquiries elsewhere. Tom Shaw was asked by Scottish Ministers to carry out an inquiry on homes in Scotland. He produced a very interesting report. It is also a very human report, because you actually hear the voices of the people coming through. We have no idea of who any of those people are, but, in their voices, we can hear their stories. It is quite a rounded picture; it is a picture that talks about the terrible abuse, the experiences, the sadness, the neglect and all of the other things that happened to the children. However, they also talk about the good things that they remember. It is not, therefore, a testimony about abuse; it is a wider

- testimony about the experiences in the homes. I am not saying that that is what our acknowledgement forum should be like, but I think that it underlines the importance of the process and of allowing the voices to be heard.
74. **Mr Kinahan:** I was concerned, when we were talking about the offences, that people might destroy information before an inquiry is held. Is there any mechanism to prevent people from doing that? Equally, we are on tape at the moment, and if you were someone who had done anything, you would be out there getting rid of every bit of evidence. Does there not need to be an offence for such activity?
75. **Ms Smith:** The offences do not apply retrospectively.
76. **Mr Kinahan:** So whatever —
77. **Ms Smith:** It comes into effect when the Act comes into effect.
78. **Mr A Maskey:** I have one point. I take Danny's point, but if someone was of that mind, I presume that they will have already got rid of the evidence, because this has been well trailed. This is not a surprise.
79. I want to ask something similar. Obviously, the team will start shortly, as I understand it. Is there any retrospective cover or authority in the legislation for the work of the inquiry team, when it starts, because there will be a gap between the start and when the legislation is passed. Is there any retrospective cover provided? Or, is it necessary?
80. **Ms Smith:** There are phases to this. The short answer is probably that it is not necessary. At the moment, they are doing preparatory work. This inquiry is starting from scratch. People have done things like this before, but nobody has done the same thing. The inquiry team has to work out for itself how it is going to take the inquiry forward, how it is going to work as a team and how it is going to let people know about the acknowledgement forum. All of that needs to be sorted out. Those are the sorts of things that they are thinking about at the moment. Until the autumn, at least, they will be involved in preparation. The closer we get to the start of the inquiry, the more detailed that work will be. They have a big job, at the moment, with the preparation. They do not need the legislation right away. In fact, I think one of the valuable things about introducing the legislation now is that there is still time over the summer to double-check that it is right and that all the details are right. It still gives us the opportunity to tweak it in the autumn, if we need to, subject, of course, to the Committee's input.
81. **Mr A Maskey:** So, there is no need to consider accelerated passage? I do not know whether anyone has even discussed that, but you are saying that there is no urgency.
82. **Ms Smith:** It really depends on how much time you take in your scrutiny.
83. **The Chairperson:** Our standard consideration would be 30 days. That is something that the Committee needs to have an initial discussion on when the officials are done.
84. Can I take you back briefly to the reasons for allowing the compelling of evidence? If I heard correctly, one reason was that there could be an individual who felt they would be unable to give evidence without being compelled to do so. I wonder why that would be and whether it might be because an individual who had been abused has some sort of arrangement with the institution responsible for the abuse, and that, without being compelled, they felt that they could come forward.
85. **Ms Smith:** The powers to compel witnesses and evidence are for the judicial part of the inquiry. It could be that the inquiry is looking for some information that is personal and that would be held in confidence by an organisation or an individual. That organisation or individual may think that it is perfectly reasonable to give this to the inquiry, but that, because the information is held in personal files, they

are not comfortable about just handing over that information. They may want to make sure that the information is something that the inquiry really needs, and they may want the inquiry to issue them with an order to give them the cover to hand it over.

86. **The Chairperson:** Are you aware of any individual who has struck some sort of a deal?
87. **Ms Smith:** No. Definitely not.
88. **The Chairperson:** I appreciate that clarification. As members are content, Maggie, Cathy and Jim, thank you very much indeed. No doubt we will see you again.

20 June 2012

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
 Mr William Humphrey
 Mr Danny Kinahan
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson
 Ms Caitríona Ruane

89. **The Chairperson:** Last week, you were asked to consider the Bill with a view to discussion this week in anticipation of the Second Stage debate on the principles of the Bill. The Second Stage debate is scheduled for Monday 25 June. The debate will be on the principles of the Bill as opposed to the detail of the clauses. Ministers from the Office of the First Minister and deputy First Minister (OFMDFM) will explain the general principles, and members may seek clarification and support and, indeed, challenge aspects of the Bill.
90. Members have a limited opportunity to consider the Bill at this point in time, but there may be some issues that members may wish to discuss today and potentially raise in the Second Stage debate as areas where the Committee will be seeking further clarification. The Clerk circulated a list of possible issues that we may wish to discuss. That was sent by e-mail yesterday. There is also a hard copy in your tabled items. Does anybody want to kick off?
91. **Mr A Maskey:** It might be useful if we wait until the debate on the Second Stage of the Bill. By that stage, parties will have collected their thoughts, and I presume they will outline their case in the Second Stage debate. I do not know if all the parties are fully prepared today. I appreciate that the Committee Clerk has given us some information, but it is still useful after today. I am just thinking that we are going to have a discussion here that will not be as well informed as it might otherwise be.
92. **The Chairperson:** I have to emphasise that it is the principles, Alex, rather than the nitty-gritty of it. The Clerk's note makes clear certain issues, such as the fact that the terms of reference are in a ministerial statement rather than in the legislation, but the legislation will allow Ministers to change the terms of reference in consultation with the presiding officer. However, it also allows Ministers to remove him. On the face of it, that does not seem to be the most democratic way of doing business. The terms of reference are not in the legislation, but the legislation allows them to change the terms of reference. We have a proposal from Alex that —
93. **Mr A Maskey:** Why do we not invite someone from OFMDFM to come along and have a discussion on this issue?
94. **The Chairperson:** Is Sir Anthony Hart going to come?
95. **The Committee Clerk:** Yes, the chairperson of the inquiry is going to come to the meeting on 4 July. The Second Stage debate will be on Monday. If members want to comment or want the chair to comment on any specific issues, the Committee will seek clarification from officials in due course or from the chair of the inquiry.
96. **Mr A Maskey:** Broadly speaking, I am happy enough with the legislation that is before us. I would like a bit more understanding as to why some of the points are in it, but I may be convinced by and happy enough with the explanations that I get.
97. **The Chairperson:** Are you happy to go forward on a party political basis?
98. **Mr A Maskey:** At this moment in time. Obviously, it has to come back here for

full scrutiny because this is the principal Committee, so we have to deal with it.

99. **Mr Lyttle:** Obviously, it has been a small window of time. I presume that we have not had any soundings from any stakeholders, for want of a better word.

100. **The Committee Clerk:** We wrote to a number of stakeholders but have not had a response yet.

101. **The Chairperson:** Ok, that seems to be way forward. Thank you.

26 June 2012

Members present for all or part of the proceedings:

Mr Chris Lyttle (Deputy Chairperson)
 Mr Colum Eastwood
 Mr William Humphrey
 Mr Alex Maskey
 Mr George Robinson

Witnesses:

Mr Michael Harkin *Office of the First
 Minister and deputy
 First Minister*
 Mrs Cathy McMullan
 Ms Maggie Smith

102. **The Deputy Chairperson:** I invite the departmental officials to the table. They will brief us on the consultation that they undertook in preparation for the inquiry. I welcome Maggie Smith, Cathy McMullan and Michael Harkin. You are all very welcome today.

103. **Ms Maggie Smith (Office of the First Minister and deputy First Minister):** Thank you very much, Deputy Chairman.

104. **The Deputy Chairperson:** Perhaps you would like to give a short briefing, after which we will have questions.

105. **Ms Smith:** Thank you very much for seeing us again so quickly. Once again, I have with me Cathy McMullan, and we have apologies from Jim Breen, who was going to be here today but has had to see his dentist, so we have Michael Harkin in his stead.

106. **The Deputy Chairperson:** Which is worse, the dentist or the Committee? *[Laughter.]* No comment?

107. **Mr A Maskey:** You are going to drill down on this one, anyway. *[Laughter.]*

108. **Ms Smith:** You invited us here to talk about the consultation that was done to inform the setting up of the inquiry. It is important to emphasise that, as Jane also mentioned, the terms of reference for the inquiry and the legislation are very much underpinned by consultation that was done by the interdepartmental

task force with victims and survivors. It is also important to emphasise that Ministers and officials have been in constant conversation with victims and survivors right through this process. There was even a meeting with victims and survivors on 31 May, before the announcement was made about the terms of reference.

109. Jane mentioned the interdepartmental task force that was set up by the Executive in December 2010 to consider the nature of an inquiry into historical institutional abuse, and to make recommendations to the Executive on how an inquiry could be taken forward. The people on the task force represented the Departments with the greatest policy or statutory responsibility for the issues — the Office of the First Minister and deputy First Minister (OFMDFM) and the Departments of Health; Education; Justice; Social Development; Finance and Personnel; Environment; Employment and Learning; and Culture, Arts and Leisure.

110. A major part of the work that they did was stakeholder engagement. They met officials from the South and from Scotland who had been involved in inquiries there. They also met Amnesty International, the Human Rights Commission, the Law Centre and the PSNI. They had consultation meetings in March 2011 with victims and survivors in Armagh, Belfast and Derry/Londonderry. To make sure that victims and survivors were aware of its work, the task force advertised the consultation meetings quite widely, through its website and in flyers that were given out by victims and survivors' groups. The task force also made sure that people outside Northern Ireland knew that this work was going on. That is important, because a lot of victims and survivors have moved away from Northern Ireland, a number of them because of the abuse that they suffered.

111. Clearly, not everyone was able to come to the meetings. So, the task force prepared a questionnaire, which was completed by over 30 survivors. The questions were about what was important to the victims and survivors about an inquiry. The sorts of issues that were discussed with victims and survivors by the task force included: what do we mean by an “institution”? What do we mean by “abuse”? What do we mean by an “apology”? What should be the time frame for, and nature of, the inquiry?
112. The issues that came out of the consultation are very important, because the victims and survivors said that; first, any inquiry should be independent; it should have the power to compel witnesses and evidence; there should be some form of acknowledgement for the victims; and there should be an opportunity for victims to recount their experiences in the institutions. The inquiry should be able to establish responsibility for abuse. They also talked about redress, accountability and the need to balance the inquiry’s ability to get to the truth with controlling the time frame that it will take to reach a conclusion.
113. For the victims and survivors, the need to have that experience acknowledged was extremely important, as was the need for an apology and for recognition that wrong had been done. You can see that all of those things that the victims and survivors mentioned have really come through into the terms of reference. If you read in more detail some of what the victims and survivors said, you can almost hear the words that they said coming through and reflected in the text of the terms of reference.
114. There are some things that are not mentioned in the briefing paper. I will give a little more detail about the consultation. I want to bring those out, because they were mentioned in the written submission that Survivors and Victims of Institutional Abuse (SAVIA) made to the task force. SAVIA was very clear that, when the victims and survivors come to the inquiry to talk about their experiences, it will be a very traumatic experience for victims and survivors. They wanted to make sure that there would be support built in to help people through that process. Ministers have built that in to the terms of reference. As part of the experience, there will be a witness support service, as we are calling it, sitting alongside the acknowledgement forum.
115. SAVIA spoke about an independent, judge-led inquiry, which is a very nice way of describing what we are setting up. It said that that should be supported by a panel of people with expertise. Again, there will be a panel of six supporting the judge. Four of those will be the acknowledgement forum panel members, and you know who those are already. You know that they are eminent experts in their field. There are two other panel members to be appointed. They will be the panel members who participate in the judicial part of the process. Again, those will be people who have specific expertise that suits them to this particular inquiry. Interestingly, SAVIA said that, from its perspective, it was best to have people from outside Northern Ireland. Of the panel members who have already been appointed, three of them are from outside Northern Ireland, and the fourth, Tom Shaw, has been involved in acknowledgement forum pilot work in Scotland, where he did some pioneering work.
116. They also mentioned the need for hearings outside Belfast. Mr Robinson raised the question about accommodation and where the work will be situated. There will be two centres for the acknowledgement forum — one in central Belfast and one in Derry/Londonderry. Clearly, we have to be very careful to make sure that we locate the acknowledgement forum in the right place, because we want to be very careful to ensure, not only that the building is suitable in the way that it is constructed and laid out, but that it is in a situation in which people could be going for many different purposes. We do not want people to be deterred from coming forward because the

- acknowledgement forum has a very prominent presence. So, the locations will be quite discreet. Something that happened in the Ryan inquiry which we have learned a lot from in terms of this inquiry was that victims, having come forward, could be cross-examined. So they had the experience of actually being cross-examined by the lawyers of their abusers. Having suffered the traumatic experiences that they did in childhood, having had the courage to come forward — I think we can all imagine how difficult and frightening that experience would have been.
117. SAVIA was very clear that it did not want a situation where victims and survivors would be cross-examined. It did not want a process which would be, as it put it, over-lawyered. Apparently there were 350 lawyers involved in the Ryan inquiry. We are going to have a very different system here, because we will not have that. Everybody involved in this has been very clear from the beginning that there will not be an adversarial system here with cross-examination of victims. This is something that the Ministers have discussed with Sir Anthony Hart at some length. We will have a situation where the inquiry is inquisitorial. Basically, what that means is it is searching for the truth, as any inquiry should, but the questions are posed by the inquiry itself, not by opposing sets of legal representatives. The interest of the victims will be very much represented by the inquiry, and the inquiry will pose the questions to the people that it feels it needs to talk to and calls forward.
118. Just on one final point from the SAVIA paper, SAVIA wanted terms of reference that were inclusive so that people would not be unnecessarily deterred or prevented from coming forward. Again, I think the terms of reference that we have been given by Ministers take a very inclusive approach.
119. Just to finish off, I should also say that, as well as the conversations which have been going on throughout between the Ministers and the victims and survivors, and between us and the victims and survivors, it is also important that we
120. **The Deputy Chairperson:** OK. Thank you very much indeed, Maggie. I think that the Committee would agree with the Assembly debate yesterday that a broad welcome has been given to the introduction of the Bill, with recognition of the Ministers and the officials in the Department for the work that has been done to engage and consult with victims and survivors. I think that is clear from your presentation today, the extent of the work that has been done in that regard. Some questions have been raised, obviously, in the debate, and it is timely and extremely useful to have you here today, hopefully for you as well, to speak to some of those concerns.
121. Obviously, the independent, judge-led public inquiry is the key aim. Acknowledgement, accountability and redress are key themes that were raised by the respondents as well. One contribution to yesterday's debate went so far as to suggest that the Bill was a charter for political control. I am sure you want an opportunity to respond to that. However, to get into the some of the specifics and to be substantive: some concerns were raised about the terms of reference being outside the Bill. The Human Rights Commission questioned its compliance with the European Convention on Human Rights in terms of not being empowered to restrict the terms of reference; the power to end the inquiry or withdraw funding; the power to decide whether or not to publish the final report; the time frame of the inquiry; and the timescale for decisions on redress. There are also the definitions of "abuse" and "systemic". Those are the raft of issues that were raised, and members want to bring in their own. Would you like an opportunity to speak to some of those concerns that were raised yesterday?

122. **Ms Smith:** Right; I will perhaps have to come back to you to be reminded of some of them.
123. **The Deputy Chairperson:** No problem; we can go through them again.
124. **Ms Smith:** Let us maybe start with the terms of reference and work through.
125. **The Deputy Chairperson:** OK.
126. **Ms Smith:** Jane referred, as you did, to the fact that “abuse” and “systemic” are not defined. However, there are a number of other definitions in the terms of reference. The terms of reference define, for example, “child” as someone who is under 18. That is a wide definition of “child”, particularly given the period that we are talking about, when people were regarded as adults and as being able to fend for themselves from much younger than we would regard them to be able to now. There is a tendency throughout to define where there can be a clear cut-off point. There is no definition of “abuse” because it is difficult to define. Implicit in this is sexual, physical, emotional and neglect, but there are, potentially, other ways of looking at abuse and, if you define it too tightly, you could end up excluding people who feel that they have been abused. I noticed in one of the notes that came out of the public meetings that there had been a discussion around whether emotional and psychological abuse were the same thing, and whether the word “psychological” included “emotional” or “emotional” included “psychological”. The terms of reference attempt to cut through that by simply saying “abuse”. If somebody has been abused, they know it and they have the opportunity to come forward to the acknowledgement forum to talk about what happened to them.
127. Similarly, as has been pointed out, there is no definition of “systemic”. I think, really, that it is what the system did. Did the system fail in its duties? So, again we could get tied in knots about what exactly we mean by “systemic”, when the terms of reference are really saying please look at the system. What did the system do or not do? It is left open to the inquiry to do its research and ask its questions.
128. The terms of reference are not in the Bill, but it is probably first worth saying something about how we got to the terms of reference. We cannot say too many times that the terms of reference have developed out of discussions with victims and survivors. Clearly, they know and understand what they are talking about and what they feel needs to be investigated. The point has already been made about the difficulties in having a large number of people— in this case, 108 if we threw it open to the Assembly — agree on what is really quite a long passage. Although it says in the Bill that Ministers can change the terms of reference, the process that got us here involved the agreement of the Executive, the agreement of the chair of the inquiry and continual discussion with the victims. So, it would be very difficult to imagine how the terms of reference could suddenly be changed without going through that process again. It would not be possible to renege or change a decision of the Executive without going back to the Executive. Was there anything else on the terms of reference?
129. **The Deputy Chairperson:** No, that is covered. Next is the powers afforded to the Ministers.
130. **Ms Smith:** The clause 1 powers are the powers to set up the inquiry. That is vital, because it gives OFMDFM the power to spend, so it really gives the Department the power to support this inquiry. The inquiry panel is being appointed by the First Minister and deputy First Minister, and people have said that that also means that the inquiry panel members can be removed by the First Minister and deputy First Minister. However, the Bill is quite specific about the situations in which it is possible to remove members. We have made the point, and the junior Minister made it yesterday again, that this is about safeguarding. We are asking what could go wrong, what the risks are that we need to control

- for and what we need to build in to allow us to control for those risks. It is highly unlikely that there would be a circumstance in which a member would have to resign, but an opportunity is needed to allow for that. There could be a circumstance in which it is discovered that, for reasons of illness, misconduct or whatever, someone who is involved in the inquiry is not able to continue. If you think about it from the point of view of a contract of employment — now, clearly these people are not in the employment of the Department but they have been engaged to do this piece of work. Any letter of appointment gives the conditions under which you are appointed to do this work and the conditions under which your employment will be terminated. This is the equivalent of that.
131. The Bill talks about replacement members, or reappointment of members, I should say. That might be to replace someone because a vacancy has occurred for any reason, but, equally, it might be because the panel needs to be expanded for some reason. For example, if more people than expected came forward to the acknowledgement forum, out of fairness to the victims and survivors and the people who are already part of the panel, we might need to expand the panel. Therefore, Ministers would need to make further appointments. The watchword here is “safeguard”, as it is with many, many things that are in legislation.
132. I know that you have had access to the human rights report, which is about the Inquiries Act 2005. As Jane said, some parts of our Bill are similar to the Inquiries Act, but the 2005 Act is, clearly, a different instrument. It is also a much longer document, and the Ministers have more powers in that. Some of the concern about ministerial powers might actually be about powers that are not in this legislation.
133. **The Deputy Chairperson:** Were there consultation submissions in relation to the power to withdraw funding and the power to decide whether to publish the report in full?
134. **Ms Smith:** The Ministers do not have the power not to publish the report in full.
135. **The Deputy Chairperson:** OK.
136. **Ms Smith:** The Bill says that the inquiry will end when the report is given to the First Minister and deputy First Minister and when the terms of reference are completed. It does not say anything about the publication of the report.
137. **Mr A Maskey:** On the issue of the terms of reference and this issue around human rights, obviously people are concerned. I thank you for your presentation and responses so far. A lot of what you outlined appears to be logical, but, of course, people have been saying “What if?”. Are the powers too extensive or more extensive than necessary, for example? I do not necessarily think that, but others are raising the question. We are duty bound to explore all of these things. I spoke to a number of the victims who were here yesterday. They were more than happy that the process was under way. If there are any issues, we can explore them; that is what Committees are for. We can tease all that out.
138. The human rights people said early on that they had some concerns, but you, Maggie, seem to suggest that you do not think that they have those concerns now. Can we clarify that somewhere along the line? If the rule of thumb is that they can change the terms of reference but not restrictively, if you know what I mean, I would like to think that most of what you outlined this morning tells me that a lot of this is enabling and further enabling. I would like to think that that is the route down which we will be going if need be. If people are concerned about the terms of reference being changed, and you have outlined reasons why they may need to be changed, do we need to have a protection to say that we need to have the flexibility to change them but outwardly, as opposed to narrowing them? If that is a human rights convention obligation or requirement,

- can we clarify whether we can address that matter?
139. **Ms Smith:** We certainly can. Clearly, terms of reference can be changed. I have outlined what I think the process would need to be, involving the Executive and the chair. There is no plan to change the terms of reference. That is important. As we said, they are designed to include as many flexibilities as possible. They are not contrary in any way to any aspect of human rights. We will check the point about the narrowing of the terms of reference.
140. **Mr G Robinson:** I thank the panel. I have one or two points. The cost is estimated at somewhere between £7 million and £9 million. Can that be shared with anyone else?
141. **Ms Smith:** Sorry?
142. **Mr G Robinson:** Will that cost be shared with anyone else? The estimated cost of the inquiry is somewhere between £7 million and £9 million. Will any other body help to pay the cost?
143. **Ms Smith:** I beg your pardon. Sorry. The costs are not yet finalised. That was an early estimate. We have not completed the business case yet. Clearly, a lot of work has to go into finishing the business case so that we can get to the final costs. The costs of the inquiry will be met by OFMDFM and will be bid for through the usual budgeting process.
144. **Mr G Robinson:** Solely by OFMDFM?
145. **Ms Smith:** Yes. The money will come from the block in the usual way. It is important to emphasise that we are bidding for that money; we are not taking it from our existing funds.
146. **Mr G Robinson:** I am not being a killjoy or anything.
147. **Ms Smith:** No; it was just in case you needed that.
148. **Mr G Robinson:** I would just like to think that some other bodies would be involved in paying the costs as well.
149. **The Deputy Chairperson:** How was that figure arrived at, and what is budgeted for at the moment in the departmental budget?
150. **Ms Smith:** There are two areas of spend, and they are set out in clauses 11 and 12. OFMDFM is responsible for the general costs of the inquiry; that is all the sort of domestic costs that you would have with any body, which include the cost of panel members, the cost of the staff, any assessors who may be appointed to assist the inquiry, and all the support — the rent and rates. OFMDFM is also responsible for meeting witness costs, and the main part of that will be legal representation. Therefore, when we come to the judicial part of the inquiry, some of the people who are called to give evidence will have their legal costs paid by OFMDFM. There is also the possibility that OFMDFM will pay compensation for time lost if someone is called to the inquiry. There is also the issue of travelling expenses, and that will be important for people coming to the acknowledgement forum.
151. **The Deputy Chairperson:** How do you intend to strike the balance between what you have called an inquiry that is over-lawyered and the level of legal representation that will be required?
152. **Ms Smith:** I mentioned earlier that this will be an inquisitorial inquiry, rather than an adversarial one. That immediately changes or reduces the number of lawyers involved. You do not have nearly so many lawyers if you do not have opposing teams of lawyers. Therefore, the whole style of the inquiry is victim-centred rather than lawyer-centred.
153. **Mr G Robinson:** We are told that, unlike the Ryan inquiry, which cost £1.2 billion, at least appointing our own legal teams and so forth will cut down quite a lot of the expense. It actually says that here. We will have our own legal teams for the inquiry, rather than individuals.
154. **Ms Smith:** There will be two types. The inquiry will have its own legal team, which will be the people involved in

- conducting the inquiry and supporting the inquiry chair. There will be lawyers on the staff, and they will be a crucial part of the team. The expectation is that witnesses will employ their own lawyers. However, in situations where the fees are being met by OFMDFM, there will be a clear schedule of payment and allocation of time. That will be worked out between the Department and the inquiry. Certain parameters will be set by the Department. They are not yet finalised, but we can talk about them later. There will be issues that people will have to answer, and the inquiry will be able to say whether advice is necessary and, if so, how much it should cost. The whole thing will be very carefully controlled.
155. **Mr G Robinson:** Hopefully, that should cut down a lot of the costs.
156. **Ms Smith:** Yes, absolutely.
157. **Mr Eastwood:** I have a number of issues, but we can go into them in more detail later. I do not believe that the terms of reference will be changed. However, I am uncomfortable with the idea that they can be changed without consulting the Assembly. I do not think that we need the consensus of 108 members — it is not going to work like that — but we need to think more carefully about that issue.
158. I am thinking about the cross-border dimension, and I know that there are jurisdictional issues, but what about the Bethany Hall survivors; people who were taken from the North and moved to the South and have fallen between two stools in terms of inquiries down there? They were moved out of this jurisdiction without the proper documentation and everything else. Is there any way that they can be accommodated in the inquiry, or is there anything that we can do to look after their needs?
159. **Ms Smith:** The inquiry is about what happened to people in institutions in the North.
160. **Mr Eastwood:** I understand that. However, is there any cross-jurisdictional work that can be done, because they were moved from here and the state here failed them in that regard? I think that they would argue that very strongly. Is there anything that would accommodate that?
161. **Ms Smith:** I do not know the details of that situation. Our inquiry is about abuse that happened in institutions in the North. We are being very careful. We know that a lot of people who grew up in those institutions have moved away. Therefore, the Ministers have been very clear that they want to ensure that those people have the opportunity to tell their stories to the acknowledgement forum. For that reason, the acknowledgement forum will be advertised very widely. We expect that it will be advertised in the South, Scotland and England. We also expect it to be advertised in Canada, Australia and places where we know people went. Ministers have told the chair that they want him to make sure that appropriate arrangements are put in place so that those people can contribute and come to the acknowledgement forum.
162. **Mr Eastwood:** I understand that the primary responsibility for those people lies with the Irish Government. We can talk about it again, but I think that there is a responsibility, although it may not be in this mechanism, for the North — the state here — to do something to recognise that it failed those people.
163. **The Deputy Chairperson:** Maggie, concerns were also raised about the timescale for decisions on redress, which you acknowledged in your opening comments was a key aim explained by the victims on consultation. Is that something that you can speak to?
164. **Ms Smith:** Yes. Certainly, victims mentioned redress during the consultation process. However, there were mixed views, and that is very important. Some people said that it was very important that people should get some sort of redress, whether that was financial or some sort of service. Other people said that they did not want to have anything to do with an inquiry if it was about giving people

- money, because, for them, none of it has anything to do with money. Financial compensation was not going to help them resolve their issues. They wanted the acknowledgement, they wanted to be understood, they wanted an apology and they wanted a memorial, particularly for those who did not survive. There were lots of other views in between as well.
165. The whole issue of redress is complex. As you know, the inquiry has been asked to make findings and recommendations about redress. The way that it is written is important, and it reflects the debate and the discussion that there has been. It talks about:
- “the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.”*
166. So it is an issue, and one which the inquiry has been asked to make recommendations about.
167. **The Deputy Chairperson:** Will the findings — the recommendations — be those of the chair and the panel? How and when will they be published?
168. **Ms Smith:** A three-year timescale has been set for the inquiry: two and a half years for the inquiry and the investigation to be done, and six months for the chairman to write his report. What goes into the report will be completely a matter for the chairman and the inquiry, as is how they organise that, whether it is an agreed report or a chairman’s report. Ultimately, the chairman is responsible. He is the chair of the inquiry; he directs it, and it is a matter for him. The chair will make his report to the First Minister and deputy First Minister, who have been very clear that the decisions that arise will be made by the Executive.
169. So, for example, the terms of reference tell us:
- “the requirement or desirability for redress”*
170. is a matter for the inquiry to make findings and recommendations about. However, the nature or level of any potential redress — financial or the provision of services — is a matter for the Executive to discuss and agree, following receipt of the inquiry report. So, the report goes to the Ministers and the decisions will be a matter for the Executive, as you would expect they would be, because, clearly, these are major decisions that will need to be made about the apology, memorial, redress and so on.
171. **Mr G Robinson:** One small supplementary: although I made some small observations about costs and so forth, I full support the inquiry. I think that it is long overdue and I am glad to see that it is finally to happen. Some of the things that happened are absolutely horrific. Quite honestly, some people should hang their heads in shame.
172. **The Deputy Chairperson:** OK. Thank you very much indeed for your detailed briefing today and for taking our questions. The Committee obviously has a scrutiny role to perform, but it is very much our intention to make this Bill, as we said in the debate yesterday, the best that it can possibly be for the victims. So we appreciate your time here today and we will continue to be in contact with you.
173. **Ms Smith:** Thank you very much for seeing us.

26 June 2012

Members present for all or part of the proceedings:

Mr Chris Lyttle (Deputy Chairperson)
 Mr Colum Eastwood
 Mr William Humphrey
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson
 Ms Cairtriona Ruane

Also in attendance:

Ms Jane Campbell *Research and
 Information Service*

174. **The Deputy Chairperson:** Jane Campbell, you are very welcome today. Thank you very much for your research paper. Perhaps you will give a short briefing and take questions.
175. **Ms Jane Campbell (Research and Information Service):** Certainly. Thank you very much, Deputy Chairman. Good morning, members. I am here to talk about my paper on the Inquiry into Historical Institutional Abuse Bill. I hope that you will find that to be a useful reference document. It is basically composed of four main areas. It starts off talking a little bit about the background to the Bill and the policy objectives — the purpose of it. The second section covers briefly some of what the consultees wanted to have in the Bill and the inquiry. It also looks a little bit at what good practice guidance on the running of inquiries says. The third section goes into the content of the Bill and explains the various clauses. Finally, there is a short section that covers some issues for further consideration.
176. I will not take you through the whole of the paper, because it is 25 pages long; I will briefly take you through the main points. Section one is the background to the Bill. It starts with the Ryan inquiry report, which was published in 2009. That led to an Assembly motion a few months later. That, in turn, led to an options paper being produced by the then Minister of Health. Following that, the Executive set up an interdepartmental task force to consider the nature of the inquiry, and that was in 2011. As of two weeks ago, we have the Bill. It is short; there are 17 substantive clauses. An explanatory and financial memorandum (EFM) was also produced. It is a very useful guide to the content of the Bill and the policy objectives. I hope that section three of my paper will add to that.
177. We have the documents, the Bill, the EFM and the terms of reference. We also had a briefing a few weeks ago from the departmental officials, from which we already know quite a lot about the Bill and the inquiry. We know that it is a statutory inquiry with specific powers. We know that the chair is Sir Anthony Hart. He was consulted on the content of the terms of reference, and he approved them. He was also consulted on the content of the Bill.
178. The inquiry will be inquisitorial, not adversarial. The purpose is to examine:
“whether there were systemic failings by the state or institutions in their duties towards ... children ... for whom they provided residential care between 1945 and 1995”.
179. The inquiry will make findings and recommendations on this, and in relation to an apology, a memorial and the requirement or desirability for redress to the victims and survivors. At the end of the inquiry, the chairman will produce a report for the Executive. Finally, we know that there will be three strands: the acknowledgement forum, the inquiry investigation panel, and a research and investigations team. We also know that a witness support service will be set up and will be there throughout the entire process, to support victims and survivors.

180. So, we now have the Bill, but how does it compare with what the consultees wanted and what good practice would advise for inquiries? Also, who did they consult with? Well, they consulted with victims and survivors — this is the task force. They consulted with human rights groups, such as the Human Rights Commission and Amnesty International. They talked to children’s rights groups, other key stakeholders and the police. What did they say they wanted from the inquiry? Well, they said a lot of similar things. I think the key thing was that they wanted the inquiry to be independent. Independence was very important. They wanted it to be statutory, led by a judge and in line with human rights standards. It was essential to have victim participation throughout the process. It must be open to public scrutiny. It should have powers to compel witnesses to attend and to call for documentary evidence. The panel should be composed of people with acknowledged expertise in the issues. The officials will be on next, and they will be talking about the consultation; in particular, I think, about what the victims and survivors wanted.
181. On the first of those issues — independence — I think it is likely that there will be some controversy over the Bill and the terms of reference and over the powers afforded to Ministers, although the Department has already stated that these are very much safeguards, to be used in exceptional circumstances. Otherwise, the Department has followed many of the recommendations found in the submissions from the victims and survivors and the other stakeholders who contacted it. Of course, the Bill’s key provision is the power to compel witnesses and to call for evidence, and that will be welcomed very much.
182. As I said, it is important to remember that Sir Anthony Hart was consulted about the terms of reference and has approved them. He was also consulted about the Bill. It is also evident from the documents that the Department has followed the strong recommendations put forward by officials who worked on other inquiries, for instance the Ryan inquiry and the inquiry in Scotland. They were unanimous in stating that it is really important to have victims and survivors involved in the whole process, and to do as much as possible to meet their requirements.
183. Just to finish, I do think that there are some issues that are going to need some further clarification. That has already been picked up on, and it was mentioned in the Second Stage debate yesterday. The purpose of the inquiry is not actually stated in the Bill. It is stated in the terms of reference, which are part of the ministerial statement. Some people have been asking why that is, why they cannot be included in the Bill itself. The power that is given to the Ministers to change the terms of reference — well, it may be that the Assembly would wish to be consulted as well, and its approval sought for that. The Ministers are given the power to remove the chair and panel members, and also to end the inquiry, which, again, will be controversial issues. Although, I must again mention that the Department has said that this is merely a safeguard that is to be used only in exceptional circumstances, and that is why it is in the Bill.
184. Another thing that I picked up is that there is no definition of “abuse” anywhere in the Bill or in the terms of reference. If you know anything about the Ryan inquiry — the term “abuse” was clearly defined in its legislation, and it comes under four categories. It may be that Ministers want to ask the Department why abuse is not specifically defined anywhere in the legislation. The word “systemic” is not really defined either. The purpose of the inquiry is to examine “systemic failings”. How will it do that? There is, perhaps, a need to probe further with the Department and possibly Sir Anthony Hart, when he comes before you next week, to find out how that is going to be ascertained through the inquiry.
185. There may be some controversy over the issue of criminal and civil liability.

- How will the inquiry deal with evidence that raises issues of civil and criminal liability? How is that going to be managed?
186. To finish off, finance for the Bill has been estimated at between £7.5 million and £9 million. How was that estimate arrived at? Perhaps the Committee will wish to ask the Department for further information on that, and, perhaps, enquire whether that is a realistic figure; particularly given the fact that the Ryan inquiry officials who briefed the task force pointed out that the cost of legal representation went sky high. So, that is, perhaps, an issue for further clarification. That is all that I am going to say. I will take some questions. Thank you.
187. **The Deputy Chairperson:** Thanks very much indeed. The submission is extremely helpful to the Committee's work in scrutinising the Bill. There was rich information there. In terms of recognising the inclusion of the victims and survivors in the consultation, obviously the independence of the inquiry was highlighted as being of extreme importance. We heard in the debate yesterday some concerns in relation to the powers being permitted to the Department. Your paper states that the Northern Ireland Human Rights Commission raised concern about the Bill's compliance with the European Convention on Human Rights because Ministers should not be empowered to narrow or restrict the terms of reference, only broaden them.
188. **Ms J Campbell:** Yes.
189. **The Deputy Chairperson:** You have made some recommendations about the Assembly being included in approving any such changes. How important do you think that that is?
190. **Ms J Campbell:** I do not know if it is entirely for me to say, but, yes, I think that that would be an additional safeguard; very much so.
191. **The Deputy Chairperson:** OK.
192. **Mr A Maskey:** On that point, I do not know how that would work out. I am actually not so sure. I take the point, and we will obviously go through these matters with the Department, heart and soul and so forth, and then come to a conclusion on some of them. However, even if everybody agreed today that the terms of reference are wonderful, I am not so sure how you could throw that into an Assembly at some point and get agreement there on terms of reference. Is there a precedent for that? Has it worked anywhere else? Is that the way it has been done? All of us at the table know that agreeing a Committee press release is a tough ask, so when it comes to agreeing terms of reference we could all want all sorts of different things, particularly on a sensitive issue like this. My understanding is that some of the issues around confidentiality are specifically at the request of victims. So, if people ask why there is a provision for confidentiality, the answer is that the victims want that. That is the bottom line. Is there any precedent for, for example, terms of reference being agreed or having to be agreed by a body of as many as 108 people?
193. **Ms J Campbell:** I could look further into that. The default legislation in the UK is the Inquiries Act 2005. I could look at that to see how it has operated in practice. It has similar sorts of curbs on the power of the inquiry chair and the powers that are given to Ministers. I could look a bit further into that to see whether there have been any challenges, and come back to you.
194. **The Deputy Chairperson:** That would be helpful.
195. **Mr A Maskey:** The Inquiries Act 2005 would not be my benchmark, let me tell you. If there are any other, credible alternatives in my view —
196. **Ms J Campbell:** The 2005 Act has been much criticised for the potential threats to the independence of inquiries. This is not a replication of the 2005 Act. Some of the clauses are similar, but the Department has tried to minimise as much as possible the extra powers that are given to Ministers. It has given as much freedom as it possibly can to the

- chair and the panel. Where it has not, it says that they are just safeguards and that it may never happen.
197. **Mr A Maskey:** I appreciate that. Thank you.
198. **Mr Humphrey:** Morning, and thank you. I agree with your last point: the Ministers are, as far as possible, trying to devolve the issues so that the chair and his panel are completely independent. I share the concerns that Alex expressed about taking it into the Assembly. One of the things you mentioned was that it was independent. That should mean that it should not, in any way, be shaped or formed by politicians. If Ministers are trying, as far as possible, to leave it to those who are charged with carrying out the investigation and are trying to play as little a role as possible, I am not sure that it is appropriate for 108 MLAs to kick it about the Assembly. It is perhaps not fair to ask you that, but that is a concern that I have.
199. **Ms J Campbell:** I raised it for your good selves take it and discuss around it.
200. **Mr Humphrey:** If it is in the political arena, the independence is somewhat breached.
201. **The Deputy Chairperson:** Are there precedents for trying to find definitions for some of the terms that you referred to, such as “abuse” and “systemic”, in other legislation?
202. **Ms J Campbell:** Yes. The definition of “abuse” was in the legislation that set up the commission in the Republic of Ireland. I think I have it in the paper there. The four categories are neglect, physical, emotional and sexual abuse. Those were very clearly defined and specified in the Act. Is it important for the Assembly to have those, or is that for the panel? It is just an issue I’m raising that you may want to think further about.
203. **Mr G Robinson:** Thank you, Jane, for your presentation. Has it been decided yet where the inquiry team will be housed or working from?
204. **Ms J Campbell:** I am not privy to that information. That question is probably more for the departmental officials or Sir Anthony Hart. I cannot provide any information about that. I know that the victims and survivors want meetings to be held throughout the Province, rather than everything being centred in Belfast. I am afraid that I do not have information about where they are actually going to meet, sorry.
205. **The Deputy Chairperson:** Jane, thank you very much indeed for the briefing. You raised some extremely important questions for the Committee to take forward with officials. We are very grateful for that.
206. **Ms J Campbell:** If there is any more research at all that you want, I am here to do that.
207. **The Deputy Chairperson:** Thank you.

4 July 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Thomas Buchanan
 Mr William Humphrey
 Mr Danny Kinahan
 Mr George Robinson

Witnesses:

Mr Andrew Browne	<i>Historical</i>
Mrs Norah Gibbons	<i>Institutional Abuse</i>
Sir Anthony Hart	<i>Inquiry Panel</i>

208. **The Chairperson:** You are all very welcome. Thank you very much for your time. Sir Anthony, would you like to make an opening set of remarks and then field our questions? If that is acceptable, the floor is yours.

209. **Sir Anthony Hart (Historical Institutional Abuse Inquiry Panel):** Yes, indeed. Chairman and Committee members, I am grateful to the Committee for giving me this opportunity to explain publicly how I see the inquiry into historical institutional abuse in Northern Ireland between 1945 and 1995 going about its work at this early stage.

210. First, I want to say that I consider it a privilege to have been asked to conduct this important inquiry. As its terms of reference make clear, the remit of the inquiry is to examine whether there were systemic failings by institutions or the state in their duties towards children in their care between 1945 and 1995. Although funded by the Northern Ireland Executive, the inquiry is an independent body. The matters within its remit will be thoroughly and rigorously investigated, without fear or favour, by me and by those who will be appointed to assist the inquiry in various capacities, whether as panel members or staff.

211. For the purpose of the inquiry, the terms of reference define a “child” as someone who was under the age of 18

and an “institution” as any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than in school but including a training school or borstal, which provided residential accommodation, and took decisions about and made provision, for the day-to-day care of children during the relevant period between 1945 and 1995.

212. The inquiry will have to investigate matters of the utmost sensitivity and importance for all who experienced life as children in those institutions, some of whom may wish to describe their experiences going back more than 60 years. Perhaps the greatest single challenge for the inquiry at this stage is to try to ascertain how many institutions will fall within our remit and how many children went through those institutions in the 50 years from 1945 to 1995. There is no central database to which we can turn that will answer either of those questions. So, it will be necessary to try to identify those institutions, and it is clear that that will not be an easy task.

213. The initial work that has been done suggests that there were over 100 separate locations that provided such residential care at different times. So far, we have identified 97 homes, hostels, adolescent units, respite units, orphanages or nurseries; 13 industrial schools, training schools, young offenders’ centres or borstals; at least 14 schools or homes for people with disabilities; and at least 13 hospital units for children with mental illness or learning difficulties. There were also a number of workhouses and their infirmaries in operation for a period after 1945. On further investigation, it may be that some of those fall outside our remit, but I hope that that conveys something of the potential scale of our task.

214. We do not know how many children went through those institutions. Various

- estimates have been given as to how many children may have been in such institutions during the 50 years covered by the inquiry's remit, but until people come forward to contact us and we can obtain more information from the records of those institutions, the estimates are only that: estimates.
215. The inquiry will therefore have to consider what did or did not happen to many children, perhaps thousands, in a large number of institutions over many years. That will be a complex and demanding task, particularly given the time frame set by the terms of reference for the completion of the report, and it will involve a great deal of time and effort because of the number of institutions, the number of children and the 50-year span of the inquiry.
216. I have no doubt that many of those affected by the decision to set up this inquiry, some of whom may be well on in years, are very anxious that it should start its work as soon as possible. Through the Committee, I would like to assure them in particular, and the public in general, that I am fully aware of such concerns, as are those who are working with me.
217. A good deal of detailed preparatory work has already been carried out by the inquiry in recent weeks to plan and set up the necessary procedures to enable it to carry out its task. Some further time will inevitably pass before the inquiry is able to put in place the necessary staff, premises and computer systems that are essential to allow it to carry out its work efficiently and speedily once the necessary legislation has been passed by the Assembly.
218. Andrew Browne, who is with me today, is the secretary to the inquiry and has been working extremely hard since his appointment on those matters. We do not yet have permanent premises, but much work has been done on the design of the necessary computer system that we will have to have in place to record and handle data before we can invite members of the public to contact us.
219. Although the inquiry will require the legislation that your Committee is scrutinising to be in place to fully carry out its work, I emphasise that everything possible will be done in advance of the legislation being passed so that the inquiry is ready to move to the next stage as soon as the legislation is brought into force.
220. As the terms of reference make clear, an equally important part of the inquiry is the acknowledgement forum. It has a separate team of very experienced panel members and will provide an opportunity for victims and survivors to recount their experiences on a confidential basis. I should like to take this opportunity to place on record the very valuable contribution the panel's members have made to our work so far. I have found it immensely helpful to have the benefit of their experience of similar work elsewhere. I am accompanied today by Mrs Norah Gibbons, who is a member of the acknowledgement forum panel and has performed a similar role with the Ryan commission.
221. It is intended that the forum will start its work as soon as the necessary staff and procedures are in place. Although it is not yet possible to give a precise date by which the forum will start to hear from those who wish to speak to it, I hope that it will be possible to have the forum operational well before the end of this year. The inquiry will make every effort to have facilities in place as soon as possible, including a website, to allow anyone who wishes to contact the inquiry or the forum to do so on a confidential basis.
222. We are here to answer as best we can any questions that you wish to put to us either about the legislation you are considering or about how we intend to go about our work. We will do our very best, if we can, to answer any questions you may choose to put to us. I hope you will understand if I invite either of my colleagues to respond if I do not feel able to answer the question.
223. **The Chairperson:** Absolutely. Thank you very much. Perhaps I could begin quite

- mundanely by asking whether you will put on record how you came to become the chair or presiding member of this panel, and, indeed, whether you might like us to, as the legislation comes forward, find a less inelegant title than “presiding member”?
224. **Sir Anthony Hart:** It seems to me a rather awkward term. I am not entirely clear as to who thought of it; I certainly did not. I would be quite happy to be described as chairman.
225. I was approached and asked whether I would be interested, and I realised the importance of the work that the inquiry was going to deal with. I had discussions with representatives of the Office of the First Minister and Deputy First Minister (OFMDFM) and we talked through what would be involved and so on.
226. **The Chairperson:** I assume that those discussions would have taken you into the terms of reference. You will be aware that there is some disquiet, questioning or uncertainty as to why the terms of reference are outwith the proposed legislation. What was your input and what is your opinion of how this is being done?
227. **Sir Anthony Hart:** As is customary, as the prospective chairman, I was asked for my opinion about the terms of reference and their content. I did not see it as my function either then or now to rewrite the terms of reference in the sense of saying that this should be included or that should be included where those matters would involve policy. That was for those setting up the inquiry, but I did offer some comments on drafting aspects of it, which were accepted. I am not entirely clear in my own mind why, unless it is simply because of their length and complexity, the terms of reference do not appear in the legislation that you are being asked to consider, but for my part, I do not see that as a difficulty when it comes to doing our work.
228. **The Chairperson:** Would you have an objection if the terms of reference were included?
229. **Sir Anthony Hart:** None. The only difficulty is that if at some stage in the future, it becomes apparent that there may have to be a change in the terms of reference, well then that means it has to come back to the Assembly for legislation. That is ultimately not a matter for me, it is a matter for the Assembly and for Government.
230. **The Chairperson:** I am sure that we could build in that flexibility, which I think does exist in the proposed Bill whereby the First and deputy First Ministers could change the terms of reference. Do you think as your inquiry progresses that it is possible that your experience will direct you to think that these terms of reference are perhaps a little narrow or that there is an element that is emerging that has not been covered?
231. **Sir Anthony Hart:** Well, I think one has to recognise that that is always possible, but this process, as the Committee will know, is one that I came to relatively late: very late, in fact, in terms of its gestation. I seem to recall that, as you will find in your Assembly briefing document, the first time it came before the Assembly was in 2009. So, clearly those concerned have been exercised and diligent in their discussion of all of these issues. I think that it is unlikely, but one can never rule out, that there may some need to amend the terms of reference. However, they are drawn in a particular way, no doubt deliberately. Of course, any significant change in the terms of reference might well have very significant implications for the scope of the work of the inquiry, the resources necessary and the timetable.
232. **The Chairperson:** The scope, in terms of the timescale, begins in 1945. Are you content with that? Presumably there will be a number who are excluded.
233. **Sir Anthony Hart:** One would have thought it is relatively unlikely that there would be many in that category. The explanation given to me, and which I see as entirely logical, is that, with the end of the Second World War and the arrival of the welfare state, a new direction was embarked upon. Although it took a

- number of years for that to be translated into legislation and structures in Northern Ireland, the start of the welfare state is generally taken as being 1945, thus a suitable place to start the inquiry. I think that one has to have some form of time boundaries set, and the starting date seemed to me to be entirely appropriate. Of course, a provision has been built into the terms of reference that will allow the acknowledgement forum members to hear the testimony of those who may wish to recount what happened to them before 1945; in that sense, they are not completely excluded.
234. **The Chairperson:** But if you were one of the albeit, I could agree with you, few whose abuse finished before 1945, how would you feel if you were not being offered the full facilities of the inquiry simply because this date was fixed? I understand your saying that you have to have parameters, but why could it not be that if you are still alive, you qualify?
235. **Sir Anthony Hart:** If you are still alive, the acknowledgement forum will have the opportunity to listen to what you have to say, and it will ultimately report to me as chairman of the committee. The experience of those who testify to the acknowledgement forum will not be lost or ignored; it will be transmitted to the statutory inquiry, so —
236. **The Chairperson:** Sorry, but it will be treated slightly differently.
237. **Sir Anthony Hart:** But treated slightly differently, I agree. In practical terms, it is difficult to envisage how the experiences of anybody before 1945 would be any different to those immediately after 1945. Therefore, our inquiry will certainly be examining the state of affairs in 1945. It is, I think, hard to envisage the inquiry not becoming aware of material information merely because of this 1945 cut-off date. For example, other than the unique wartime circumstances that obtained, it is difficult to see how someone who had gone into a home in 1942 or 1943 would be any different from someone who did so in 1945 or 1946.
238. **The Chairperson:** Might the circumstances of someone whose abuse finished in 1944 speaking to the acknowledgement forum be such that the forum panel would be coming to you to say that you have to change the terms of reference?
239. **Sir Anthony Hart:** If a sufficiently compelling case were made, I would have no hesitation in asking for them to be changed.
240. **Ms Ruane:** Go raibh maith agat. You are very welcome. I welcome the work that you are and will be doing. This is very important. The work that was done in the South made huge changes to the Southern state. While it did not meet everybody's needs, it was really important. I suppose that I have to declare an interest; I was Minister of Education at the Executive table when it first came up for discussion and I pledged my full support for an inquiry to get to the truth. So, I do not need to tell you that your work is really important. I did have a question about the date. I understand that it is difficult. If you start at 1940, you might be asked why it is not 1935, but, if there were cases, I think that we need to keep an open mind and see how people can be facilitated, because we do not want to victimise further in any way.
241. I have a couple of questions. Perhaps it is not the right question to be asking you, but I am asking myself about boarding schools. Is there a reason why they are not included? Also, there is the link between certain institutions and adopting and fostering. I am just interested in your opinion in relation to that. For you, Chairperson, but also for Nora and Andrew — are there lessons that we can learn from other inquiries that you have been involved in, and what are those main lessons?
242. **Sir Anthony Hart:** I will answer that as best I can. I can only presume, because I do not know why schools have been left out, that it may be to do with the scale of the matter. I just do not know. I do not feel that it is appropriate for me to indicate that this or that additional substantial area should be included. If it

- is included, well and good, but no doubt those from OFMDFM would be able to explain better than I can why they chose to limit it in that way.
243. Fostering agencies and so on present a more difficult case. I can understand why one is looking at institutions, because, insofar as it is possible to examine these matters, experience elsewhere shows that the problems were particularly acute in institutions. The experience of the Ryan inquiry in the Republic and similar work that one of our acknowledgement forum members, Tom Shaw, did in Scotland, suggests that people are subjected to those experiences in the context of being in institutions. If they were not in the institutions, they could not be exposed to them in the same way. Clearly, for example, if one had an inquiry into child abuse without any form of limitation, one would be looking at families and social services, and that would be an enormously larger, more complicated and, dare I say it, more expensive and considerably longer inquiry than this one. That is the only explanation that I can give.
244. I have already found it extremely helpful to have the benefit, in particular, of Norah and her colleagues, who have been through comparable exercises. There are a whole range of ways in which my eyes have been opened just from listening to the accounts they have given of the detailed way in which those problems affected children, both at the time and in later life. If you wish, I am sure that Norah would be happy to add to what I say about that.
245. **Mrs Norah Gibbons (Historical Institutional Abuse Inquiry Panel):** Indeed. I would also like to say what an honour it is to have been asked to take part as a member of the acknowledgement forum. I bring with me experience of a similar type of forum in Dublin. One of the things that impressed on us who worked on the Ryan commission was the importance of reporting to the public sooner rather than later, because of the age of some of the people who may wish to speak to us. For people who experienced, for the first time, being listened to and believed about what had happened to them, having their voices heard was extremely important. What our chairperson has spoken about in terms of the effects that went on into their later lives is something that can help our whole societies in looking at how we care for children now who need to be in the care of the state. The issue is that, if we do not provide the kind of stability and emotional well-being that every child should have — and, indeed, material well-being to an acceptable standard — the difficulties that can arise can come with them into their lives.
246. This inquiry will have learned from what happened in other inquiries. We are able to use my experience and that of Tom Shaw and, indeed, the other members of the acknowledgement forum, and, no doubt, the other inquiry members, to make this inquiry work very well from day one, because we are more tried and tested than we were when I started many years ago in Dublin.
247. **Ms Ruane:** I want to ask one supplementary question. Are you content with the powers that you have?
248. **Sir Anthony Hart:** Yes. It is important to confirm that an absolutely crucial element of the Bill that the Committee is required to scrutinise relates to the powers that we have been given to call for documents and to require people to appear before us. Of course, our ability is limited geographically, in the sense that we cannot operate outside of Northern Ireland.
249. Access to records will be of the utmost importance to the work of our inquiry. We have already started exploratory conversations with health trusts to get access to records that we think they may have. We have also started work with the Public Record Office to get information that we know has been deposited with them by a number of organisations. In due course, we will request and, ultimately and if necessary, require Departments, religious orders and voluntary organisations, all of which

- have played a part in this history, to produce relevant documents. We will request their internal records, and not just admissions records but things like punishment books. From a governmental point of view, we will also request reports from inspectors. We want to know what the nature of those reports was, and whether they were thorough or ignored. We will have to look at all those things.
250. Although I very much hope that everyone to whom we issue a request to provide information will do so voluntarily, if they do not, I will have no hesitation in making it clear that I will seek to use the powers the Bill will give. It would perhaps be unrealistic to assume that absolutely everybody will co-operate voluntarily without us having to use those powers. I hope that we will never have to use them, but, if necessary, we will. Their existence is crucial to persuading those who normally might be reluctant to co-operate to do so. They will know that if they do not co-operate voluntarily, regrettably but necessarily, one will have to invoke those powers.
251. **The Chairperson:** Norah, you said something that I would not like to be lost. It was about building a better future for children. However, it seems that your terms or reference do not allow you any scope to define the lessons to be learned.
252. **Sir Anthony Hart:** I see our role as making findings about what happened; that is clear from our terms of reference. If it becomes apparent to us — particularly as we look at the latter part of our period, up to 1995 — that there is reason to believe that some practices and procedures may still be continuing, I see no difficulty in making appropriate recommendations for further work or consideration. I do not see the inquiry being precluded from commenting, if it thinks it necessary, on what may have happened after 1995.
253. **Mr Humphrey:** Good afternoon and welcome to the Committee, and thank you very much for your presentation.
254. Given what we have just heard from you, Sir Anthony, it is clear that the lady sitting to your left, and her experiences with the Ryan commission, may prove to be invaluable. If there are people who refuse to co-operate — and I hope that that will not be the case; I hope that everyone, every organisation and every body that is approached will do that. You will be aware that there will be considerable media and public attention on the work that your inquiry will carry out. Placed on your shoulders will be a huge responsibility and trust, and the hopes of many people who are seeking to get answers and bring closure to horrendous events that we cannot even think about. I wish you well and Godspeed in that work, because it is vitally important.
255. However, there are a couple of points from what you said that I want to home in on. I am pleased that the work has started and that contact has been made with the health boards and the Public Record Office and so on. It is vitally important that the Government bodies and the religious orders are spoken to as the process continues. In the preliminary discussions you have had with those institutions or organisations, have you and your colleagues had co-operation?
256. **Sir Anthony Hart:** Yes. I see no reluctance whatever on the part of either of the health and social care trusts, which are the successor bodies to, for example, the county welfare committees that existed prior to the local government reorganisation, or the Public Record Office. I see no indication of any reluctance. They are concerned about what anybody who runs any organisation would be concerned about: the resource implications of the requests that we make. We will try to manage our requests in a way that places as small a burden on those who have to respond to them as possible. However, the burden will rest on those who have the material, to produce it to us. So far, although it is a very early stage, we have seen no signs of any reluctance. Far from it: both bodies have

- made it clear that they are anxious to co-operate in every way they can.
257. **Mr Humphrey:** I am pleased to hear that.
258. **Sir Anthony Hart:** We are still at, you will appreciate, a general exploratory discussion stage with them.
259. **Mr Humphrey:** Yes. As I said in the House on the day we discussed the issue, many people — families and parents — placed trust in institutions and, in many cases, faith. They were let down, and that trust and faith was literally abused. People are different, and some will react to that process. As we have heard from victims' groups and those who were victims of the terrorism campaign, people react differently.
260. One of the important things that your inquiry has to consider is where the offices are located. You mentioned premises, and some people will more readily come forward and speak, but other people will do so much more reluctantly, if at all. We need to do as much as possible to enable them to come forward. Therefore, where the premises are located is crucial to giving people who are coming forward the comfort to do so. For example, if it was based in Royal Avenue, which it would not be, people would be able to see who was going in and out. However, if it was based in a more private or secluded place, there would be more opportunity for people to come forward.
261. **Sir Anthony Hart:** I am not, I hope you appreciate, in a position to discuss an individual location, because we have not got one yet. Although negotiations are proceeding, they are far from concluded, so there is an element of commercial confidentiality. We are very aware of the need to have to somewhere that is, first of all, central and accessible in the sense that it is easy for people to travel to.
262. Secondly, it should be somewhere that, whilst accessible, is relatively anonymous. So, I do not anticipate us having a great big sign outside the door saying, "Historical Inquiry". There may be a very small label, if there is one at all, so that the individuals who come to us will be able to do so without any feeling of stigmatisation from people recognising them. That can always happen, but we will do what we can to reduce that. We have looked at premises from the perspective of ensuring that, once people have come through our door, we will arrange the layout in such a way that there is little prospect of their meeting someone whom they do not want to see. I have learnt from my discussions with colleagues that many of the people who have had these experiences have never talked about them to their nearest and dearest and that others may, unfortunately, have been divided as families. They may never have seen brothers and sisters or have lost contact with them. They may not want it known in their families or wider circles that they had these experiences. Therefore, it is extremely important that we can reassure them that we will do everything that we can to make it confidential in the full sense of the word when they come to give evidence.
263. **The Chairperson:** On a technical but very important point, can you clarify that, until the legislation is passed, you can have only tentative negotiations with these bodies because you do not legally exist and that, therefore, you cannot sign up with the Information Commissioner? Can you clarify that, until then, you will not have data handlers and processors, so you cannot start to gather information?
264. **Sir Anthony Hart:** I do not see any reason why we cannot start to gather information in the sense of asking people to write to us. Ultimately, we will advertise. When we get premises, we will ask people to contact us. Hopefully, there will be a website and so on. It is our view, at least, that we do not need statutory power to operate the acknowledgement forum. That is why we hope to bring it into being later this year, and our structures and procedures will be developed to service it as well as the inquiry.
265. **The Chairperson:** Will getting information from institutions require the legislation to be passed?

266. **Sir Anthony Hart:** Only if they do not co-operate. We will certainly be in contact with them well before the legislation is passed, and we will invite them to provide it voluntarily. If they do not agree, we will not be able to take it any further without the legislation, but we will then be ready to move. I assure you and your colleagues that we will move as quickly as we can after the legislation comes into force, rather than allowing time to go by through writing letters back and forth. If people co-operate voluntarily, so much the better; if they do not, we will be ready, I hope, to move as soon as the Bill becomes law.
267. **Mr Lyttle:** Thank you for your presentation. I wish you well in your important work to give a voice to victims and survivors and to meet their legitimate needs. One of those needs was to ensure that the inquiry was independent, judge-led and public. Some concerns have been expressed about the extent of the powers that have been given to OFMDFM in relation to the inquiry, including the power to terminate the inquiry, to withdraw funding and, possibly, to decide whether the inquiry report will be published in full. Can you speak to those concerns, Sir Anthony?
268. **Sir Anthony Hart:** I certainly anticipate that, at some stage, the inquiry will have public hearings. The acknowledgement forum, by its very nature, is not designed for that purpose; that would be self-defeating. However, I anticipate that we will have to move to some form of public hearing, although it may be some time before we can do that. I accept the explanation that has been furnished to me about the powers of OFMDFM, and, in some instances, it was I who made the point in correspondence when we were discussing the terms of reference: the inquiry will take a certain length of time and it would be foolish in the extreme to proceed without taking into account the risk that one of our panel members might fall ill, for example. If that happens, there needs to be a mechanism to allow replacements to be provided. We do not know, as I have explained, how many people will come forward, but we have proceeded on the assumption that four acknowledgement forum members would be sufficient. However, if that were not sufficient, we would have to ask for more to be appointed, so there has to be a power to provide all that.
269. The powers to interfere with the production of the report and so on are similar to those of the Inquiries Act 2005. I do not see them as likely to be a difficulty in the circumstances of this inquiry. I cannot envisage how anyone would want to stop our report becoming public. It is not, after all, concerned with issues of national security, commercial confidentiality, scientific processes or matters of that sort. Therefore I do not see those as likely to be problematic, and there are possible reasons why they may be beneficial.
270. **Mr Lyttle:** Concern has also been expressed about a decision on redress not being taken until the final outcome of the inquiry. Can you speak to that concern?
271. **Sir Anthony Hart:** I can understand that, particularly for those well on in years, that is a live issue. However, until the inquiry completes its work it is not likely to be in a position to make any recommendations, because that would be arriving at a decision before we had heard all the relevant evidence. So I am afraid that, given the scope of what it is we are being asked to do, the reality is that although I will do everything I possibly can to ensure that we produce the report within the time limit, the nature of the process makes it inevitable that, from the inquiry's perspective, it would not be possible to make any form of recommendation, and I would not like to commit myself even to saying that we would look at producing interim recommendations because they would be subject to the same inhibition.
272. **Mr Lyttle:** What type of arrangements will be put in place to assist and support victims and survivors when they are contributing to the inquiry?
273. **Sir Anthony Hart:** As you will have seen from the terms of reference, there are

two ways in which that will happen. The mechanism, which is not in any way the responsibility of myself or my colleagues, is a victim support service, which I understand the Executive intends to provide to — I think the expression is “support”. I am not in any way concerned with that. We do not know exactly how it will work or what its terms of reference will be.

274. That aspect will be our responsibility; we have referred to it, perhaps as a working title, as a “witness support service”. What we envisage is that, quite apart from ensuring that our staff who deal with correspondence and enquiries react sensitively and appropriately when an individual physically comes to speak, either to the acknowledgement forum or later to the inquiry, whenever that may be, they will be met by individuals who will explain to them what will happen, give them whatever emotional or other support they need and help them afterwards. Perhaps, since Norah Gibbons is more familiar with that sort of thing, I could ask her to give a little more detail.

275. **Mrs Gibbons:** Thank you. The role of the witness support officer is to help the person who wants to talk to the acknowledgement forum. First, he will help with whatever practical arrangements may be necessary and to explain to them in advance whatever expenses system is put in place so that they know precisely what is likely to happen. The officer will then set up an appointment for them that is conducive to them and to the forum or inquiry; meet and greet them, if you like, have a cup of tea with them, or whatever they wish; make sure that they are as comfortable as they can be by the time they come to meet us; and to look after them afterwards. The experience can be very traumatic, particularly for people who have not spoken about what happened to them before. It would be wrong to let people leave to go about their daily lives without making sure that they were all right, that they could return to wherever they came from comfortably, that we would be in touch with them, if

they so wish, perhaps a few days later, and that we could hand them on to the long-term support service that may be put in place to help them. That has certainly proved very helpful in the past.

276. **Sir Anthony Hart:** Perhaps I could add to that. In our preliminary discussions on the content and format of any written material that we may send people before they come to us, we are looking at being able to recommend to individuals who may not have had any contact with some form of help or counselling that there are organisations, which we will identify in our written material, that they may be able to get in contact with. For example, if someone, through their evidence, makes it clear to the acknowledgement forum panel that they have never had help of any sort, we would not take responsibility for their getting that help — that would not be part of our terms of reference — but we would see it as part of our service to those individuals to try to direct them to the appropriate place. Indeed, as Norah indicated, we anticipate having some form of follow-up, a week or two later, when someone will contact the individual and ask whether they are all right, whether they got home all right and so on. If there was a particular concern, we would point out the leaflet that says that they can ring such and such.

277. **Mr Buchanan:** I thank you and your team for coming to the Committee again today and wish you well in the mammoth task before you. I know that some concern has been raised about this, but the terms of reference talk about looking at historical institutional abuse. Is that your only remit: to look at those who were abused in institutions, or does it go wider than that to look, perhaps, at those who were abused outside institutions? For instance, if somebody came to you who had not been in an institution but who had been abused, could you cover that?

278. **Sir Anthony Hart:** I do not think that we could cover it in quite the circumstances that you envisage. Our terms of reference relate to:

- “any body, society or organisation with responsibility for the care, health or welfare of children ... which provided residential ... accommodation”.*
279. Of course, the situation may arise, because we know from other inquiries that that did sometimes happen. I am not, as it were, prejudging what we may find, merely indicating that we know that it has happened in the past and, therefore, that we may find that it has happened here. For example, if someone was in an institution and was abused, not on the grounds or in the building, but by a member of staff who, let us say, took them out for a day trip, whose home they went to, whose farm or business or place of employment they went to and then came back, that is a matter that we will pursue. Even if they were abused outside the physical location of the institution, if the institution knew about it, or should have known about it, and did nothing, that is a matter that we will pursue. However, were we to hear about an extreme case in which someone came forward and said that they had been beaten or ill treated by an aunt and an uncle with whom they lived but that they had never been in an institution, that would not come under our terms of reference.
280. All I can say is that our deliberations will depend on the particular circumstances, but we are limited by the terms of reference to organisations, for want of a better word, that looked after children in residential settings.
281. **Mr Buchanan:** The remit of your inquiry covers only those who suffered in an institution.
282. **Sir Anthony Hart:** Yes. If a member of staff took someone out for a day trip and abused them on the day trip, that would clearly be within our terms of reference, because it would not have happened unless the individual had been in the institution and entrusted to the care of the abuser. However, we are required to look at what happened in the institutions. There will, undoubtedly, be some other grey areas around the margins where things may not always be entirely clear.
283. I cannot commit my colleagues on the inquiry side, who have not yet been appointed, but I hope that we would take a generous view, so far as we can, without violating our terms of reference.
284. **The Chairperson:** Tom’s point is that if you have a serial abuser — an abuser who has abused more than one person — it is possible that some of the abused people will get comfort from your inquiry and others will be excluded.
285. **Sir Anthony Hart:** That may be inevitable.
286. **Mr Kinahan:** Thank you. I look forward to seeing you up and running. My questions are about the press. If you are using the same building all the time, perhaps in Belfast, will you look at using others in different locations if there are suitable ones that the press are not aware of? Anyone, by watching any building, can put two and two together and work out a story. In order to protect victims, will you use other locations?
287. I was not present for the debate in the House, but I know that clause 7 requires the presiding member to take whatever steps he judges reasonable to ensure that people are able to attend the inquiry. I feel that that is the wrong way round, because it seems to put the onus on allowing the press and the public in, which would frighten people away. Should we change that around so that the onus is on you to decide when the public can come in? Do you see where am I coming from?
288. **Sir Anthony Hart:** Yes. I will deal with your question in several stages. First, we are very alert to the need to have relatively anonymous premises; on the other hand, however, people have to be able to come to us. There is an extent to which, perhaps, one cannot achieve a completely perfect solution. Bearing that in mind, we may have to compromise on it in practical terms.
289. We anticipate that the acknowledgement forum is the one on which people are likely to wish to be unrecognised so that

- they can be as discreet as possible. There may be occasions where, for logistical reasons, it is necessary to go outside Belfast. We may have to look at that in some detail.
290. We have already talked in general about whether we may just have to, for example, rent some rooms in a hotel somewhere. Although they would know and we would know who they were, the hotel staff would not know, but of course we would look at each location with a view to ensuring that it was, as far as we could achieve it, possible for people to come in and not be stigmatised by being accommodated with us.
291. As far as the inquiry side is concerned, there is a long-standing convention, which has now almost become a matter of public law, that proceedings of a public inquiry are public; that is necessary to ensure that the public can see and hear for itself what is happening. An inquiry is not a court. However, it shares some of the characteristics in the eyes of the public in the sense that those who are interested want to be able to see and hear for themselves the material that the inquiry is considering. In practical terms, that means that it has to be done in public. We have not yet reached any concluded position about whether individuals would be named, whether we would give them a pseudonym or whether they would simply be referred to by a number. Some may be quite content to be identified, but others may not. We may have to look at devices such as screening for individuals. We will look at all those things, but, generally, the emphasis must be under clause 11 to have public access.
292. We would have facilities to have a transcript available as quickly as could be achieved; perhaps not simultaneously, but certainly by the next day. As for broadcasts including the individual appearing on screen, we would have to look at that. Ideally, proceedings would be broadcast to allow the largest number of people possible to follow what we are doing. Some individuals may be content to be named but may not want their faces to appear, and we might wish to screen them, for example. It is unlikely, but not impossible, that we would exclude anybody from our hearings. However, there may be some people whose state of health, for example, is such that they say that they will talk to the inquiry but could not cope with the world and his wife looking on. We will just have to look at each on a case-by-case basis.
293. **The Chairperson:** If I may just ask a quick-fire question to finish: you mentioned obliquely time and money, and of course nobody wants to spend more for longer than is necessary. However, you also say that you do not know how many people we are dealing with here. With two and a half years and £7.5 million to £9 million; are those constraints? What happens if that gets squeezed?
294. **Sir Anthony Hart:** Naturally, my attitude and that of my colleagues is to start from the position that, since the Assembly, if it passes the legislation, will let this inquiry take place, it is up to government to provide the resources to allow it to be done in an adequate way. Like everybody else, I have to realise that we live in an era in which the most common word seems to be austerity, and there are clearly constraints on spending public money that perhaps were not as acute five or 10 years ago when there was more in the way of resources available. We have to be careful to balance, on the one hand, the need to do the work of the inquiry properly to see that it is adequately resourced and, at the same time, not to spend money without consideration for the welfare of the public purse. I am not convinced that it will always be an easy decision in every instance, and we are at present negotiating with the relevant portions of government over our budget and so on.
295. **The Chairperson:** You are the presiding member of an inquiry panel of three. Will it be the chairman's report or will it be the panel's report?

296. **Sir Anthony Hart:** The way the legislation is drafted indicates that it would be my report. However, I envisage that we will try to arrive at a report that all three members would feel able to sign. I hope that that will be the case. My approach will certainly be a collective one. The input of those who we hope will agree to serve as panel members will be extremely valuable; they will be people of great experience and standing in their respective fields. Any report produced as a result of deliberations of the panel will gain extra weight and authority from being the report of all three. They are not merely there to offer advice; they are part of the process just as much as I am.
297. **The Chairperson:** I think that I am right in saying that this is the first time since 1998 that the devolved Administration has put together a process to deal with the legacy of a very specific part of our past: institutional abuse. Do you, in any sense, think that you are a road test for perhaps a broader model in the future for dealing with the legacy of the past as we define it in terms of the conflict?
298. **Sir Anthony Hart:** That is for others to comment on. I certainly consider that the task that we have been given is sufficiently taxing not to look outside it to see what lessons others might draw from it in future.
299. **The Chairperson:** Sir Anthony, Andrew and Norah, thank you very much for your time. We wish you well.
300. **Sir Anthony Hart:** Thank you, Chairman. I repeat how grateful I am for the opportunity to put into the public domain many of the things that we have talked about today.
301. **The Chairperson:** Obviously, we have a role in the process of legislating. Perhaps we can keep in touch over specific issues as we go forward.
302. **Sir Anthony Hart:** Indeed.
303. **The Chairperson:** Thank you again for your time.

5 September 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Trevor Clarke
 Mr Colum Eastwood
 Mr Danny Kinahan
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson
 Ms Caitríona Ruane

Witnesses:

Miss Rhyannon Blythe	<i>Northern Ireland</i>
Professor Michael O'Flaherty	<i>Human Rights Commission</i>

304. **The Chairperson:** We have Professor Michael O'Flaherty and Rhyannon Blythe. Michael, when you are comfortable, can you introduce Rhyannon, put her role in context for us and then give us your presentation?

305. **Professor Michael O'Flaherty (Northern Ireland Human Rights Commission):** Thank you very much, Mr Chairperson and Committee members, for this invitation. We are very grateful for the opportunity to provide evidence to you on this issue. Rhyannon is a member of our staff who has been working on this issue and who has played an important role in developing our submission on the Bill, which you have before you. I will make the principal presentation, and Rhyannon and I will then engage with you on whatever questions you may wish to put.

306. With your permission, I will begin. It is the view of the Human Rights Commission that the sexual abuse of children is as profound an issue of human rights abuse and violation as one could find. It constitutes a fundamental undermining of the rights and dignity of the child, but much more, because it carries with it legacies that go right through the entire lifespan of

the violated human. The human rights abuse of the child can constitute a form of human rights violation on the part of the state when the abuser is acting as an agent of the state. More widely still, regardless of who the perpetrator is and whether they are acting on behalf of the state, the state has a duty to take all reasonable steps to protect its people, particularly its most vulnerable people, among whom we would all include children. That duty extends to a procedural duty to investigate, prosecute and deliver remedies to victims of abuse.

307. Those headline statements do not come from the air. They are not just an opinion. They are constructed from the international human rights commitments of the United Kingdom. In the first place, there is, of course, the Human Rights Act 1998, which draws into domestic law much of the European Convention on Human Rights, but there are also other international treaties that the UK has ratified, including the UN Convention on the Rights of the Child, the Convention against Torture and the International Covenant on Civil and Political Rights. We draw from those instruments and nowhere else with the advice that we bring to you today.

308. This is the third occasion on which we have taken the opportunity to present advice on the matter of the sexual abuse of children. We did that first in January 2011 before the Bill was published, we responded to the Bill in July 2012 and we now take this opportunity before you.

309. We have, of course, concerns about the Bill, which I will come back to in a moment, but let me start by saying what we welcome. We welcome the initiative. It is important, significant and timely, but it is also multifaceted in a way that is worth noting and acknowledging. The manner in which the Executive propose to balance the delivery of

- an inquiry and an acknowledgement forum is good practice. It draws from practice elsewhere, such as proposals in Scotland, but adds to those with the link between the work of the acknowledgement forum and the inquiry in a manner that is innovative and important and that constitutes an advance on practice internationally. We think that that is to be applauded.
310. We do, however, have a number of regrets. I will present those to you not in order of importance but more in a logical sequence. The first of those regrets has to do with the limited scope that is proposed in the Bill: the focus on institutional abuse. The exclusive focus on institutional abuse overlooks the broader obligation on the state to deliver accountability and redress more broadly for victims of sexual abuse, including those who have suffered sexual abuse in contexts other than an institutional one. That is not so much a matter of policy regret; it is a matter of legal regret, based on the provisions of the UN Convention against Torture and the UN Convention on the Rights of the Child.
311. Turning to the narrow framework of the Bill and the focus on the establishment of an inquiry into institutional abuse, here, too, we have significant concerns. The principal concern relates to the extent to which the current proposals fail to take account of the Jordan principles. As many members of the Committee will know, the Jordan principles were developed by the European Court of Human Rights in the light of jurisprudence out of Northern Ireland to deal with investigations that engage issues in articles 2 and 3 of the European Convention on Human Rights to deal with the right to life and the right to be free of torture and of cruel, inhuman and degrading treatment. The Jordan principles were developed in a very different context, obviously, but the legal reasoning is clear that they transpose exactly to investigations such as those proposed in the Bill.
312. What are they? I will name the five core Jordan principles and then take the bulk of my time referring to the problems. The principles relate to the need for the inquiry to be independent; for it to be capable of identifying individuals responsible for whatever evil is being investigated; the requirement that the investigation be prompt; that it be open to public scrutiny; and, very importantly, that it involve victims in order to protect their legitimate interests.
313. Taking account of the nature of the Jordan principles, what then are our concerns with regard to the Bill? There are a number of areas that we would like to draw to your attention. First, the Bill proposes that the Executive would have the power to amend the terms of reference for the inquiry without consulting anyone, be they members of the inquiry team or anybody else, including victims and witnesses. The lack of a consultative requirement before any amendment to the terms of reference is not consistent with the Jordan principles.
314. Secondly, the Bill proposes a very broad power for the Executive to terminate the appointment of members of the Executive. We do not challenge the power of the Executive to terminate appointments, but we note the very broad framework in which that action could be taken, which is far broader and far looser than, for example, that for the termination of the appointment of a judge. Again, there is a concern that that liberal power that the Executive retain to themselves in the Bill challenges and undermines the independence of the proposed inquiry team.
315. Thirdly, the Executive retain to themselves the power to terminate the inquiry at any time, even if that is before the anticipated lifetime of the inquiry. Again, that undermines the independence as laid out in the Jordan principles.
316. Fourthly, the Bill makes provision for the inquiry to issue restriction orders with regard to evidence and individuals. We do not challenge the need for restriction orders around deeply sensitive issues and deeply vulnerable people. However,

- we are concerned that restriction orders can be issued by the inquiries without the requirement that consultation take place with the individuals or communities affected. You will recall that the Jordan principles emphasise the need to involve victims in order to protect their legitimate interests. Therefore, this very permissive power to issue restriction orders is a matter of concern.
317. Penultimately, there is a provision in the Bill whereby the Executive can refuse to pay the expenses of the inquiry when they consider that the inquiry has acted *ultra vires*; that is, outside its mandate. Again, we have no issue with the need for efficiency in the use of public resources. That is not the point. The point is what happens in a case in which the inquiry itself has a different understanding of its mandate than do the Executive. In such a case, the Bill provides that the Executive would ultimately be the authority on the matter. We feel that that is not necessary because of the existence of judicial review. If the Executive and the inquiry were at odds over the mandate of the inquiry, the matter could be resolved in the courts. Therefore, we fail to see the need for the power proposed by the Bill, which again is inconsistent with the independence principle of Jordan.
318. Finally, and very worryingly, there is a provision in the Bill that were an actor to take judicial review proceedings with regard to any act of the inquiry, they would need to do so within 14 days of whatever matter was being impugned. Under a general statutory framework, you have three months in which to take a judicial review. Therefore, the normal three-month period in which to take a judicial review is being reduced to 14 days. Given the way in which the law works and given all the elements around deciding to take a judicial review, consulting on a judicial review, and so forth, 14 days seems not so much unreasonable as unworkable.
319. Those are the matters to do with the application of the Jordan principles. They are the reasons why we issued advice, under our statutory function, to the effect that the Bill is incompatible with the Human Rights Act. In other words, it is the commission's view, on the basis of the manner in which the Jordan principles have not been integrated, that were the Bill to be judicially reviewed, there is a high likelihood, in our opinion, that it would be found wanting and undermined fatally. We very rarely issue a view of incompatibility with the Human Rights Act, but we felt that it was important to do so here and to emphasise that matter to you this afternoon.
320. Let me turn to one last element before wrapping up. This has to do with the time frame and the scope of the inquiry in respect of the period under review. A moment ago, you, Chair, mentioned the significance of 1995. In my presentation to you, I want to refer to the significance of 1945. The commission is at a loss to understand why, for any living victim, there is a need to fix in stone the year 1945. We recognise that for dead victims, you have to draw a line somewhere, but where a victim is living, it is the commission's view that that victim's case should be embraced by the mandate of the inquiry. Therefore, for living victims, we are of the view that a date should not be set and that there should simply be an acknowledgement that if a victim is still alive, regardless of whether the abuse occurred before or after 1945, they will be given their full right of audience to the inquiry.
321. To conclude, on the specifics of the Bill, we are of the view that it is necessary to make it compliant with the Human Rights Act and the European Convention on Human Rights by integrating proper attention to the Jordan principles. We are not of the view that the Bill should be withdrawn in order to do that. We share the view of victims that this is a matter of high urgency, and we suggest to you that the Bill can be adequately amended in its process through the Assembly in order to ensure compliance. We also consider that, in the process of amending the Bill, the matter of the time frame, which I just referred to, can be addressed without any great complexity.

322. Turning to the wider issues of sexual abuse outside the institutional context, again we share the view, as I think I mentioned earlier, that this is an issue that needs to be taken account of. The sexual abuse of children did not just happen in institutional care settings. It occurred in many other social contexts that have to be taken account of as a matter of international human rights law. We nevertheless consider that it is difficult to take account of those dimensions of sexual abuse in the current legislative project. We do not think that it would be wise or prudent to withdraw the Bill in order to widen it. Rather, we consider that separate legislation will be required to deal with those elements of sexual abuse not currently covered. Those elements would embrace any other forms of sexual abuse that occur outside the home. Of course, we would also look for the opportunity, in due course, if a separate Bill is to be introduced, to provide advice on how that might best be made compliant with the United Kingdom's human rights obligations under the treaties to which it is a party.
323. In wrapping up my introductory remarks, I suggest that it is very important that we never lose sight of the fundamental framework of reference for our discussion on this matter.
324. First, we must keep in mind that sexual abuse constitutes, as I said at the outset, one of the most fundamental examples of the undermining of the human rights of victims, not just in childhood but all through their lives.
325. Secondly, it is not a matter of goodwill, graciousness or kindness to deliver justice to the victims. It is a solemn matter of accountability and delivering under the United Kingdom's formal international human rights obligations.
326. Finally, that obligation, as a matter of law, is not a generalised one for some time into the future; rather, it is one that requires to be delivered without any undue delay. Thank you.
327. **The Chairperson:** Michael, thank you. That is a rather sobering assessment, if you do not mind my saying so. I will not second-guess the members. I am sure that they want to test the Bill in its current format against a number of measures, such as whether it is victim-focused and fair, but also whether it is compliant with our legal obligations. You are 100% clear that you believe that the Bill is not compliant and that there is a very high risk that, if tested, it would fail. How easy would it be to fix?
328. **Professor O'Flaherty:** We think that it is not a difficult legislative matter to correct. It requires adjustments to the provisions for the independence of the inquiry and reining in the powers that the Executive are giving to themselves in this framework, and all that can happen without having to do anything radical or revolutionary. We have standards for the removal of judges that could be transferred to the removal of members of the inquiry, and so forth. There is nothing that we feel is not fixable through a normal legislative process.
329. **The Chairperson:** Let us take one example: the terms of reference sit outside the Bill within a ministerial statement made to the House and currently rest with the First Minister and the deputy First Minister. Have you an opinion on whether they should be brought into the legislation? Would it be adequate to state that the First and deputy First Ministers, with the agreement of the panel's chairperson, should be able to look at the terms of reference? Do you have an optimum fix?
330. **Professor O'Flaherty:** The terms of reference are, of course, much wider than the inquiry itself. They also deal with the accountability project and the investigation tool. Therefore, there are three strands to what is being proposed by the Executive, some of which have no need for a legislative support. As such, a part of this story will always rest outside the Bill. However, it seems to us critical that, in order to deliver on the international obligations, guarantees must be copper-fastened in the Bill around such matters as the

- Jordan principles. They cannot simply be agreed to by way of an Executive policy decision. If we are to be compliant with international standards, those need to be locked into the law.
331. **The Chairperson:** If the termination of the inquiry were not solely down to the Ministers but required the agreement of the chairperson, would that fix the problem, or would it be better that the decision to terminate had to come before the Assembly?
332. **Professor O’Flaherty:** I am not in a position to provide a detailed solution to a question such as that. The Human Rights Commission’s competence does not extend beyond pointing to what the international standard demands, but we recognise that a range of policy options could comply with it. If, for example, the inquiry simply finished its work early, no one would suggest that it had to prolong its life artificially. However, that decision must be taken in a manner that ensures that the threat of closing down the inquiry is never used, or perceived to be used, to influence its proceedings. You gave two alternative ways of avoiding that threat, but it is not for us to say which of those, as a policy matter, would be the better.
333. **The Chairperson:** Are you implying that you think that either course would be human rights compliant, or compliant with the Jordan principles?
334. **Professor O’Flaherty:** In principle, yes. Sometimes, lawyers have to recognise that they have reached a gate, after which the policymakers take over. On that matter, I am pretty much at the gate.
335. **The Chairperson:** You are not coming to us with a set of fixes.
336. **Professor O’Flaherty:** No, because many fixes are policy fixes.
337. **Mr Eastwood:** In a way, the Chair has already asked my question. One of my concerns is that the terms of reference — about which you outlined some serious concerns, as have others who responded to the consultation — sit outside the Bill. In scrutinising the Bill, what role does the Committee play when it has been told that there are major concerns with the terms of reference, which do not even sit in the Bill but are part of a written statement to the Assembly? Perhaps I should be putting that question to the Committee Clerk.
338. **The Chairperson:** Do you want to take this under oath?
339. **Mr Eastwood:** Do you understand my point?
340. **The Committee Clerk:** Yes, I can see your point. Perhaps we can get legal advice on that.
341. **Mr Eastwood:** I want to get into that.
342. **The Chairperson:** We can discuss the issue after Michael and Rhyannon have gone. It is a valid point, Colum, and we will come back to it.
343. **The Committee Clerk:** We received advice from the Examiner of Statutory Rules that referred to the issue.
344. **Miss Rhyannon Blythe (Northern Ireland Human Rights Commission):** I should clarify that our issue is with the clause that allows the Office of the First Minister and deputy First Minister (OFMDFM) to amend the terms of reference. The issue is not the content of the terms of reference or the fact that they are outside the Bill. Our main focus is on the ability to amend.
345. **Mr Maskey:** When people talk about major concerns — I am using that only as an example — they need to be careful that they might be speaking for themselves. I know that everybody is speaking for himself or herself in here. However, you did not say that you had major concerns with the terms of reference. For the record, it is important to state that the representatives of the Human Rights Commission did not say that they had problems with the content of the terms of reference. I accept what you say, and I also accept the validity of Colum’s point.
346. OFMDFM, in conjunction with the survivors and victims of this abuse who have lobbied firmly and well, if I can put

- it that way, has the best of intentions. I have not heard anything directly or starkly contradictory in what you have said so far, Michael, about the intent behind the Bill. I have not spoken to the other side of OFMDFM that has been dealing with the issue, but speaking for my party colleagues, I can say that there is the best of intentions. People are conscious of the arguments that have been put forward, particularly from those who have been victimised because of this criminal activity over the years, and they want things done as quickly as possible and with integrity. They do not want the issue to be over-lawyered, extended indefinitely or to cost the public purse a fortune. I accept entirely that it has to be conducted with integrity. I am concerned that you say that the Bill is not compatible with the Human Rights Act. Have you raised the issue with OFMDFM, and, if so, what was the response?
347. **Professor O’Flaherty:** We provided advice in our normal way to OFMDFM in our July submission. We have not received a specific response, but it is not normal practice for us to receive a specific response in the way in which we would with regular correspondence.
348. **Mr Maskey:** Your statement is fairly stark, so I am looking for a specific response from OFMDFM to the Hansard report of Michael’s submission.
349. **The Chairperson:** For the record, Michael, is it the issue of who has control and the ability to amend the terms of reference, rather than the currently constituted terms, that concerns you?
350. **Professor O’Flaherty:** Yes, that is it exactly. We are also concerned that, in the current proposals, there is no provision to consult victims when there is a proposal to change the terms of reference. I mentioned that one of the Jordan principles requires the involvement of victims in all matters to do with their welfare: that has to include any changing of the terms of reference of the inquiry.
351. **The Chairperson:** For the record, when did you issue the advice to OFMDFM that, in your opinion, this would not prove to be compliant?
352. **Professor O’Flaherty:** In January 2011, we reminded OFMDFM that it would be required to be compliant, and in July this year, we expressed the advice that it was not compliant.
353. **The Chairperson:** Right. Has there been any contact on that theme between those two dates?
354. **Professor O’Flaherty:** Let me ask Rhyannon about that because you will recall that I have not been in office for much of that period.
355. No; she tells me that there has not.
356. **The Chairperson:** Right. Have you had a response since then?
357. **Professor O’Flaherty:** No, we have not had a response since July, but we would not particularly expect one as that is not the normal practice when we deliver advice in the context of a generalised consultation. I have regular meetings with OFMDFM. I have not had one since July, but this will inevitably be a topic for discussion at our forthcoming meeting, which will take place at some point in the autumn.
358. **The Chairperson:** Do you expect that it will be at the top of the agenda?
359. **Professor O’Flaherty:** It is certainly a very serious matter. It reflects the very rare action of the commission’s presenting to Government an advice of non-compliance with the Human Rights Act. So, from our point of view, yes, it would be.
360. **Mr Kinahan:** Thank you. I am glad to hear others expressing that this should be done quickly and with integrity. It is essential that we get this right because it relates to heinous crime.
361. One area that bothers me all the way through is the conflict between being open to public scrutiny while dealing with an issue that is sensitive for so many people. In many cases, the last

- thing they want is public scrutiny. How do we get a balance that will ensure that everyone will come forward and we will respect and look after them, but at the same time will ensure that we get an end result?
362. **Professor O’Flaherty:** We respect and value the provision in the framework of the Bill that there will be no compulsion on victims to come forward. That is the starting point of engaging with your question.
363. Secondly, there is a framework of restriction orders in place. We do not challenge the need for such orders to be issued by the presiding member with regard to content or individuals. The power to deliver restriction orders is necessary to honour the principle you refer to. However, we are concerned that, under the current proposals, a restriction order may be issued without any consultation with affected individuals. That is where the problem is on the matter of restriction orders.
364. **Mr Kinahan:** Thank you. That has clarified that.
365. **The Chairperson:** Michael, do you believe that the use of the date 1945 is open to a legal challenge on a human rights basis?
366. **Professor O’Flaherty:** The formal engagement of human rights with historical cases has triggered a lot of discussion and debate, because many historical cases refer to periods before the United Kingdom was party to the relevant international standards. However, if a victim of abuse in, let us say, 1944, when there was no treaty, still lives today and the medical and psychological evidence available to us demonstrates that that person continues to suffer the effects of the attack that took place, that means that a human being living in contemporary Northern Ireland with all its human rights protection framework is suffering, and that engages the state’s duty to respond.
367. **The Chairperson:** You are the expert, I am not, but I would expect human rights protection to say that that person should have some sort of challenge. You can argue that there are reasons for using 1945, but, ultimately, the date is arbitrary if those people are still alive.
368. **Professor O’Flaherty:** Yes, that is my view. Even if one were not able to construct a compelling legal argument, there are basic human decency reasons why no living person, particularly the oldest in our society, should be excluded under any circumstances.
369. **The Chairperson:** Under your functions, would you be able to support an individual who came to you looking for advice and help in that area?
370. **Professor O’Flaherty:** I hope that we will not have to look at that because I hope that this will be corrected in the Bill. However, if it were to be the case, we would look at it with a genuine interest on the basis of our mandate.
371. **Ms Ruane:** On that point — and tá brón orm go raibh mé mall; I am sorry that I was late — if I recall correctly, and I am sure that we can look at the minutes of our last meeting, the Chairperson, when we raised questions in relation to the date of 1945, and I understand that there are only a couple of cases pre-1945, did not seem to feel that it would be a problem in relation to amending. I know that it is an issue that we have raised, as well. I am conscious that there are, and I know that there is someone in the room whose relative is affected by this. I reiterate what Alex has said. If things need to be changed, and obviously things need to be human rights compliant, and obviously the intention behind this is good and we want to see the survivors — I do not like the term “victims” — getting justice, then that is very important.
372. **The Chairperson:** I suppose that the bottom line here, Michael, is that we are at one that everything is done with the best of intentions, but we want it done with integrity and speedily. However, my interpretation of your warning is that it could all be undone by a legal challenge. If that were the case, can you give us

some parameters about what that would do to timescales and costs? There is a consideration in the proposed legislation that no unnecessary expense will be undertaken.

373. **Professor O’Flaherty:** First, the Bill is fixable. That is a very important message for us to deliver today. We would be appalled if the Bill were to be withdrawn; it can and should be fixed. Secondly, we do not believe that its remit in terms of the context of the abuse should change. The decision was taken to stay with institutional abuse, and it should remain so. That is not because other forms of abuse are not equally unacceptable and outrageous, but they probably need a separate legislative instrument because different issues arise. In those cases, we are dealing with abusers who were not acting on behalf of the state, so a whole range of different issues crop up, some of which are complex. They need to be dealt with, but I would consider it very unhelpful if the Bill were withdrawn in order to widen its scope to embrace all those other contexts of abuse. That said, if the Bill were adopted in its present form, the most that I can say is that it would not take a genius lawyer to construct pretty compelling arguments, based on the Human Rights Act, to undermine the implementation of the inquiry.
374. I do not have a crystal ball; I cannot say how much that would cost or what the delay might be. However, I can confidently say that it would be profoundly disruptive and further traumatise those I have been correctly reminded to describe as survivors of the abuse.
375. **Mr Maskey:** I am concerned about some of the deficiencies in the Bill but I am encouraged by Michael’s repeating that it is very fixable. As far as I am concerned and speaking for my party colleagues involved in any of this, I cannot see a difficulty with any, perhaps even all, of the proposed amendments or the changes that are required. I have never had any conversation with any of my party colleagues involved in this who do not want the same outcome that you

talked about earlier on, with the required level of integrity and particularly in conjunction with survivors and victims, a point that was made by the Chairman.

376. All I am saying is that, clearly, the Bill has to be human rights compliant. It has to do what the intention is behind the ministerial statement. Those commitments were given to the victims and survivors themselves and, therefore, have to be followed through with absolute integrity and as speedily as possible. I do not see a massive — in fact, I would probably go the other way. I imagine there is enough goodwill in the Assembly, across the parties, to fix the Bill’s deficiencies. I say that fairly confidently, and although I may be proved wrong, I do not think so. All I am saying is that I think that there were a number of specific points put to the Committee by Michael. I would like OFMDFM to be asked about those one by one, because it is in the report. Obviously, fairly quickly thereafter, we will be going to amendments. I read the Examiner of Statutory Rules’ report, for example, in which he recommends some very easy solutions to fixing some of this. So, I do not see insurmountable problems. As I said, from what I have heard, I am satisfied that the measures are well intended. Therefore, for us it is about getting the proper and right Bill. So, in the first instance, I would like OFMDFM to be asked to deal specifically with the issues around the Jordan principles. How do we get the efficiencies realised so that they meet those principles? Going back to Colum’s point, it is obviously then for us on this Committee to be involved in tabling amendments and all the rest if needs be. However, I would prefer it if we could get the amendments from OFMDFM instead of having to table them here.
377. **The Chairperson:** Effectively, you would like a point-by-point response from OFMDFM to the submission?
378. **Mr Maskey:** The commission very helpfully made a number of specific points, which deal comprehensively with concerns that others raised. So, let us ask OFMDFM to deal with those

- specific queries, and when we get the responses, we can decide what we need to do. I believe that there is goodwill there, so let us get it fixed.
379. **The Chairperson:** As well as asking OFMDFM to address the specifics that the commission raises, I suggest that we ask for the proposed fixes through amendments to the legislation, which would take us to the next stage.
380. **Mr Maskey:** There may be issues as regards OFMDFM changing things. That is a discussion for another day, and it should probably be a private discussion. If it has solutions and can amend stuff readily, let it do that. If not, let us amend things with agreement.
381. **The Chairperson:** So that I am clear about things in my head, I have one more question, which is about your support for the Bill's being restricted to institutional abuse. It is a genuine question. Human rights is about fairness and equity, but you could presumably have had on the same day two young people abused by the same individual, one occurrence in the afternoon in the institution and one elsewhere. How is that fair?
382. **Professor O'Flaherty:** It is not fair. I am glad that you have allowed me to further clarify our position on this. All victims of child sexual abuse are entitled to justice, redress and accountability, and all perpetrators of that abuse should face the consequences. That is the clear starting point.
383. That said, there are some legal issues around the levels of human rights compliance. The forms of human rights compliance vary according to whether the perpetrators are acting on behalf of the state, such as an official in a publicly funded home, or whether they are individuals who are not acting on behalf of the state. For example, we have spoken a lot about the Jordan principles, and it is not clear that, in their totality, they would apply to the latter category. For that reason, it is our suggestion that both dimensions are taken account of but that that is probably best done through two distinct, legislative frameworks. So, we are not for one minute suggesting that the victims of institutional abuse are in a preferential category of survivors or that the others are in less-worthy categories. We are simply discussing with you a Bill that is framed around the issue of institutional abuse.
384. **The Chairperson:** If the Jordan principles applied to both categories, the application of point three of those principles, which states that the investigation should be prompt, would suggest that those who were not abused institutionally are being disadvantaged.
385. **Professor O'Flaherty:** The whole Bill is constructed around institutional abuse. Everybody wants this to be done properly and as quickly as possible. If the decision were taken to broaden it to deal with all forms of sexual abuse, wherever they took place, my fear is that that would kick the Bill into a very long piece of grass, which would be in nobody's interests.
386. **The Chairperson:** So, it would be better to get this going and then to look immediately at the second process?
387. **Professor O'Flaherty:** Or to look at it simultaneously.
388. **Mr Lyttle:** You said that there are two distinct legislative frameworks. Could they feed into the same inquiry or are you saying that there should be two different inquiries?
389. **Professor O'Flaherty:** That is a very interesting question. I do not see why the single panel could not deal with both — of course not. There is a matter of capacity and resources, but there is no reason why that could not happen.
390. **The Chairperson:** Rhyannon and Michael, thank you both very much indeed. Please keep us informed of your developing thinking.
391. **Professor O'Flaherty:** I certainly will. Thank you very much.

5 September 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Trevor Clarke
 Mr Colum Eastwood
 Mr Danny Kinahan
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson
 Ms Caitríona Ruane

Witnesses:

Mr Jon McCourt *Survivors and*
 Ms Margaret McGuckin *Victims of*
 Institutional Abuse

392. **The Chairperson:** We welcome Mr Jon McCourt and Ms Margaret McGuckin, the chair and secretary respectively of Survivors and Victims of Institutional Abuse (SAVIA). They have tabled a written submission, which you will find in your folders. I will give you a moment to take your ease. Would you like tea or coffee?
393. **Ms Margaret McGuckin (Survivors and Victims of Institutional Abuse):** I would love a coffee.
394. **Mr Jon McCourt (Survivors and Victims of Institutional Abuse):** I would love a cup of coffee, to be honest.
395. **The Chairperson:** We will get you both a cup of coffee. Are you content with how you are going to play this?
396. **Ms McGuckin:** No, but I am sure that you will help me, as will Alex and the rest of you.
397. **The Chairperson:** Jon, are you going to make a short presentation?
398. **Mr McCourt:** Yes. I am not going to rush this, but for the sake of brevity, members have a copy of our proposals. I do not know whether that will be made available to anyone else here, but if
- there is no point in my going through every word of our submission, I will not do so.
399. **The Chairperson:** We cannot make it available to those in the Public Gallery.
400. **Mr McCourt:** OK. The submission stands on its own, but there are a couple of pertinent points to be made from it. I was glad to hear that similar points have already been raised, but I am not going to draw someone else's evidence in on top of ours.
401. I have a copy of our submission, but because of the way in which we prepared the original submission, you will have to find ways of referring back to it, because there are a couple of areas of concern to which I want to draw attention, the first of which is our concern about the time frame of the inquiry, which is from 1945 to 1995.
402. From the perspective of victims and survivors, the process, although it has made significant progress in legislative terms, still seems drawn out. We ask that the Committee's scrutiny take no longer than necessary, and we would want to see the Bill pass into law by the Christmas recess, as had originally been timetabled.
403. Although we understand the need for scrutiny, any extension to what was previously timetabled may be interpreted as undue delay; an extension of months would certainly cause further anxiety to already vulnerable people. Days, although begrudged, will be seen as par for the course in the legislative process; weeks will cause worry; but months could be interpreted as stalling and would not be acceptable to us.
404. In light of the legislation as it stands, there may be a need to seek further time to consult on the 1945 to 1995 time frame. According to its own rules, in Standing Order 31(c), "Stages in

- Consideration of Public Bills”, which deals with Consideration Stage, the Committee can bypass any further delay that may be due to a proposed consultation extension by putting an amendment before the Assembly removing the 1945 start date and reframing it to include those who are still alive and who were placed in institutions before that date. It need not be specific in date, but limited to those who were in institutions before 1995, when significant safeguards, monitoring and reporting were put in place. We would seek cross-party support for such a motion.
405. One of the difficulties with the legislative process appearing to take longer than we assumed that it would take is that it opens room for speculation about what will be added. We, of all people, have a deep sympathy for anybody who was abused, particularly children who were abused, and in whatever circumstances in which they were abused. However, the Inquiry into Historical Institutional Abuse Bill should focus specifically on that issue. Lessons and recommendations that come from the report of the inquiry could, hopefully, broaden the investigation out into whatever sphere it needs to go.
406. Again, the difference is that we, as survivors and victims of institutional abuse, were placed in the care of the institutions, in most cases by the state or by agencies of the state. The state has a responsibility to us. It seems unfair, and we do not want to be unfair. However, even human rights legislation is inclined to task the state more than the individual, and that is where the focus should be. Lessons will be learned through this, and added protection will come from this.
407. According to the Bill, the chairperson still has the right to broaden out the terms of reference of the inquiry. Looking at the precedents of the only examples that I can think of, I can say the clostridium difficile inquiry did not look at all the failings of the health service. The Cory inquiry did not look at 40 years of conflict and all of the deaths and injuries that occurred. So, we are not asking for something that does not have precedent.
408. As I said, I do not want to go through the whole of the submission, and I know that Margaret has a specific point that she wishes to raise. However, the Committee should give sincere consideration to these two points, particularly the point about the time frame and the removal of the limitation from 1945. There are survivors from before then. There may not be many, so we are not talking about a massive overspend of the budget when we talk about including those people, who should be there as of right. As we say in the submission, they should not be there as an add-on or an also-ran.
409. **The Chairperson:** Jon, because we are putting this into the official record, can you answer whether you have a problem with the 1995 finish point?
410. **Mr McCourt:** I do not have a problem with the 1995 finish point. That is simply because sufficient safeguards, monitoring and protections were put in place. Criminal offences from that period have already started to be looked at. So, it works from 1995, and our view is that it did not work before then.
411. **The Chairperson:** We shall listen to Margaret before we come back to you on the two specific points that you raised. Are you happy enough with that, Margaret?
412. **Ms McGuckin:** Yes. A lot of our people are concerned about the start date for the forum, and they are waiting for the legislation to get passed by Christmas. Correspondence that I read this morning states that the inquiry will be ongoing and does not need to wait for the legislation to come through. However, a lot of our people cannot see that happening. We would love to have a start date for when that will happen. Also, have the premises been secured? We were informed of the premises, but am I hearing that they are not there any more and that they are not secure?

- Speaking on behalf of our people, we are very unsure and uncertain.
413. **Mr McCourt:** Is that not the acknowledgement forum, Margaret?
414. **Ms McGuckin:** Yes, that is the first thing. That could be ongoing.
415. **The Chairperson:** Justice Hart, who is the chair, gave evidence here, as you know. I think that he gave grounds for optimism in that they were not waiting for the legislation to be passed before starting the groundwork. He indicated that he had been in touch with officials and state bodies to ask about their records and, basically, to get them prepared for handing over what they will need. I am not across the specific issue of the premises. I am not sure whether any Committee member can enlighten you on the search for those, but we will certainly bear that in mind.
416. **Ms McGuckin:** That is the way we are. Insecurity has been part of our lives. We were in the premises but then heard behind the scenes that they may not be so secure now.
417. **The Chairperson:** So, you have been given a tour of what you expected the premises to be and now you wonder whether it will be somewhere else?
418. **Ms McGuckin:** Yes.
419. **The Chairperson:** Is any member aware of that? We can certainly ask that specific question, Margaret; that is not a problem.
420. **Ms McGuckin:** Could we also have clarification on redress rather than just having terminology that talks about desirability? Our people need to know. As you said, and I read this morning what you said about the Bill, our people have been affected all their lives and were unemployable in the outside domain. I commend what you said at that time; it affected us all. I heard what you said, and that was me — I was unemployable when I came out of these places.
421. We do not speak much about redress. I actually find it quite embarrassing to talk about it, but I know what is needed. If someone is run over in the road, they will be compensated. It is vital that our people are compensated. I am with them every day, and I know how this has affected their lives. Compensation works, and it can do something for our people for whatever time they have remaining in their lives. I ask all the Committee members, the Executive, the Assembly and whatever for something to be set up. You are aware of the ages, health and vulnerability of all our people, so I ask that an interim process on redress is set up before this all ends. The way that it is going, it will take years. We appeal to you here. I know that we have your concerns. I have listened to you all, and you are all together in supporting us after what we have been through.
422. I am hearing from all our people that they want to be compensated in some way. It may be that they want to compensate their families for what they have lived through. I did not understand my anger and rage all my life, and I have taken it out on my children. I will say in front of everybody here that, until now, I did not know what was wrong with me. I find that with lots of our people. We did not disclose or tell anybody about what we lived through. We are only now understanding our anger, rage and behaviour and the trouble that we got into growing up. I was not always the way that I am now in trying to find out who I really am. I was a completely different person, and that was to do with the way that we were brought up in these institutions. So, we want to look after our families now. Can we, even our older people, have something to help us in the rest of our lives?
423. **The Chairperson:** I hope that I have the Committee with me in encouraging you as individuals — and you are all individuals, although there is a common issue — to make incredibly clear to Judge Hart and everybody else who is involved, when the process begins, about what would suit you as a way forward. Some people will want financial recompense, while others might want

- help with health, training, education or for their children. It is up to the individual, and your case is strengthened the more that you articulate exactly what you need. The Committee understands that what you have gone through will go down through generations unless we can intervene and help to stop it.
424. Jon, you raised two points, the first of which was that we should get this done by Christmas. In our initial discussions, we indicated the likelihood that we do not think that we will be able to do our bit in the minimum time. However, in discussing whether we need an extension, we are minded to make sure that any extension will get it across the line before Christmas. We want to take the time to get it right and to ensure that the issues that Michael outlined do not come back to bite us and cause unnecessary delay. It is a two-way street: the Department has to work with us. Either the Committee or the Department could be responsible for delays, and we will commit to trying to get it across the line for you by Christmas.
425. **Mr McCourt:** I am aware of the arguments that have been brought up. However, given that we have had massive support across the Assembly, I do not think that there is a difficulty in seeing it before Christmas. I know that it is hard to put a date on a calendar and say that it will be done by then, but we hope that that will happen.
426. Margaret and I keep referring to our older people, and the longer that it goes on, the more disheartened and upset they become and the more difficult it is for them to believe that this is being taken seriously. They all understand it. We are trying to get the process running, but the Committee may not have any control, because that now rests with the acknowledgment forum. However, I hope that the acknowledgement forum starting to secure premises will give people belief and affirm the commitment of the Committee and the Assembly to resolving the issue.
427. **The Chairperson:** Several members want to speak. I promise that you will face no obstacle from me in getting rid of the 1945 starting point and looking after every living survivor.
428. **Mr Eastwood:** You are both very welcome, and I congratulate you on all the work that you have done to take it this far. To echo the Chairperson's remarks, although I have some issues with how the Bill is presented — you have outlined some of your own issues — I will commit to helping this go as quickly as possible and will not stand in the way of progressing it. Everybody around the table wants to make sure that it happens as quickly as possible.
429. You are right, Margaret, that we do not want to wait until 2016 to start to look at how we deal with redress. Like you, I want an interim report from the chairman to look at the redress issue so that we can get the ball rolling. You will find support for that. It is important that people be given confidence that that will happen and that we will not have to wait for years.
430. I completely agree with you on the 1945 issue. I see no reason why it could not be to the foundation of the state, because we are not talking about many people or saying that the commission could not have flexibility on moving before that date. The state had a responsibility, regardless of what treaties or protections were signed in law, to protect people in institutions pre-1945. I am open to looking at beyond 1995, because there may still be lessons to be learned. That is an issue for debate. I am never convinced that things are perfect, but we should always strive to make sure that they are. I completely agree with the point about 1945, and we should be open to looking at the 1995 issue as well. There are a few other issues. Thank you very much for attending. Be assured that we will try to deal with the Bill as quickly as possible.
431. **Mr Clarke:** My views are similar to Colum's. The Bill has been laid, and the process has started. Jon, although I understand why you want the Bill to be dealt with as quickly as possible, it

is more important that it be dealt with correctly as quickly as possible. The last thing that we want, bearing in mind the evidence that we heard in the previous presentation, is to get it wrong. You have already been wronged once, and you do not want to be wronged twice. Everyone has commitment. All political parties have spoken on the issue and are committed to the process being completed as quickly as possible. However, we need to do it correctly, because we do not want those who have suffered to have more problems. There is a commitment to getting the Bill to that stage as quickly as possible, but we must do it correctly.

432. **Mr McCourt:** Thanks for the way in which you phrased that. I am saying that the timing should be right and that there should be expediency. Instead of another debate and consultation about the starting date of 1945, it certainly would speed up the process if an amendment were drafted by the Committee, tabled at Consideration Stage and put before the Assembly.
433. **Mr Clarke:** With regard to what Alex said earlier, I do not think that anyone is reluctant to widen the parameters. Given that the institutions are still fairly new, it is also worth noting that, once a Bill gets to this stage, it continues its passage. None of us wants to stifle the system or mess about with it. The Bill has been laid before the House because it has cross-party support. All parties want to get the Bill over the line, and, importantly, they want to get it right.
434. **Mr McCourt:** Thank you for your support.
435. **Mr Maskey:** I echo what has already been said and commend you for taking the issue forward and for having the courage to do so in a very public way. That has helped to shape the Bill. First, it has ensured that there is a Bill, and, secondly, you have substantively shaped the Bill. We want to ensure that we get the right Bill passed as quickly as possible. You will have heard representatives from all parties saying the same thing: we want to get this done as quickly as possible. We will have to ensure that the Bill is human rights compliant and that it does what it intends to do. With the goodwill that you have heard expressed and, clearly, the good intentions behind the Bill, we will get it fixed. If we need to use the mechanism of an all-party motion to resolve an issue, I am confident that you will get that support around the table. You will certainly get support from us, and you have already heard about such support from others. I imagine that the Bill is very doable within the time frame that we are considering. Everybody has the best of intentions to support you, and we have to work through the details and get it sorted as quickly as possible.
436. **Mr McCourt:** I want to come back to Margaret's point about redress and the way in which that is phrased in the explanatory and financial memorandum: "the ... desirability for redress". Why "desirability", and desirable to whom? As has been pointed out already, victims of human rights abuses, which we consider these to have been, have a right to an effective remedy and reparation that includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. I cannot sit at this Committee — in fact, I have never come into this Building — without asking what we can do for the people who have not made it this far, for whom the burden has been too much and they have taken their own life. Are the children and relatives of those people being taken into consideration? I am not talking about opening the issue out like a parachute, but we should consider the people who were in the institutions and give as much consideration to them, to their families and to their surviving relatives as we can. Again, I would be clear about the fact that that would not be as an add-on; it would be as of right, not an also-ran consideration.
437. **The Chairperson:** If we are genuinely to acknowledge that we understand that the impact goes down the generations, we will, of course, have to do that, absolutely.

438. **Mr McCourt:** Thanks, Mr Chairman.
439. **The Chairperson:** I am sure that you have had enough. Thank you very much. I am sure that you will be back, so would a different format be easier for you?
440. **Mr McCourt:** The format does not distress us. Our difficulty is taking information from here and getting it out to our members and others. One thing that perhaps might help is publicity from the Executive, the Committee and OFMDFM to let people know that this is happening and that these are considerations that they have already approved. It is not just about the people whom we have in this room. An awful lot of people have not come forward yet. They have spoken to us individually and said that they just want us to know what happened, but they do not want us to say anything to anybody. We want to get them to the point at which they can sit in the room with us and be a part of what makes this happen.
441. **The Chairperson:** That is a challenge that we will accept and think about. I am not sure whether there is an absolute fix. There are also an awful lot of silent victims of the Troubles. We do not know whether they do not come forward because, although they know what is available, they say, "Thanks, but no thanks", which is OK. The fear is that many people simply do not know what is available because we have not reached them.
442. **Ms McGuckin:** The priority is getting the inquiry up and running. Seeing that will give people the courage to come forward.
443. **The Chairperson:** At that point, we will need a blitz of publicity to let people know that the inquiry is happening.
444. **Ms McGuckin:** That is it. I get so many calls daily from people asking whether they have been forgotten about again. That is everybody's insecurity, and one that I suffer from, too, so forgive me if I may have spoken out of turn. I just want to raise awareness on certain matters.
445. **Mr G Robinson:** The other point to which Margaret referred at the beginning of the session was the security of the building, which is also very important.
446. **Mr Lyttle:** May I just ask a quick question on communication? I do not know whether it is normal practice, but would it be helpful for the Committee to issue a press release outlining its timescales and intentions for the Bill?
447. **Ms McGuckin:** Yes, that would help people to be a bit more informed.
448. **The Chairperson:** I think that we should also issue an appeal for people to come forward.
449. **Mr McCourt:** That would show that you are genuine. I am not saying that anybody in this room is not genuine about pushing this forward. What I am saying is that, when you have been through as many let-downs as we have, why exaggerate the abuse? We are trying to say to people that we are fixing it and that this is how we intend to do so. We are asking them to help us to achieve that by coming forward and telling us their stories.
450. **Ms McGuckin:** If they wish to do so.
451. **The Chairperson:** Let us have a wee think about what we can do within our timescale for the various steps, and we will come back to you on that positively. Thank you both.
452. **Ms McGuckin:** Thank you.
453. **Mr McCourt:** Mr Chairman and Committee, on behalf of SAVIA, Margaret and me, thank you very much.
454. **Ms McGuckin:** Thank you for your support.
455. **The Chairperson:** On that last point, we will consult Assembly Communications on some sort of media plan.

5 September 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Trevor Clarke
 Mr Colum Eastwood
 Mr Danny Kinahan
 Mr Alex Maskey
 Mr Francie Molloy
 Mr George Robinson
 Ms Caitríona Ruane

456. **The Chairperson:** We have heard from Survivors and Victims of Institutional Abuse (SAVIA) and the Human Rights Commission; I want to nail down agreement on the next steps for that. Alex made clear that he would like the Department's response to the Human Rights Commission's submission. Is it the same for the SAVIA submission?
457. **Mr Maskey:** It seems that most people have expressed the concerns that we had. I think that the points that Michael made earlier address the concerns. If we get the Office of the First Minister and deputy First Minister (OFMDFM) coming back and saying, "We agree on point one, and we are happy to change that," happy days. If it is not happy to change it, we will come back and consider that. OFMDFM might have a reason for coming back and saying that it would be better if we tabled an amendment, or whatever, but I imagine that all of this will be done by agreement.
458. **The Chairperson:** I cannot imagine any reason why there should be any sort of delay on this.
459. **Mr Maskey:** I agree.
460. **Mr Eastwood:** I agree with that, and I think that that can be done very easily. Bear in mind that we have other people coming in the next couple of weeks, and they may come up with other changes. There are other small changes that I would like to see as well, but we need to be mindful of the fact that we need to be flexible enough to keep changing this if necessary but doing it as quickly as possible. It is important to communicate the importance of speed to the Department.
461. **The Chairperson:** You could argue that these are substantive changes, and pressing ahead with getting the Department's response will give us an indication of how willing it is to work with us.
462. **Ms Ruane:** I thought that it was interesting to hear the two groups say that the Bill should not be broadened. There was a very clear rationale. Other groups have suggested that it should be broadened, but, today, it was very clear to me why it should not be broadened. If it were to be broadened, it would become something different from what it was intended to be. I know that can be difficult. I think Michael O'Flaherty gave very clear rationale, which was subsequently supported by Jon. We, as a Committee, also need to be clear on the implications of broadening it.
463. **The Chairperson:** Instinctively, I would have been for broadening it, but having listened to Michael in particular, I think that it would be meddlesome to do so.
464. **Ms Ruane:** You could end up doing a huge disservice.
465. **Mr Kinahan:** I agree with you. My instinct was to broaden it, but I read through one or two of the other submissions that we are going to get. Michael said that it was easily fixable, but there are hints in here that there are legal cases and others that could throw us completely off line. We need to get the Attorney General or legal advice to make sure that we are not going to get thrown off line, so that it happens quickly, because that is what we want. The more I read through this, I think, "Hang on; things have been floated in

- other submissions. If we do not start tackling them now, we will be thrown off, and we will not get started in time”.
466. **The Chairperson:** I was going to suggest that, as we contact the Department and ask for the response, we ask whether the Attorney General has formed an opinion on the issue.
467. **Mr Eastwood:** Sorry, I do not mean to hog the microphone, but I want to talk about the broadening. I completely agree that, within the legislative framework for this inquiry, it is right not to broaden its scope. However, we have to be mindful that there are cases, such as those concerning Brendan Smyth. Some of the people he abused will be covered in this, and some will not. I think that we need a very strong commitment from the Department that we will go ahead on the basis of this legislation, when we have it finally amended, but, at the same time — and this has been said today as well — there is a sense of urgency around those other cases and around those people who will fall outside of this inquiry.
468. Something of an almost twin-track approach needs to be taken to address those concerns as well, in whatever format that takes. We must send out that commitment that we want to see those people’s issues dealt with as well. There should be no reason to slow down this particular inquiry, but, at the same time, there is no reason to stop looking for ways to deal with the people who do not come under the remit of this inquiry.
469. **The Chairperson:** Is it our unanimous view that we do not want to broaden it out, but, at the same time, we do not want to forget those who are not included?
470. **Mr Lyttle:** It was not broadened out at all by the Human Rights Commission. It requires a separate process to deal with the other issue in a timely fashion.
471. **The Chairperson:** Are we agreed that we will make a call?
472. **Mr Maskey:** I think that we are. The point that Colum made was that somewhere along the line, on the back of other presentations, we might take a view on a wide range of things. We are dealing with a Bill that is designed to tackle a particular range of issues; if we need another Bill for something else, let us ask to get that done as quickly as possible as well. My proposal that we ask OFMDFM to respond specifically to Michael O’Flaherty’s points was a first go at this because I am working on the basis that, hopefully, we will get a response from them quickly and then we will know what they can do to address our concerns quickly. We will also work interactively with the Department and officials as we take presentations in the next few weeks.
473. From today, we will put things back to OFMDFM for a response. We will get a presentation next week or the week after, we will hear other issues and then we will go back to the Department again. It will be an interactive process. If something comes up, let us ask whether it can be sorted out. In his presentation, Jon said that the way to get a particular matter resolved was to get an all-party motion. We can do that if there is no need for an amendment from OFMDFM. It will be an ongoing thing.
474. **The Committee Clerk:** When the Committee has finished taking evidence, officials have said that they will come back, so they will not be coming next week to speak.
475. **Mr Maskey:** I understand that. I know that they will be here intermittently but in a structured way.
476. **The Chairperson:** Is everyone content that they have had their opportunity? I will move on.
477. It has not been a big issue today, but the closing point of 1995 is significant. There is a response in your folders from OFMDFM referring to the significance of the 1995 Children Order. The response stated that it radically changed how institutions were run and that it built in many safeguards. Therefore, the situation changed radically in 1995. However, the Children’s Law Centre does

- not consider it reasonable to exclude victims of abuse after 1995 since the Children Order had not always been effective and lessons could still be learned.
478. **Mr Eastwood:** That was my point earlier. We need to be open-minded in listening to evidence about that date. Moreover, in the terms of reference, there is no ability for the commission to offer ideas on changes to legislation. Although 1995 was very good and very advanced, it may not be the utopia that has been suggested. Therefore, we need to be open to looking at evidence around that.
479. **Mr Clarke:** The danger is that if you do not have a definitive date, when does it stop? When the inquiry is finished, will we deny people who are currently subject to institutional abuse — if it is still happening — the opportunity to be heard? Let us hope that the changes in 1995 brought such abuse to an end. I am conscious of what Jon said, but if we keep moving dates and trying to include more people —
480. **Mr Maskey:** We are not discussing the Bill clause by clause today; we will have time to discuss all those matters.
481. **The Chairperson:** OFMDFM has written to us telling us the rationale. However, the Children's Law Centre says that the way in which it has been applied is not perfect. Therefore, perhaps in the meantime, we should send the Children's Law Centre letter to the Department for information and comment.
482. **The Committee Clerk:** I have been thinking of sending the Department's letter about 1995 —
483. **The Chairperson:** To the Children's Law Centre?
484. **The Committee Clerk:** Yes.
485. **The Chairperson:** Let us get that done.
486. **Mr Molloy:** Would it be worthwhile asking the Children's Law Centre for examples of how it has not been applied and what action has been taken?
487. **Mr Clarke:** That is highlighting that there is an issue now that needs to be fixed anyway.
488. **Mr Molloy:** Why are we not getting those issues coming up? Why are they not being dealt with if it is still an ongoing situation?
489. **The Chairperson:** We will do that.
490. In a lot of the submissions that we were not dealing with today, there was a focus on the inquiry's terms of reference being outside the Bill and on whether they should be included in the Bill and subject to Assembly scrutiny, as well as on whether changes to the terms of reference should be subject to Assembly scrutiny. We kind of touched on that with the Human Rights Commission, so are we happy to leave it in the meantime or is there anything else that anybody wants to add?
491. **Mr Eastwood:** I am sure that this will come up again. My only concern, which I mentioned earlier, is that we as a Committee need to have an ability to scrutinise the terms of reference, and it is difficult to do that without them being in the Bill.
492. **Mr Clarke:** I thought that the purpose of highlighting areas in the terms of reference was to have those areas fixed. When do you stop tinkering with something? Clearly, when anything like this goes forward, there are terms of reference for how it goes forward. When do you stop tinkering with it? If we continue to work on the terms of reference, the Bill itself will be affected. We have to agree or not agree the terms of reference. I appreciate what the human rights people said today and the issues they raised about the terms of reference. If we ask OFMDFM to fix those, why would we need to continually interfere with the terms of reference afterwards?
493. **Mr Eastwood:** I suggest that we will hear other evidence that will have implications not only for how the terms of reference are changed or otherwise but for what is actually in the terms of reference. I think that we need to be

- prepared for the fact that there will be other evidence that will suggest that the terms of reference are not perfect, even if they were in the Bill and even if the mechanism for changing them —
494. **Mr Clarke:** That is accepting that we will accept everything that is given as evidence.
495. **Mr Eastwood:** No, it is not. It is just —
496. **Mr Clarke:** It is.
497. **Mr Eastwood:** No. What I am saying is that we need to be prepared to listen to any evidence coming forward and not just close down the debate.
498. **Mr Maskey:** I think that we will be in danger of stringing this out. That is my only real concern about it. I accept entirely that very clear concerns have been raised, some of which I share. By the same token, we need to get this in chronological order because if we do not get the terms of reference right and agreed from the start, the Bill will not follow logically, so you could be talking about an entirely different thing at the end of the day. My concern is that we need to get this right.
499. As I mentioned earlier, I read the Examiner of Statutory Rules' report on whether the terms of reference should be provided in the Bill. When I read that report, it told me that — I am paraphrasing the Examiner — there are precedents for doing it that way, that it might be preferable to have the terms of reference contained in the Bill and that if they are not in the Bill, the Bill will be read in conjunction with the ministerial statement. The Examiner of Statutory Rules then recommended that you switch the threshold for accountability by making the supplementary legislation subject to affirmative resolution in the Assembly. That is easily done. I do not think that there is a problem with fixing that. That is what I said earlier on.
500. **The Chairperson:** We have a wee bit of debate at least.
501. **Mr Maskey:** I appreciate that.
502. **The Chairperson:** On that point, members, in the tabled papers, we have an outline forward work programme for discussion on the Bill.
503. Francie, are you leaving?
504. **Mr Molloy:** Yes.
505. **The Chairperson:** I misread that earlier, Francie. As I understand it now, if the motion goes through in the plenary session on Monday, Francie and Caitríona will be leaving the Committee, so this could be your last meeting. On behalf of the Committee, I thank you very much for your contributions and wish you every success wherever you go next.
506. **Ms Ruane:** I have to say that I have really enjoyed being part of this Committee. I will work and do anything I can to support you.
507. **Mr Molloy:** Thank you very much for your co-operation.
508. **The Chairperson:** We will excuse Caitríona from this part of the debate about what we are going to do and when we are going to do it. Does anybody have any comments on the draft forward work programme in terms of submissions? That obviously includes Programme for Government delivery plans and some other issues that we need to turn our attention to. Perhaps we will just leave that with members for the week.
509. **The Committee Clerk:** The suggestion is that we invite along next week some organisations representing the human rights perspective. Are members broadly content with that or would they like to hear from particular organisations that made submissions?
510. **The Chairperson:** Do you want me to run through who is available?
511. **Mr Maskey:** Can I suggest that we leave it with you to schedule presentations?
512. **The Chairperson:** If anyone feels strongly that there is an individual or group that we need to hear from, they should suggest it to the Committee Clerk.

513. **Mr Eastwood:** You never know how these things will work out. I think that we can all be available for meetings on Mondays and Tuesdays, or any other day, so that we can do this as quickly as possible.
514. **The Chairperson:** OK. The last substantive issue is whether we extend our Committee Stage.
515. **Mr Maskey:** If we need to extend it, we should do so. However, we intend to wind this up as quickly as possible in order to meet our commitments. Let us get this turned around quickly.
516. **The Chairperson:** The difficulty is that if we do not give ourselves flexibility and we miss the deadline, we are in trouble. We can always finish ahead of schedule. We have an official motion for an extension here, Alex. Are we content to take that today? It would push us back to 26 October.
517. **Mr Lyttle:** We should note that this is precautionary; we do not have to use it. It is sensible to give ourselves the option of using it if necessary.
518. **The Chairperson:** It is a two-way street. The downside is that the blockage comes from the Department, but there is no indication on this specific of anything other than willingness to push ahead.
519. The motion is entitled:
“Extension of Committee Stage: Inquiry into Historical Institutional Abuse Bill (NIA Bill 7/11-15).”
It is proposed:
“That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 26 October 2012, in relation to the Committee Stage of the Inquiry into Historical Institutional Abuse Bill (NIA Bill 7/11-15)”
- Members indicated assent.*
520. **Mr Lyttle:** May I clarify my proposal for a Committee press statement? The communication from OFMDFM about how this will proceed has been less than ideal from the point of view of victims and survivors. There are certain factual details, such as the one that you just read out, that should be included. It would be useful to put out a press statement to make clear the trajectory that this will take. I say that just to be clear.
521. **The Chairperson:** Yes. Are we all agreed? We should add that we are open to taking written and oral submissions.
522. **The Committee Clerk:** At this stage, we have our submissions, although the Committee Stage will run on.
523. **The Chairperson:** If an individual has not really been engaged with us and this news release makes them feel —
524. **Mr Clarke:** I suggest that we seek written submissions rather than oral ones.
525. **Mr Maskey:** Was not a formal invitation published by us?
526. **Mr Kinahan:** Let us keep at it.
527. **Mr Maskey:** I am not suggesting that we do not take submissions from someone who did not meet the time frame, but, by the same token, we need to get this finished; we cannot leave the invitation open-ended.
528. **The Chairperson:** Sure. However, if an individual came forward next week and said that they had missed all this or that they were now ready to talk, I would be happy to meet them with one or two members of the Committee. We should go as far as we can.
529. **Mr Lyttle:** Yes. Not to overstate the role of the Committee either, but it is an opportunity for a Committee of the Assembly to show itself as interactive in the legislative process.
530. **The Chairperson:** The other issue before we close off, members, is whether we are content to share all the submissions that we have received with the Department. Are members content?
- Members indicated assent.*
531. **The Chairperson:** Are you content, Committee Clerk?

532. **The Committee Clerk:** Yes.
533. **The Chairperson:** We are content with the table showing the draft forward work programme.
534. There is no other business. The next meeting is on Wednesday 12 September at 2.00 pm in Room 30. Thank you all very much.

12 September 2012

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 Danny Kinahan
 Mr Alex Maskey
 Ms Bronwyn McGahan
 Mr George Robinson

Witnesses:

Mr Patrick Corrigan *Amnesty International UK*

535. **The Chairperson:** We are joined by Patrick Corrigan from Amnesty International UK. Committee members have a written submission from Amnesty International dated July 2012. Patrick, you are very welcome. I offer you the opportunity to set out your stall and then make yourself amenable to members' questions.
536. **Mr Patrick Corrigan (Amnesty International UK):** Thank you very much, members of the Committee and Mr Chairman, for inviting me to add some flesh to the bones of the submission that we have already made in written form. Thank you for the invitation to give oral evidence.
537. To set out our credentials specifically on this issue, I must say that Amnesty International has campaigned alongside the victims and survivors of institutional abuse since February 2010, specifically in pursuit of an inquiry that can deliver a measure of truth and justice for victims of institutional child abuse. We want to take the opportunity to commend all those victims who have courageously come forward to tell their story and campaign for this inquiry. I also commend the Ministers and officials from the Office of the First Minister and deputy First Minister (OFMDFM) for the work that they have done in bringing forward the proposals for the inquiry. We really want to acknowledge that they have done a very good job and committed to engaging with us on a number of occasions via meetings and correspondence over the past couple of years. We welcome the publication of the Bill and the inquiry's terms of reference. We think that they represent significant moves in the right direction. The concerns that I will, from this point onwards, focus on are the outstanding concerns that we have with the proposals. However, I do not want that to detract from the good work that we think has been done and that we acknowledge.
538. I will run through a few of our main points that I want to focus on. One is around the independence of the inquiry. I know that the Committee heard at length from the Human Rights Commission (HRC) last week on some of the points, so I will not go over that issue at length. However, I will say that the Bill as framed gives the First and deputy First Ministers' office significant powers potentially to intervene in the running of the inquiry. Those powers, taken either individually or collectively, amount to a degree of potential control over the inquiry. Again, that has the potential to undermine its independence, to risk public confidence in its effectiveness or actually to risk its effectiveness. We note that the HRC says that the Bill as framed would put the Northern Ireland Government in breach of the Jordan principles, and that that could be in breach of our international human rights commitments. I have to say that Amnesty International shares those concerns.
539. Again, we know that you have already heard that there are some concerns

about the historical scope of the inquiry, and I want to underline our concerns, too. First, victims of institutional child abuse in the years pre-1945 or post-1995 effectively face exclusion from the inquiry. We consider those cut-off dates at both ends to be arbitrary and as potentially amounting to discrimination on the basis of age. We note in the legislation that the Ministers have given the panel on the acknowledgement forum the discretion to look at pre-1945 cases. We welcome that direction of travel, but it falls far short of what we think the Bill needs to do. We think that the approach as framed is problematic because it provides a second-class form of inclusion by the acknowledgement forum, granted at its discretion rather than as a right that the victims can assert.

540. Secondly, it is worth noting that neither the Bill nor the terms of reference grants a similar degree of discretion to the other two components of the inquiry — the research and investigation team, and the investigation and inquiry panel — to take direct evidence and consider cases of abuse outside the 1945 to 1995 time frame, beyond receiving a report from the acknowledgement forum. Therefore, again, there is a secondary status being granted to those victims affected pre-1945 or post-1995. The Bill at the moment is stating that we will allow those individuals who suffered abuse as children in institutions to have their abuse acknowledged but not researched, investigated or enquired into. We think that that is a significant shortcoming of the Bill. We recommend that the Bill be amended to address that.

541. I want to touch again on the lifespan of the inquiry. The two years and six months period following the commencement of the legislation may be a reasonable time frame within which the inquiry can complete its work. Equally, it is possible that the scale of evidence presented for consideration or the number of witnesses that come forward may mean that additional time is necessary for the inquiry to do its

job. Therefore, we would say that the 30-month time limit should be open to revision should the chair decide that that is necessary in the interests of completing a thorough and effective investigation. I note, in passing, the precedent of the Smithwick tribunal, which is investigating allegations of state collusion in the Republic of Ireland, where the chair of the inquiry has twice sought and been granted extensions to the period of investigation. I think that those extensions have been roundly welcomed as necessary.

542. I also want to touch on reparation and redress. At the moment, a decision on reparation, including compensation, has been deferred for consideration by the Executive until after the inquiry reports. Effectively, we are looking at 2016 and beyond before anything might happen on that front. We know that that is of deep concern to quite a number of victims who have spoken to us. We suggest that decisions on aspects of the right to reparation and redress need not necessarily be dependent on the final outcome of the whole inquiry process. Instead, the inquiry could be tasked with making an interim report on those matters, with recommendations for the Executive based on specific inquiry into the issue of redress and what the panel might recommend. The Bill as framed already makes provision for the publication of an interim report by the inquiry. We suggest that an interim report focused on the issue of reparation would mean that recommendations on redress are actually based on evidence presented to the inquiry but does not mean that there is a delay until the whole work of the inquiry is completed.

543. The terms of reference are crucial, yet they are currently not contained in the Bill itself but form part of a wider written ministerial statement to the Assembly. I want to make a few points about the terms of reference. We consider them to be quite narrow, confining the inquiry to investigate and report on whether there were systemic failings; recommendations

- as to a possible apology; a tribute or memorial to victims; and the possibility of redress. We think that the terms of reference could prove restrictive and that the inquiry may need to request a redefinition or widening of those terms of reference as it goes about its work and uncovers evidence.
544. The terms of reference do not provide for the inquiry to make recommendations around changes to current law, policy and practice so that we can ensure that there is no repetition of the type of abuse that the victims who have been the subject of this inquiry experienced. At the moment, the inquiry's hands are tied in pointing us towards any lessons that we can learn as a society. Neither the terms of reference nor the Bill offers us a definition of abuse. We think that those are all omissions that need to be addressed between the Bill and the terms of reference.
545. We think that the terms of reference should be amended to have more flexibility so that the inquiry can determine in more detail the matters that come within its scope. We also argue that the terms of reference should be brought within the legislation, with an enabling clause to give Ministers the power to amend them with the prior agreement of the inquiry chair, should that prove to be necessary. We think that that would fulfil the twin objectives of ensuring proper Assembly scrutiny of this crucial aspect of the architecture of the inquiry and ensuring improved scope for amending the terms of reference, should that prove to be necessary.
546. Finally, I will make the point that the inquiry is obviously not addressing clerical abuse in non-institutional settings. We regularly receive calls to our office from victims of clerical child abuse who ask, "What about us? Why will this inquiry not deal with our experiences of abuse?" We are not particularly calling for the scope of the inquiry to be amended to address that. However, we take this opportunity to request that the Committee make recommendations to the Executive that
- they address that abuse as well. We think that it is an issue that requires political attention.
547. I thank you for your time, and I thank the Ministers for their work to date. I am happy to answer any questions that you have.
548. **The Chairperson:** Thanks, Patrick. Let me press you a little bit on that last point. You said that you are not particularly minded to call for change. I think that I am right in saying that, last week, the Human Rights Commission was very definite in telling us not to attempt to broaden the scope of the inquiry but to be mindful of the fact that this process is leaving people behind and that this is not the complete picture. Is that what you are saying?
549. **Mr Corrigan:** We are happy to echo that sentiment. We are saying that if this is not the mechanism for addressing those cases, and we are happy to accept that it is not because the inquiry's framing has gone so far, another mechanism needs to be investigated to do that. We have lots of cases of clerical abuse in Northern Ireland, and none has yet been investigated by this inquiry methodology.
550. **Mr Eastwood:** You have made quite a number of points. I suppose that we will go through those as we go through the Bill. I will ask you specifically about the 1945 and 1995 limits. There are a number of different ways that we could resolve it, but have you any particular solution in mind for how you would frame the Bill?
551. **Mr Corrigan:** We think that the limiting dates could be done away with altogether so that it will look into cases of historical abuse up until last year or whenever and so that we essentially run from the formation of the state up to a recent date. I understand that the 1995 date has been stipulated because of the passing of the Children (Northern Ireland) Order in 1995 and a sense that the rules of the game changed at that point. I know from looking at the submission from the Children's Law Centre and the work that it has done

on children's rights that it does not consider the problem of institutional child abuse to have ended in 1995 and that there are many recorded instances of its being an ongoing problem. I think that it would be remiss of the inquiry to miss out those cases. We would look to bring the date closer to the present day so that the inquiry can tell us about current and recent experience as well as about purely historical experience in the pre-1995 sense.

552. As for pre-1945, we see no compelling reason why the starting date cannot be from the formation of the state. We already understand that the number of cases from between 1921 and 1945 will be relatively limited simply because of the advanced age of the victims concerned. Therefore, we do not think that it would be adding to that workload unduly. It would be a fairer way of proceeding. I think I pointed out in our submission that the Ryan commission was given discretion, for its two main components of inquiry, to amend either earlier than its stipulated start date of 1940 or later than its stipulated end date of 1999. That discretion was used in the investigation and confidential committee work. So, there are two different ways that this issue can be approached. The fairest, most open way, where we are not designating some victims as second class, and who may be admitted to the inquiry only at the discretion of the inquiry panel, would be to simply widen the dates from, let us say, 1921 up to 2011, when the legislation was framed.
553. **The Chairperson:** Patrick, you made the point that the word "abuse" could be better defined. You reference the UN Convention on the Rights of the Child. Does that constrain the panel when it is looking at abuse? Should we be saying that there is a really rigid definition that the panel must work to, or is it OK for the panel to say what it thinks abuse is when it hears from victims and survivors? Abuse is what it is.
554. **Mr Corrigan:** It needs to be defined in some sense, because it is specific to the context of institutional abuse during

the time period involved. However, it can be informed by the Convention on the Rights of the Child. I think that there are lessons to be learned from how some of the other inquiries that have come before this one addressed that point. At the moment, it seems to be an omission that this is not to be defined in law. Obviously, it can be a matter that is left to the inquiry. Perhaps that is the intention of the Department.

555. **The Chairperson:** Is there not the inevitable implication that it might exclude somebody? I am speaking from the experience of working on the Victims' Commission. The worst thing you can ever have to do is sit down with a victim or survivor and say: "I am sorry, but you do not meet the criterion or criteria."
556. **Mr Corrigan:** It is a matter of getting the framing right. We are not offering a specific form of words. We are saying that the issue should be informed by the international children's rights standards.
557. **The Chairperson:** We hear that redress is important. We also hear the use of other words, such as "reparation". Do you think that there is a common understanding of what those words mean? Do you think that, over the course of the inquiry, we will reach a common understanding among those who come forward as to what they want and need?
558. **Mr Corrigan:** From the victims that I have spoken to, I know that different people would like different things from the process. For some, there is the desire for an acknowledgement of the pain and disadvantage they suffered throughout their lives through the form of financial compensation. We think that people have a right to that where, for instance, such loss of earnings can be classified in financial terms. For others, it is about addressing the other elements of their life that have been harmed or that they have missed out on. That may be through employment or educational opportunities, if they are of a younger age. For others, it is about an

- apology and a proper acknowledgment, a point already addressed.
559. There is confusion. There are a number of components. Again, I bring us back to the point of non-repetition. One component of redress is non-repetition. It is important that the inquiry is allowed to come up with recommendations that will ensure that we do not have future victims and that as much as possible is done to prevent a recurrence of the abuse.
560. **The Chairperson:** We have to recognise that those lost opportunities, if we can define them broadly like that, are intergenerational. It is not just about the person who was abused and who is impacted. It may impact on their children, and possibly grandchildren, too.
561. **Mr Corrigan:** Indeed. That concern has been raised with me, particularly by people of significantly advanced age. If the issue is postponed or deferred until 2016 or 2017, they may not be around to receive compensation to pass on to their children or grandchildren. That is a very human fear.
562. **Mr Maskey:** Thanks, Patrick, for your presentation. In fairness, we dealt quite extensively last week and in previous discussions with most of what you raised. Most people around the table, if not all, share a lot of what you have said. I am happy to leave the situation as it was last week. I make that point primarily because last week, the Committee agreed, unanimously if I recall, to tell OFMDFM — and most members, if not all, acknowledged that OFMDFM is clearly well-intended in the matter — that we want the issue dealt with as quickly as possible and to get the best Bill possible passed. I left the meeting last week encouraged that everybody around the table was saying exactly the same thing. Then, over the next few days, I read that people were having a go at it. It is fair for people to say whatever they want publicly, but when we agreed a course of action unanimously last week, that should have been reflected in what they said publicly.
- However, it is for people to say whatever they wish.
563. On that basis — and I am saying this because people may now want to run to the media, which is fine; but they may leave themselves open to be challenged — Patrick, you used the language of people who may not be included in the legislation as perhaps being second class. I want to make sure that that is your language. It is not acknowledged or accepted in any shape or form by me or my colleagues. I want to put on record that I do not accept that there is any inference to be drawn from the Bill that anybody who is a victim of sexual abuse is being treated as second class, certainly not by anybody connected to me and my party. I presume that that stands for all the parties. You used that language. All I am saying, because people are choosing to run to the media, is that I want to make it very clear that we disassociate ourselves from that language.
564. **The Chairperson:** Patrick may want to come back on that point.
565. **Mr Corrigan:** I welcome that, and the commitment from the Committee to seek amendments to make sure that there is no second-class or secondary status for any victim. In using that language, we are echoing the language used to us by victims and family members of those who do face exclusion. That is how they feel about the experience or prospect of their case not being dealt with adequately. The secondary, second-class, or lesser treatment that those victims are set to receive, if the Bill stays as it is, is a comment on the reality of the draft Bill.
566. **Mr Maskey:** That is fair enough. I am just making it very clear that you can say whatever you want, but we disassociate ourselves from any suggestion that anybody will be treated as second class.
567. **Mr Corrigan:** That is very welcome.
568. **Mr Humphrey:** Thank you very much for your presentation. Unfortunately, due to difficulties in north Belfast, I could not

- be here last week. However, I spoke to colleagues about the presentation.
569. Let me make it very clear from the outset, as Alex did on behalf of his party, that my party is determined — given the day that it is today and what we have just heard from the Commons about the disaster at Hillsborough — to ensure that in a democracy any inquiry should be fully independent, open and transparent. Therefore, the bona fides of my party in its sincerity in trying to get a resolution to this matter for all the victims concerned are, I assure you, without question.
570. You mentioned people coming to your office to make representations to you and that you are speaking on behalf of those people today. What are you advising them to do when the inquiry is actually up and running?
571. **Mr Corrigan:** If they fall within the scope of the inquiry, we are recommending that they come forward and participate in it as fully as they feel able to. That may be through one element, such as the acknowledgement forum; that may be through multiple elements, such as the inquiry investigation panel as well. We recommend that people participate in the inquiry. Meanwhile, we try to work with victims to ensure that it is the best inquiry possible. That was our objective at the outset, some years ago.
572. **Mr Humphrey:** A number of months ago, Sir Anthony Hart was in front of the Committee with some of his colleagues, including a lady whose name I have forgotten and who served on the Smithwick inquiry. I think that she was deliberately selected by the Department to ensure that the mistakes made there, or shortcomings, can be ironed out and will not happen in this inquiry. That is obviously very important.
573. You mentioned OFMDFM having ministerial control over the inquiry. I listened to Sir Anthony Hart. Having done so, and given his evidence here, I cannot imagine that someone such as Sir Anthony Hart would, in any way, be controlled by any Minister or departmental official. I have confidence in him. Equally, I have to say that I do not believe that it would happen, nor should it.
574. The life span of the inquiry will be two years and six months. It is very important that people get closure. That is an often-used American term that seems to have crept into our language, so I really should not use it. People need to get as quickly as possible to the bottom of these heinous crimes committed against them personally or against members of their families who are no longer with us. It is about trying to get a balance in having the inquiry, taking the time to do it thoroughly and delivering it to people quickly, which is equally important. Do you agree?
575. **Mr Corrigan:** Yes, and that is the basis for our not suggesting or asking that the period be extended to some other arbitrary period of, say, three years, three-and-a-half years or four years. We are saying that two years and six months is perfectly reasonable guidance. However, none of us around this table, Sir Anthony Hart, nor anyone else, knows what evidence, how many victims or what obstacles may come his way in the next few years. It is important that should he encounter a scale of evidence or obstacles, he has the discretion to request an extension of that time period. It is only fair should it be deemed necessary by the inquiry panel that an extension should be possible. We drew the parallel with the Smithwick tribunal in the Republic, where the Government set down guidance for how long they should have. They sought an extension because they felt the need to do so, and it was acknowledged that they truly did need that extension to complete their work.
576. **Mr Humphrey:** Instead of seeing Reds under the bed, could it be that the reason why Ministers have control — as you put it — is to deal with that very point, namely that if extra time needs to be given, it can be given. Ministers can reach that decision very quickly.

577. **Mr Corrigan:** As this is set out, the inquiry chair is not being given the power to specifically request an extension. We think that he should have that power: that would be the best way of doing it.
578. **Mr Humphrey:** Surely, that is because people do not want these things to be long and protracted. You made the point that the people who need answers need to get them as quickly as possible, and that is why this has been done. I listened to Sir Anthony Hart when he was in front of the Committee. I think that all parties agreed with him at that time when he said that he was confident that there would be no interference, and nor should there be. I believe that Ministers have the power to deal with the point you raised. In my opinion, that should allay your concerns.
579. **Mr Corrigan:** Our concerns are not fully allayed. I want to put on record that we fully respect the integrity and capability of Sir Anthony Hart, Ms Norah Gibbons and the others who have been appointed by Ministers to date. It is not about their integrity, and I do not think that that should be put in question. It is about framing in law around where the respective powers sit between the Executive and an independent tribunal of inquiry. It is important to get that right, not just for this issue — and it is very important that it be got right for this issue — but for the precedent that it may set in law for other inquiries that this Assembly may wish to establish in future years to address other aspects of our past. It is important that we get the separation and balance of powers right; it is how we present it.
580. **The Chairperson:** Members, if you are all content, I will say that we have exhausted Patrick's input. Thank you very much, Patrick.
581. **Mr Corrigan:** Thank you for your time.

12 September 2012

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*

582. **The Chairperson:** Ciaran McAteer of McAteer and Co Solicitors now joins us. Ciaran, thank you very much indeed for coming.
583. **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 statute 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.
584. 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.

585. 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.
586. 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?
587. 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.
588. 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.
589. 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.
590. 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.
591. 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.
592. 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.
593. **The Chairperson:** Ciaran, thank you very much. That was most informative.
594. **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.
595. 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.
596. **Mr McAteer:** I thoroughly agree with that.
597. **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.
598. **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.
599. **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.
600. 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.

601. 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.
602. **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.
603. 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.
604. **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.
605. **Mr McAteer:** I am not saying that anyone around this table has that perception. I am saying that it is, sometimes, a public perception.
606. **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.
607. 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.
608. 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.
609. **The Chairperson:** Do you want to say anything on that?
610. **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.
611. 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.
612. **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.
613. **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.
614. 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.
615. 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.
616. It is very difficult to get something that will satisfy everybody, but all we can do is our best.
617. **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.
618. 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.

619. **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.
620. **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.
621. 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.

622. **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.]*
623. **Mr McAteer:** I am here representing myself, not the profession. I may be in some trouble elsewhere. *[Laughter.]*
624. **The Chairperson:** Thank you very much.

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625. **The Chairperson:** Members, before we hear from our final witness, is there anything from that session that we want to include in our correspondence to the Office of the First Minister and deputy First Minister (OFMDFM)?
626. **Mr Maskey:** We need to get a response from OFMDFM on all these matters. Most are interlinked in some shape or form. Some witnesses have made additional points, but all the presentations have some commonality. There are also some conflicting recommendations. People have said that there is, largely, agreement but, in fact, on some of these matters there is not. There are stark differences of opinion, but I think that, as a rule, we should ask OFMDFM. If we are to have OFMDFM officials before the Committee to deal with a lot of these points, we will need those answers.
627. **Mr Lyttle:** A key issue seem to be the clarification of whether fostering, adopting and schools are included in the category “institutional”, which is a point that you raised, Chairman. In addition, we need clarification on the scope, or intention, of the panel to inquire into non-institutional child abuse.
628. **The Chairperson:** I think that we still have a consensus that we want this to be done as quickly as possible. Also, we are now of the belief, and do not contest, that it is not a totally inclusive process. Some who have been abused will not fall under the inquiry’s scope, so some other process will be required.
629. **Mr Maskey:** The focus of the whole discussion and debate is primarily and initially led by a number of courageous victims and survivors of historical institutional abuse. The Bill is intended to deal with that. It is not intended to deal with a range of other matters, which are equally important but fall without the Bill. That is why I was quite annoyed when listening to people coming in here and talking about second-class citizens. I do not want to reinforce anybody’s view that they are second class. In general, people should be mindful of their terminology.
630. **The Chairperson:** That was a report of what was being said.
631. **Mr Maskey:** That is fair enough, but then you keep repeating it. If I say something, it needs to be addressed. If I make an argument or a complaint here, someone should discuss it with me or challenge me on it, and a very important debate may ensue as a result.
632. It is just my opinion, and my colleagues will share it. Everyone here is of the view — we discussed this last week — that all those involved in the process seem well-intentioned. So if there are some deficiencies in the Bill, let us deal with them.
633. Already, what is emerging is a very negative counter-narrative to what should be a positive development of the Bill. I am a bit frustrated, because people from some quarters are using language that is not designed to be encouraging and certainly not designed to be constructive. We have to be involved in constructive criticism in order to get the Bill right.
634. I am sharing with the Committee a wee bit of my frustration because if I was out

- there reading some of the recent press reports, I would think that there were people up here who were going out of their way to obstruct an inquiry.
635. My party is one of those involved in OFMDFM, and I believe that those people are very well-intentioned. However, if I were a victim who was reading what others, including some political parties in the Executive, were saying, I would be asking myself why people up in Stormont were dragging their heels when people are trying to get the process sorted out more quickly.
636. In expressing my frustration, I am asking for people, particularly here, to be constructive and positive. By all means, we should all air every single concern that we have, but let us deal with them more positively.
637. **The Chairperson:** OK, but on that specific point, when Patrick Corrigan used the term “second class” he was reflecting what people were saying to him. He has a duty, I suppose, in that he has to go back to those people who may have listened to this session. He does not want them to say that he did not reflect their view.
638. **Mr Maskey:** That may be fair enough, but I do not want people to have a lingering perception that I am acknowledging, or accepting, that anyone has been treated as second class. There is a difference, which is why I took issue with it.
639. **The Chairperson:** Yes, and the point has been made.
640. **Mr Maskey:** Someone could come to my house tonight and put their argument, and I might have to say to them that they are wrong.
641. **Mr Lyttle:** I will be brief. My observation is that Committee members and those giving evidence have gone out of their way to frame all their comments positively and have recognised the hard work that has been done and the good intentions that have got us to this point, but there are some key concerns.
642. Whether or not it was the intention of parties, issues such as, for example, the 1945 cut-off point, have caused some trauma and may have made people feel akin to being excluded or second-class citizens. I recognise that this term seems to have caused particular concern, and I take that on board. Nevertheless, we do not need to lose track of the fact that people are committed in a positive way.
643. I do not know to which members or political parties you are referring when it comes to press reports, and we probably do not need to go into that, but from a Committee point of view, we have endeavoured to ensure that press comments that we make as a Committee are constructive. It is useful for that to go on record.
644. **Mr Maskey:** We agreed last week that we would do that, but then I read other comments. That is fair enough. People can say whatever they want, but they may well end up being challenged. I do not want that, because people are asking us —
645. **Mr Lyttle:** I do not know who you are referring to from outside, so I cannot respond.
646. **Mr Maskey:** That is OK, fair enough.
647. **The Chairperson:** I do not know what the comments are, but I do not want to open something up —
648. **Mr Maskey:** I am trying to generalise, Chairperson. All I am saying is that this is a very important issue. Everyone seems to want to resolve it as quickly, and with the maximum amount of integrity, as possible. Everyone seemed to be on the same hymn sheet last week, and all I am saying is that we should proceed on that basis.
649. **The Chairperson:** OK.
650. **Mr Maskey:** I am sorry, Chairperson, but it has become an issue. If I were a victim, I would be thinking that there are people up here, including those driving the Bill, who are trying to exclude them

or treat them as second class. Let us be a bit more positive.

651. **Mr Eastwood:** I did not really want to get into this, because we just need to get on with sorting out the Bill. I do not think that anything that has been said by anyone here in a public Committee meeting or by anyone in the media has been in any way contradictory to anything that Alex said.
652. We have all agreed that this matter needs to be dealt with as a matter of urgency, but we have also all agreed that there are issues with the Bill that we need to sort out. Everyone is coming at it in that vein. Every political party supported the Bill's passage through the Assembly and this Committee happening as quickly as possible. There is no argument, so we just need to get on with the job.
653. **Ms Fearon:** I would just like some clarification. As Bronwyn and I were not officially on the Committee last week, we missed a lot of what was going on. I know that there is consensus that 1945 is not a reasonable starting point and that we will write to OFMDFM about that, but what about the upper limit? That has not really been mentioned.
654. **The Chairperson:** The consensus is that a start date of 1945 is not reasonable and that it would be reasonable to start at 1921. A closing date of 1995 was chosen because, after that, new legislation came into effect, and the Department said that those new rules mean that that period is covered. In submissions, groups such as the Children's Law Centre said that those are not as robust as was being suggested. So there is more of a debate over the finish date. As a rule, we write to the Department for its opinion on the witness statements and evidence that have come to the Committee.
655. **Ms Fearon:** That is OK. I was just clarifying what was being sent, because we were not here last week.
656. **The Chairperson:** Sure.

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

Witnesses:

Mr Fergus Cumiskey	<i>Contact NI</i>
Ms Pam Hunter	<i>NEXUS Institute</i>
Ms Susan Reid	<i>Victim Support</i>

circumstances of their experience. That is why we encourage consideration of devolving discretionary powers to the inquiry panel chair to alter the terms of reference to address unforeseen issues as they arise. Echoing the European directive on victims of crime, particularly articles 17 to 23, we ask that consideration be given to how victims will be protected from:

“retaliation, intimidation, repeat or further victimisation”,

including:

“measures to ensure that the risk of psychological or emotional harm to victims during questioning or when testifying is minimised and their safety and dignity are secured.”

657. **The Chairperson:** Next we have a tripartite approach. We have Pam Hunter from NEXUS, Fergus Cumiskey from Contact NI and Susan Reid from Victim Support. You are all very welcome. Susan, you are in the middle, does that mean that you are presenting?

658. **Ms Susan Reid (Victim Support):** Yes. Thank you very much for the opportunity to discuss the draft Bill. My name is Susan Reid, and I have the role of chief executive of Victim Support NI. With me today are Pam Hunter, the chief executive of NEXUS, and Fergus Cumiskey, the director of Contact. Our three organisations have been working together on this issue.

659. First, we acknowledge that those victims who have come forward have had their views respected and reflected in the drafting of the Bill. Although we commend that, we also wish to draw particular attention to the needs of those who are still holding their painful secrets. We urge you to ensure that no further harm or hurt is inadvertently enacted by the state as a result of barriers to participation — barriers related to their age or to the particular

660. We believe it to be essential that, where sufficient evidence exists and a person or persons can be identified, the process of criminal justice can be followed.

661. We seek assurance that the process of inquiry will not be an obstacle to a case being progressed. We are disappointed that the decision to make compensation will be postponed until the inquiry has concluded and wish to highlight the significant benefit to victims in being believed by representatives of the state. We draw a parallel with the criminal injury compensation scheme, the context of which is a different burden of proof, which is rightly lower than that required in court. We draw your attention to compensation as an important symbol of an apology by the state — an apology and recognition of harm done for those older individuals who have lived with the burden of their experience for so long. It seems unnecessarily cruel to have to wait until after the inquiry for a decision on whether compensation will be made.

662. We see the inquiry as a significant step by the Assembly, not just to recognise the individuals who have been harmed

- but to learn from the mistakes of the past and, as far as possible, take steps to ensure that the harm cannot be repeated in the future. To that end, we urge that the inquiry work to the definition of abuse outlined in articles 19 and 34 of the UN Convention on the Rights of the Child and that the inquiry panel should have the authority to make recommendations on changes to law, changes to administrative procedures and changes to practice that would ameliorate the risk of abuse in the future.
663. I began by recognising the work that has gone into the Bill to date and the need to ensure that those who have not been heard to date are encouraged and supported to come forward. I will now hand over to Pam Hunter to speak on that theme.
664. **Ms Pam Hunter (NEXUS Institute):** Our collective services between Victim Support, NEXUS and Contact NI work with many clients who express inherent mistrust of statutory services. The Committee and the roll-out of the review, have the unique opportunity to address and correct that mistrust. However, to do so, it is critical to remove barriers and address concerns that may promote cynicism and mistrust. The onus is on you to create an open, accessible and healthy process to help to redress the crimes committed and to support historical abuse survivors.
665. We highlighted two such barriers with the inquiry in our joint letter to the Committee dated 23 May. First, there is the 1945 date restriction. The 1945 limit serves no purpose other than to discriminate against our aging population. The inquiry Bill notes discretionary provision hearings for those cases prior to 1945, which we appreciate. However, there is an inference that there may be no follow-up investigation. We request reconsideration of the inquiry's historical scope, enabling equal consideration for all historical abuse survivors.
666. The second barrier is the location restriction. The current review is limited to state-controlled residential institutions. Queen's University recently completed an independent study of NEXUS clients, all of whom are survivors of sexual violence and abuse, and found that 60% of sexual abuse happens within the family home. With that stark finding in mind, we request the Committee to consider the inclusion of all boarding schools, including day attendees, all day school provision and fostering and adoption services within the scope of the inquiry.
667. The historical scope and location restrictions detailed in the Bill have the potential to create a hierarchy of survivor legitimacy. That represents a significant credibility risk to the entire inquiry purpose, with the potential to exclude many vulnerable groups and individuals who suffered dreadful childhood abuse. That risk may undermine the good intentions of the review and severely limit the scope and relevance of the inquiry's recommendations, conclusions and future strategies.
668. Our understanding is that the principal aim of the inquiry is to establish truth, learn lessons from the past and prevent future abuse of all children, while acknowledging the suffering of survivors. We are concerned that the current review limitations may undermine that excellent purpose and steep the inquiry in controversy. That will then alienate some survivors from taking part when conciliation and justice for all historical survivors could well be within the inquiry's grasp. I will now pass over to Fergus Cumiskey, the director of Contact NI.
669. **Mr Fergus Cumiskey (Contact NI):** Very briefly, our key message today is that to omit any sector from the historical childhood abuse inquiry will confirm a sense of victimhood hierarchy, risking further isolation, splitting and discouragement from support seeking and redress.
670. The recent learning from the acknowledgement and redress process completed in the South of Ireland accentuated the sense of grievance

- driving the compensation agenda. The downside of that overemphasis is that it also magnified the sense of isolation, splitting and victimhood for those who still felt that they could not come forward, despite compensation payouts averaging more than €60,000. That was especially apparent for those who were not harmed by state and religious institutions but subjected to abuse at home or neglect and harm within or close to home. It is our understanding that compensation payouts in the South were not subject to conventional proof requirements. That became a corrosive issue, undermining the prospect for some of criminal prosecution and alienation for others who saw the compensation issue as an unhelpful distraction.
671. We also wish to reflect with you on the necessity for a wider childhood violence sexual prevalence study. We contend that evidence-based practice can only follow policy informed by high-quality, systematic research. We are concerned that a narrow focus on historical institutional abuse will inadvertently delay our understanding and prevention strategies by some years when there is a prime opportunity now to unite the historical abuse redress and current abuse prevention and child protection movement by the scope and understanding of the inquiry Bill.
672. Although we accept that the current inquiry focus is important, unfortunately, in its current form, it tends to distract public understanding to the past, deflecting from the fact that many children remain vulnerable to significant harm right now at home and close to home.
673. As a policy and practice community, we would not fully understand how to adequately protect all children from harm if we did not take the opportunity to engage in a wider childhood abuse prevalence study for Northern Ireland as an immediate follow-up to the historical childhood abuse inquiry. Without a childhood abuse prevalence study akin to the Sexual Abuse and Violence in Ireland (SAVI) 2002 report in the South,
- we will continue policy-blind, informed by studies from other places and relying on speculation for the relevance of key community context factors, severely hampering abuse prevention strategy policy and practice development for children in Northern Ireland.
674. Finally, we strongly advocate the adoption of a survivor strengths-based approach, enabling the inquiry to identify incidences and learn from resilience testimonies, where survivors of childhood victimisation went on to create a life worth living, making meaning from coping with the trauma of childhood adversity through family, community and, occasionally, therapy support, affirming that victimisation does not always result in catastrophic psychological consequences, and inspiring an optimistic recovery narrative for the inquiry and the support services it creates. A dedicated inquiry reporting communications strategy will be an important counter to the ever-present risk of the entire inquiry process being dogged by press leaks, conjecture and withering criticism, as per the current dominant narrative.
675. We are very happy to field any questions and respond to comments that you may have about our presentation.
676. **The Chairperson:** I thank all three of you very much. Fergus, I am quite taken by the way in which you finished with a positive, because sometimes, when we look at victims and survivors issues, we tend to assume that the picture is all bleak, and it does not need to be.
677. **Mr Cumiskey:** Quite.
678. **The Chairperson:** Pam, we heard from Michael O’Flaherty of the Northern Ireland Human Rights Commission last week, and he was really quite set in his opinion that we should not broaden the inquiry and that we should get on with what we have got, being mindful that it is not the full deal, as it were. Amnesty International seems to be on the same road, but you are not.
679. **Ms Hunter:** If memory serves me right, Amnesty was on the same road in not

- including the clerical side of things, but was on the same road in looking at the date restrictions. Before me, their representatives talked about lengthening the scope of the inquiry to before 1945 and up until only a few years ago.
680. **The Chairperson:** If we are talking about who would be included, you have mentioned boarding schools.
681. **Ms Hunter:** Oh, yes, OK.
682. **Mr Cumiskey:** To the abuse survivor community, Mike, the hair-splitting distinctions are irrelevant. They happen to be the necessity of the bureaucratic and legal requirements that you are facing. You have a once-in-a-generation opportunity to make a clear commitment to abuse survivors from wherever they emanate, particularly those who were violated in institutions run by the state, but also those who were violated in other institutions that were receiving part-funding from the state and acknowledgement and endorsement from the state.
683. It is as though we could inadvertently gag a whole host of community contexts by going with the narrowness of the Bill as it is presented.
684. **The Chairperson:** Fergus, I think that we are of a mind that we want to get on with it, and we want what we do in this phase to be right, but that this is only a phase and there will be other people for whom there will need to be another process and another phase. We will just try to get our heads around the extent to which we amend what we have got.
685. For example, I can say very clearly that I think that 1945 is a no-no as a starting point and that we should be starting at the inception of the state. It is about teasing out the extent to which we need to adjust the current process, bearing in mind that we now seem all to agree that there will be a need for another process later.
686. **Mr Maskey:** Thank you for your presentation and the work that you are putting into this, particularly in support of victims and survivors.
687. I am a bit concerned, because you seem to be suggesting — and I can understand the reason for it — that this inquiry would be extended to every incident of child sexual abuse. I may be wrong, but someone may have mentioned fostering circumstances as well.
688. The intention of the Bill was to deal with specific circumstances and to try to get an inquiry up and running as quickly as possible in order to address those heinous crimes that were committed against a lot of people.
689. As I understand it, the adoption of the 1945 starting point for the inquiry was based on a legal opinion and all the rest of it. We have already covered that, and most members seem to be of the view that we should get around that. I hope that that will be the case, whatever about the legal opinion and its veracity.
690. What I am picking up from you loud and clear, however, is that you are saying that the inquiry needs to be much more broadly extended to cover every example of abuse. Is that the case? Is that what you are actually saying?
691. **Mr Cumiskey:** No, it is not exactly what we are saying. We are saying that it should cover institutional abuse, whatever the institution, be it a Church, state or quasi-Church or state institution. We are not talking about abuse in families, per se. We are looking at adoption and fostering specifically and the whole school context — the boarding and day school context — which had both statutory and clerical imprimatur.
692. **Ms Reid:** Building on that, we are —
693. **Mr Maskey:** I am sorry, Susan; I apologise. I am not sure where the distinction lies. All those examples would have been criminal acts and should have been subject to criminal law. Obviously, I know that there are a lot of reasons why that did not happen in a lot of cases. I am just concerned — and we will have to make our judgements on these in due course — that you are, in effect, suggesting that this should be

vastly widened out. You might be right. I am just trying to get your argument clear in my mind.

694. **Mr Cumiskey:** It may seem like a vast widening, but our perspective is that the inquiry needs to be comprehensive. The Lifeline service that I lead has worked with 25,000 people on whom all sorts of crises and drama have impacted. In the past five years, a huge proportion of them have reported child abuse in contexts where they were at their most vulnerable, especially when they were removed from their family of origin and placed in a fostering, adoption, school, boarding school or institutional context. It is not that broad a widening. Very few will come forward from all those constituencies. However, everybody will watch very carefully to see how comprehensive and inclusive the Bill and inquiry are. People will vote with their feet. The people who are representative of those who have experienced abuse of that kind will have to find a way to commit to engage in this. You will always have a representative core coming forward to an inquiry. Not everybody who suffers that form of abuse will come forward. You should not limit it to one particular tier of abuse, when there really is a genuine and sincere opportunity to be inclusive at this point. This will not overly complicate the process or drag it on for ever. It puts out a clear message to the whole community of those who suffered in those circumstances that their suffering is every bit as valid as the next person's and that their recovery is just as important to the powers that be and to the community here as anybody else's.
695. **Mr Eastwood:** I want to go on a slightly different track. I think that most of us agree on 1945 as the appropriate date. For my information, I am trying to bear down on the 1995 cut-off point. You have not really mentioned it in your submission. Fergus, you said that there are very real lessons to learn and that children are still at risk. I am trying to work out your view on the upper limit.
696. **Mr Cumiskey:** The upper limit is fine with us: the year 1995 is a good starting point. It ensures that everybody you work with is an adult who has had the opportunity to reflect on the experience. What we are also promoting — you may have noted this in some of things that we said towards the end of our presentation — is the need for a prevalence study on childhood sexual abuse of those who have just become adults now. In 2002, the SAVI report in the Republic included people who were 18 and over at the time the study began. If we were to follow that example, that would bring us from 1995 up to now. If you make that commitment at the outset, you are saying that absolutely nobody who was impacted by childhood sexual violence and abuse is being neglected by the House. It is critical that that is the message that gets out to people.
697. **Mr Eastwood:** You would not include them in the actual —
698. **Mr Cumiskey:** No, this is a historical inquiry, and we think that it has to have a limit. The most local time limit of 1995 seems apt to us. There seems to be consensus that the earlier suggested limit is not apt.
699. **Ms Reid:** Building on that from a practice base, which I think is where we are all coming from, we have seen before the consequences of public communications and initiatives and the ripple effect that that has had on people. Therefore, as well as the scope of the inquiry and how that is communicated and promoted to the public at large, I think that thought needs to be given to how we communicate with victims of other types of abuse, so that they are clear that they have adequate information on how to access the support systems available. We do not want people to get to crisis point before they come forward and access support and information. So I think that there are two important strands: the inquiry, which we respect and value; and the need to communicate and to make sure that good information is available to others who may not fall within its scope.

700. **Mr Cumiskey:** The last thing you want is to have is a counter-inquiry emerging in six months' time. There is every possibility that that will occur. You also want all the other support agencies, in the community and voluntary sector, and in the statutory sector, collaborating on this. There needs to be a single, unified voice on the issue, and there is an opportunity for that.
701. **Mr Lyttle:** Fergus, Susan and Pam, you are very welcome. I found your suggestions and contributions very helpful. As a Committee, we are, ultimately, trying to drill down into practical ways in which we can enhance the Bill at this stage. Whether we like it or not, and regardless of whether it was the intention of parties, the 1945 cut-off point seems to have caused difficulty and, potentially, trauma for people who have been excluded by the setting of that date. Regardless of whether that was the intention, I think that we have to recognise that. There seems to be consensus that that is one issue that we have to address. The comments on the prevalence study are also helpful, because the upper limit is the other issue. If I am wrong, members may correct me, but the explanation that officials gave for the choice of that date was the inherent assumption that child protection matters have been got right from that date on. It sounds as though you are suggesting that there may be merit in double-checking that such an assertion is accurate. It would be useful to hear from you on that.
702. If memory serves me correctly, the Human Rights Commissioner suggested that it would be difficult to add other institutions or state-funded areas to the Bill and that there might be merit in considering whether other legislation could be easily created to include such people. In answer to my parting question, the professor was not clear on whether that legislation could feed into this process. We need to explore that, rather than just ruling it out completely. I am interested in your feedback on those points.
703. **Mr Cumiskey:** As is always the case, no matter where they are, the legal eagles will do their best to limit the inquiry, and others will push to expand it. We are part of the expansion consciousness. If it is feasible and doable, it should be done. The risks of the inquiry's not being comprehensive are potentially catastrophic to its purpose: to create acknowledgement and redress.
704. We feel that the prevalence study is an opportunity to have knock-on discussions in other parts of the Assembly about committing resources to engage with this issue, because it is a big, deep-seated issue that goes to the heart of some of the silences and taboos in our culture over generations, and it was further masked by the era of political conflict. In truth, we see this as being part of creating the new circumstances of a place where people can live at peace with one other and their histories. This is part of our blind history. Until we have a qualitative, comprehensive prevalence study of childhood sexual abuse, we will have no idea about its incidence, notwithstanding what the Department of Health and other Departments will offer you in relation to what has happened since 1945.
705. **Ms Hunter:** Also, many people will be watching how the Bill is rolled out, as it is, potentially, the first time for something like this in abuse scenarios. So it is important to get it right now because there will not be a second chance. People will be put off if it is not right this time. That rolls out even into how the inquiry will take place — what support mechanisms will there be for the victims who come forward to divulge their stories for the first time.
706. **The Chairperson:** I take your point, Pam, but nobody sets out to get it wrong. We will have to make a judgement on whether to expand this inquiry, go for a second one, or whatever.
707. **Mr Clarke:** I want to follow on from the comments about expanding the inquiry. Last week, I was clear in my mind that some of what Fergus has said today

- would be classified as an expansion. I am conscious that some of the people in the Public Gallery today were also here last week, and we could feel how emotional they were about how long it has taken them to get to this date. Last week, they told us very clearly that they did not want this process to be slowed down any further. By including others or expanding the scope, I think that we would start to do that.
708. I made a promise to those who gave evidence last week that the intention of what we have in front of us at present is to cover the people who made the presentation to us then. There was frustration and concern among them that the period could be extended, and what you said today, Fergus, also gives me that fear. Even before you gave evidence, I had heard concerns about some of the points that you raised, and we have asked for clarification from OFMDFM about what the intention is. You referred to a dual process. If it needs a dual process, so be it. We should not necessarily leave anyone behind, but we have made a clear commitment of intent in the inquiry, as proposed. We are all conscious that some parts might have been expanded, for example, to include pre-1945. However, continuing to push back this inquiry in order to include other groups would mean that those who have already waited for so long would have to wait much longer still. That is what fears me.
709. **Ms Reid:** I do not think that we are asking for the situation to be made worse for those who have come forward. We are asking for consideration and due attention for those who have not been able to come forward. The question we leave you with is this: put yourself in the shoes of those people, and tell me what they will hear and understand from the process. Credit for what has been done for those who have come forward, but the key is the message and communication. What will those who have yet to come forward hear? Will they hear that the care and consideration being offered to those who have spoken will be offered to those who have not been able to come forward? I am sure that my colleagues will support me when I say that the particular psychology that surrounds the impact of this sort of experience is such that there is a lot of self-blame and a huge impact on the individual's psyche. We ask that you consider whether they could possibly be further harmed by misunderstanding your intent.
710. **The Chairperson:** We are all aware that to go ahead, knowing that it is not a fully inclusive process, is an incredibly serious decision to make, but justifiable.
711. **Mr Cumiskey:** My response to your remarks is that an accelerated process does not have to be a skimming process, and a comprehensive process can be an accelerated process. You have the resources at your disposal.
712. **Mr Clarke:** Is that not a bit of a contradiction?
713. **Mr Cumiskey:** No. You can do the two at the same time: accelerate and expand. One criticism of this process is that it has been delayed.
714. **The Chairperson:** Saying that we have the resources at our disposal is a pretty sweeping statement.
715. **Mr Cumiskey:** One would hope that you have, given that you are the seat of government.
716. **The Chairperson:** Of course, we would hope so, but all things are finite.
717. **Mr G Robinson:** Just for clarification, at the beginning of your presentation, you mentioned that 60% of people were not included. Who are those people?
718. **Ms Hunter:** That is 60% of NEXUS clients: that is, those who have been sexually abused or violated in the family home. That is where the predominance of sexual violence occurs, which is why we want consideration given to fostering and adoption services. If children are placed in the care of other people by the state and abuse happens there, we think that that should be part of the inquiry.

719. **Mr G Robinson:** That clarification is fine.
720. **Mr Clarke:** May I tease that out? George raised a point about your clients. Are we talking about the normal family home? I am not saying that those people whom you mentioned should suffer abuse, but look at the definition of the inquiry: it is an inquiry into institutional abuse. We cannot define the family home as an institution, although mine feels like one at times because I have three children.
721. **Mr Cumiskey:** We are addressing the fact that very vulnerable children were placed in the care of fostering services, foster families, adoption services and adoptive families. That is the institution of state that we are talking about, which involves the transfer of very vulnerable children to contexts in which they were cared for and the duty of care resided with the state, to some extent, through oversight and safeguarding. The institute of state also includes all schools, and boarding schools in particular.
722. **Mr Humphrey:** May I get clarification from you, Pam? You said that 60% of NEXUS clients are abused in the family home. Is that 60% of NEXUS clients or 60% of those in society who are abused?
723. **Ms Hunter:** That is NEXUS clients. Of those who come to NEXUS to get help and counselling for sexual abuse, 60% were abused in the family home.
724. **Mr Cumiskey:** Some studies suggest that more than 90% of abuse takes place in or near a child's home and involves someone whom the child knows; a trustee of the family. In most worldwide studies of prevalence, that figure is 90%.
725. **The Chairperson:** We have another briefing to follow, so please be brief, Trevor.
726. **Mr Clarke:** Am I reading this wrongly? One of the policy objectives states:
"An institution is any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland".
727. How is that excluding them?
728. **Mr Cumiskey:** Correct.
729. **Mr Clarke:** You are the one who is defining them as being excluded from the inquiry as it stands, but the Bill's background and policy objectives suggest that those who are responsible for the care, health and welfare of children, "other than a school", are included.
730. **Mr Cumiskey:** We include the school part of it. That is an inclusion, and we are happy to have that clarification made if that means fostering, adoption and children's homes all fit within it.
731. **The Chairperson:** I have a couple of what will, I hope, be quick-fire questions to finish. Susan, if I heard you right, you said that you wanted the power to extend or amend the terms of reference to rest with the panel chair.
732. **Ms Reid:** Yes.
733. **The Chairperson:** Not the panel chair in conjunction, or liaison, with the First Minister and deputy First Minister?
734. **Ms Reid:** It was not to separate or say that it was distinct from OFMDFM; it was to have the power and authority with the chair as well.
735. **The Chairperson:** OK.
736. I have a question about families. I think that we all agree that there is an intergenerational element and that it comes down a few generations. Does the Bill, as constituted, give sufficient focus to the children and grandchildren of people who were abused and may have passed on?
737. **Mr Cumiskey:** There is room for deposition. If there is room for hearings from families and their representatives, it would, of course, be inclusive.
738. **The Chairperson:** Finally, I have a point on compensation. Money tends to be what many people look for, and, sometimes, I think that it is a metaphor for need. I do not propose a nanny state, but giving money to people is not

necessarily the best way to address their needs.

739. **Ms Reid:** It may not be the best way to address needs, but I can draw a parallel with my experience of supporting clients through criminal injury compensation. The point that I was trying to make concerned the different, and appropriately so, burden of proof in the context of Compensation Agency guidance, the scheme or, ultimately, the tribunal, if it is considering an appeal to a decision. That is important to the clients whom we see going through the system. The obvious difference is between a process of criminal justice, which requires the burden of proof, whether through a test of the evidence or of culpability, to be beyond all reasonable doubt, and an acknowledgement that something awful happened to you as a human being. So I can understand that people will say that financial compensation is not that important. However, as a metaphor for being believed, it is hugely significant to people, and it is particularly important to those who would not see justice. The point has been put to me that, for the majority of people, it meets their sense of justice to have, through compensation, that recognition.
740. **The Chairperson:** So there could be an acknowledgement or recognition payment, but one that should be backed up with a personal plan, where appropriate?
741. **Ms Reid:** Yes. I have also heard others quoted, and have personal experience of older people particularly, as seeing it as a significant opportunity to give something back to their family.
742. **The Chairperson:** Susan, Fergus and Pam, thank you all very much indeed.
743. **Mr Cumiskey:** Thank you so much.

19 September 2012

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 Tom Burford *Barnardo's*
 Mrs Sara Clarke
 Ms Lynda Wilson

744. **The Acting Chairperson:** I welcome Lynda Wilson, Sara Clarke and Tom Burford. You may begin with a brief presentation of, say, 10 minutes, and that will be followed by members' questions. Mike always offers coffee, so if you would like one, we can get it for you.

745. **Ms Lynda Wilson (Barnardo's):** Coffee would be excellent, but we will start without it.

746. I thank the Committee for the opportunity to speak on behalf of Barnardo's UK and our board of trustees. It may be helpful for me to begin with fuller introductions. I am Lynda Wilson, the director of Barnardo's for Northern Ireland, and I know many of you already. Sara Clarke is the assistant director of Making Connections, an international service that provides support, information and an archive resource to anyone who has been in the care of Barnardo's. That archive is the custodian of the records of every child who has been in the care of Barnardo's, be that in a children's home, a school or a family placement, since 1866. Sara carries that historical responsibility, and I am sure that she will be open to questions on that. Tom Burford is the chief of staff in our chief executive's office. It is important that

he is here today, because it represents our chief executive's commitment to participation in this process. The chair of our Northern Ireland committee, Ruth Laird, is unable to be with us today. She would very much have liked to have been here, but she is with the board of trustees in London. Our trustees have been fully briefed on, and are cognisant of, the significance of this process and are committed to engaging in the process. I think it important to reflect the commitment of those individuals who are not here today.

747. We want to put on record that we commend the Committee on its work on the Bill and its terms of reference. We do not say that lightly, because we fully appreciate the significance and weight of the legislation and what it means. We recognise the challenges in the process of making this legislation.

748. Many of you will be familiar with us as a contemporary children's organisation, providing services to the most vulnerable in Northern Ireland. However, another perspective that we bring for your consideration is that of being a children's organisation that has delivered residential care. We have operated residential care and know what that means across a broad spectrum of history. We are also an organisation that has a strong sense of the heritage of what that responsibility means in our duties and responsibilities for those who have been under our care, including direct experience with victims of historical abuse. We hope that that will be a helpful perspective. We want to put on record that we welcome the objectives of this inquiry from both those perspectives: our present-day commitment to the safeguarding of children in the current context and being an organisation that has a duty of care, which, at times, is weighty, to former residents. We also welcome the aspirations of the legislation, particularly

- the emphasis on transparency and redress. Critically, this legislation must deliver. That is a very important point that we want the Committee to hear. It has to deliver an inquiry process and architecture that are effective. It has to work for the victim survivors concerned, and it has to be perceived as fair and independent and to retain a focus on their voice.
749. Obviously, we have been following some of the discussions, both those that are part of this process and those in the media, and the last thing that is needed is an inquiry so contentious and unfocused that it will not meet the needs of victim survivors or instil any confidence in any other coterminous or future inquiry process. Our organisation is very interested in what works, so we will apply a similar lens to this matter. We think that the Committee should measure the legislation and terms of reference against the three elements of effectiveness, fairness and focus on victims, when considering what are some very complex questions.
750. We want to comment on three areas, the first being victim support. In our view, the legislation and terms of reference must allow for the inquiry and its chairperson to develop a responsive approach to the support needs of victim survivors as those needs emerge. I do not think that those can be totally pre-empted. It is also our view that the support must be differentiated. Victim survivors, just like the rest of us, are not a homogeneous group. They will have varying needs at different points. The experience of our organisation is that those needs are complex and very challenging, and they will, mostly, be underestimated.
751. This inquiry has an ambitious timescale, and our view is that it should have the capacity to extend and sustain victim support as appropriate and to give a level of capability and authority to the chairperson to achieve that. We want the Committee to give due consideration to the magnitude of potential support required and to draw learning from other similar inquiries.
752. Again from our experience, the independence of victim support from the inquiry process itself and a sense of separation from statutory and government processes are very important considerations so that there is a sense of independence and separateness in the support process. As the inquiry is established, it will be important for organisations such as Barnardo's to be very clear about how they fulfil the expectations of the inquiry at each stage. We must be clear on what the inquiry expects of us as an organisation in how we respond and participate, but, at the same time, how we exercise our duty of care to our ex-residents. That is quite a challenge, and I do not think that it has been fully addressed in the inquiry's terms of reference.
753. That brings me to the second area that we wanted to comment on. The fact that it is critical to place victims at the centre of the inquiry means that the focus of the legislation and the inquiry's terms of reference is, quite rightly, on the needs of victims. That is where the focus must lie. However — again this comes from experience — our view is that the capacity of the inquiry process to fulfil those needs will be enhanced if organisations such as Barnardo's are sufficiently clear on what they need to do to be prepared to engage effectively and responsively. That goes back to my earlier points about effectiveness and having a focus on victims. It will be good for victims if there is clear guidance for organisations such as ours. Sara can talk more about this, but we are undertaking work to place ourselves in a position of preparedness to respond to the inquiry on all matters. However, as they stand, the terms of reference do not adequately clarify the nature and extent of that preparedness. Further clarification is needed on what exactly is required of organisations at each stage of the inquiry. As much precision as possible is needed on the parameters of the terms of reference. I know, for example, that there has been a lot of discussion here on timescales. Also, there must be as much precision as

- possible on definitions, jurisdiction, which is particularly pertinent to us, and what is and what is not in the public domain. Those are all important points not only for organisations such as Barnardo's but for the victims. We think that there is, perhaps, a place for a note of guidance or direction or standards of engagement from the inquiry to organisations such as Barnardo's to help us to fulfil our responsibilities. At this point, our view is that the extent of the inquiry's responsibility, if any, to give direction and facilitation to organisations such as Barnardo's to achieve appropriate engagement is unclear. More clarity, we think, will lead to a more effective inquiry, and we would welcome more guidance on that.
754. We would also welcome more guidance on the status of certain potential victim groups. There are particular issues for us, as a number of our children and young people from Northern Ireland were placed in Britain or migrated. The terms of reference are unclear on the inclusion or status of those children. We feel that the inquiry should be able to reach all Northern Ireland's children, and they should have access to this inquiry regardless of what jurisdiction they may be in now. That is a fundamental, underlying principle. At one point in its history, Barnardo's also provided services on an all-Ireland basis, and we have a sibling charity, Barnardo's (Republic of Ireland). Again, from the terms of reference, we are unclear whether those young people, who came from what is now a different jurisdiction, are included in or excluded from the inquiry.
755. There is also a potential lack of clarity on the inclusion of peer abuse. Additionally, we have contact with a number of victim survivors who are imprisoned in this and other jurisdictions. That goes to the heart of the issue of the hierarchy of victims, and I think that it needs to be addressed. There are also issues about disclosures that relate to victims or alleged perpetrators who may be deceased. We think that a higher degree of precision in the definition is needed in that area.
756. Our final point is on the importance of learning about protecting the most vulnerable. We think that the inquiry has real potential to provide learning in influencing current safeguarding, standards of care and the training of those who care, as well as influencing other inquiry processes. There are lessons to be learned. The terms of reference, as they stand, do not give sufficient weight and emphasis to that objective or to placing that responsibility on the chairing of the inquiry.
757. We submitted our views in writing on, I think, 20 August, and you will be relieved to know that we will not go over all that again in detail, but we will be more than pleased to take questions or provide clarification. In summary, we encourage the Committee to ensure that the terms of reference are drafted with a very full understanding of the magnitude and complexity of victims' support needs, and a commitment and capacity to reach and support all in an inclusive way, so that organisations such as ours clearly know what we are required to undertake in our role in the inquiry while exercising our contemporary duty of care.
758. No matter how painful the process is, and it will be painful, one of the positives that we can take from it, quite apart from hearing the stories of victims and providing reparation and redress, is learning the lessons on how to meet the current and future needs of the most vulnerable. We very much welcome your thoughts and questions.
759. **The Acting Chairperson:** An enormous thank you. We all have huge respect for Barnardo's, so it is very good to see you here. You have come up with a mass of important points that we will take to Sir Anthony Hart next week and to others. I know that there will be questions from members. Many of your comments were on the need for us to keep you informed as we go along. We are learning at the same time as taking all the evidence from everyone. I am sure that you will not do this, but do not sit back. Keep

- asking the questions to make sure that we are scrutinising in the way that we need to. This needs your input just as much ours. You have given us a lot of extremely useful points to put to Sir Anthony.
760. **Mr Maskey:** Lynda, thank you for your presentation and for the material that you provided earlier. A lot of work went into that.
761. You raised two particular points. The first was about the lifespan of the inquiry and the ability to extend that if needs be. I take that point. All the presentations that we have heard so far, particularly those from victim survivors, said that they wanted the process to happen quickly. They do not want it to be drawn out, and so on and so forth. Nobody wants that, and I am certainly not suggesting that you do. I do not think that the inquiry would prevent that, but we must tease that out and get clarity for ourselves. As I said, people genuinely have an interest in trying to get this done and in doing it in the right way without undue delay.
762. You also raised a point about the status of victims or groups. I got a wee bit lost there. I am not sure what you mean by that and what the relevance of it is. Just so that it is clear in my mind, will you explain what that means? Are you asking whether someone living in another jurisdiction would be invited to participate?
763. **Ms L Wilson:** Yes. The inquiry will want to reach everyone who wants to be a witness and raise their victim survivor status. One major exercise for the inquiry is ensuring that those people are reached. Some organisations may be in contact with victim survivors serving prison sentences, for example, not just in this jurisdiction but elsewhere. Some very elderly people may have been affected before 1945, and some may be outside this jurisdiction. Our organisation, and Sara may talk more about this, estimated how many children and young people may have been here and how many may have gone elsewhere. It is important that they are not excluded and that they have a choice. Some may have been in establishments outside this jurisdiction but were still Northern Ireland children and still in the care of Barnardo's. There are questions there. I know that there must be some precision and that there must be boundaries, but if that is not clarified, it will, potentially, leave some victim survivors not knowing whether they are included. For them, never mind the inquiry, that is critical.
764. **The Acting Chairperson:** We will take those points on board. In other presentations, people raised questions about things that happened on the periphery and beyond. We have to remain flexible, which is one of the points that we will all take on board, but at the same time, it must —
765. **Ms L Wilson:** Be effective.
766. **The Acting Chairperson:** Yes, it must be effective, and it must happen within the time frame.
767. Was Barnardo's involved with the Ryan inquiry?
768. **Ms L Wilson:** No, but Barnardo's in the Republic of Ireland was significantly involved with the Ryan inquiry. Its director of advocacy sat on the Ryan inquiry panel and has been appointed to the acknowledgement panel here, so we were keen observers of that process.
769. **The Acting Chairperson:** Hence some of the points that you made. I imagine that they come from lessons learned from that inquiry.
770. **Ms L Wilson:** Lessons have been learned from our experience in Northern Ireland and from Sara Clarke's work, at an international level, on responding to the needs of both ex-Barnardo's residents and their relatives.
771. **Mrs Sara Clarke (Barnardo's):** Thomas Barnardo set up aftercare, and there has always been an aftercare element. One of our values and bases is to continue to provide support to all those formerly in our care. We do that in a number of ways, including providing access to

- their records and some understanding of their experience. That enables individuals to share their experiences of their time in Barnardo's, both positive and where there was ill-treatment and abuse. We take all disclosures of abuse very seriously and seek to work on an individual basis with all those who come forward, and we wish to continue doing that throughout the inquiry. Again, greater clarity on roles and expectations would help to enable us to continue that work while fully engaging with the inquiry.
772. **The Acting Chairperson:** We will add that point to our questions for Sir Anthony next week.
773. You referred to the magnitude of victim support needed for those participating in the inquiry process.
774. **Mrs S Clarke:** Yes.
775. **The Acting Chairperson:** There was also another point. The inquiry is into abuse that occurred before 1995. You asked whether we should be learning and building up recommendations based on law and procedure that are not current. Yes, we must learn from it today. However, with a limit of 1995, we must get what we can from it.
776. **Mr T Clarke:** Thank you for your presentation. I am a wee bit curious. Lynda, in your presentation, you drew a parallel with other jurisdictions. Did you say that Barnardo's was in the South as well?
777. **Ms L Wilson:** When Barnardo's was originally set up, it was an all-Ireland organisation. We made a formal, constitutional separation 23 years ago, I think — I have to work these things out by the ages of my children — and it is now a separately constituted sibling charity but with a very close relationship.
778. **Mr T Clarke:** This possibly follows on from what Danny asked about your connection with the Ryan inquiry. Was that other organisation involved with the Ryan inquiry?
779. **Ms L Wilson:** I do not think that it was. To be perfectly honest, I do not know. We could check that out and get back to you. From my informal knowledge, I do not think that Barnardo's (Republic of Ireland) was called to the Ryan inquiry because the residential facilities, the 15 main homes during the period under consideration, were all in the North. We still do not know, but we are in the process of finding out whether any children came from what is now the Republic of Ireland into the North. There must have been some, but we are looking at just under 2,000 files.
780. **Mr T Clarke:** Your point about this inquiry and other jurisdictions was interesting. Obviously, we have no influence on inquiries in other jurisdictions. I can see your openness when it comes to this inquiry. You said that the inquiry covered 15 homes in the main, but I would hate to think that there were others. We have to be very conscious in this inquiry of ensuring that people are not forgotten about just because they are not "in the main".
781. **Ms L Wilson:** Exactly. There is a question about whether the legislation will include young people who moved from here to a facility in Scotland or Wales as Northern Ireland's children or whether they belong to another jurisdiction.
782. **Mr T Clarke:** My reading of it is that if the state placed them somewhere, they come under our jurisdiction.
783. **Ms L Wilson:** That is why we are raising the question.
784. **The Acting Chairperson:** It is a good point that we will take on board and explore.
785. **Ms L Wilson:** It has to be answered.
786. **Mrs S Clarke:** We have examples of young people who were Northern Ireland residents as children but were placed in homes in England, from where they have disclosed that abuse happened in those English homes.

787. **Mr T Clarke:** My understanding of the legislation as scripted is that the responsibility is on the state, regardless of the location of the home in which it placed young people, although it does not actually say “regardless of location”. The very fact that the state here placed them in a home, regardless of where that home is, means that there is a responsibility on the state.
788. **Mrs S Clarke:** The state would have placed them in the care of Barnardo’s, and Barnardo’s would have made the decision about where to place them, whether that was in Northern Ireland or England.
789. **Mr T Clarke:** I do not want to keep repeating myself, but my point is that the state made the decision to place them, whether that was through Barnardo’s or whoever. The state made the decision that they had to go into care.
790. **Ms L Wilson:** There was a period in our history, probably up until the 1950s, when there was a probability that a child coming into the care of Barnardo’s in Northern Ireland would be placed in England, Scotland or Wales. If a child was placed in Barnardo’s, there was a possibility that he or she, and others whose initial care may have been here, would have gone on to train, perhaps in seamanship or printing, in England and lived in residential facilities.
791. **Mrs S Clarke:** The current starting point of the inquiry is 1945, at which time many children were not placed by the state, because the statutory legislation to facilitate that did not exist. In those cases, the children would be outside that jurisdiction. Many came in through other voluntary organisations, the poorhouse or just turned up on the doorsteps of charitable institutions.
792. **The Acting Chairperson:** We really need to look into this. There are too many vagaries, and, at the same time, we do not want to miss anyone. We very much take that on board. Do members have any other questions?
793. **Mr Maskey:** I do not have another question, but I am working on the basis that the inquiry is designed to follow the child, wherever the child was placed eventually.
794. **The Acting Chairperson:** If we are missing someone, we need to know, or if there is a link that is suddenly not going —
795. **Ms L Wilson:** There is an important principle at stake.
796. **The Acting Chairperson:** We have had a number of briefings so far, so if our questioning has been short, it is because the same points have been coming up all the time. Thank you very much for giving us your time.

19 September 2012

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	<i>Jones and Company</i>
Sister Cataldus Courtney	<i>Sisters of Nazareth</i>

797. **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.
798. **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.
799. 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.
800. 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.

801. 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.
802. 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.
803. 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.
804. 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 —
805. **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.
806. **The Acting Chairperson:** I think that we have to let them speak. It then depends on how you ask your questions. If your questions —
807. **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.
808. **Mr G Robinson:** Chair, William and I feel the same way.
809. **The Acting Chairperson:** I feel that we should listen, and if that is the case, do not ask your question.
810. **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.
811. **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?
812. **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.
813. We have invited you here to give your presentation, and I think that we should listen to it.
814. **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 —
815. **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.
816. **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.
817. 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.
818. Thank you for your time. We are happy to take questions.
819. **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.
820. Your briefing paper states:
“the Draft Bill fails to include a full list of the institutions that will be subject to investigation”.
821. 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?
822. **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.
823. 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?
824. **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.
825. **The Acting Chairperson:** That has been raised previously, and it is something that we have taken on board.
826. **Mr Maskey:** That is a helpful explanation. Thank you.
827. **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?
828. **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.
829. **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.
830. **Mr Canavan:** Listing would help.
831. **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.

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

833. **Sister Cataldus:** Thank you very much.

19 September 2012

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

834. **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?
835. **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.
836. **The Committee Clerk:** Will you clarify that again?
837. **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.
838. **The Acting Chairperson:** Thank you. I think that we need to ask.
839. **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".*
840. 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."*
841. 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.
842. The next point, as Colum indicated, states:
- "as previously indicated there are significant issues regarding discovery, preparation of documents and disclosure."*
843. These are not things that we should be discussing. We are, in my view, overstepping our role and responsibility.
844. **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.
845. **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.
846. **The Acting Chairperson:** We can get advice. We will add that to the advice that we will get next week.
847. **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.
848. **Mr Humphrey:** That is the point, Alex. That is his role, not ours.
849. **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.
850. **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?
851. **Mr Humphrey:** As a solicitor who would answer questions.
852. **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.
853. **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.
854. **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?
855. **Mr Clarke:** It is a bit late to look at it after we have strayed. We are looking at our next presentation.
856. **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.
857. **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.
858. **The Acting Chairperson:** That is a very good point. Do we go to the next briefing, with members remaining silent?
859. **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.
860. **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.
861. **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.
862. **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 —
863. **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.
864. **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.
865. **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 —
866. **The Acting Chairperson:** I will ask the Clerk to clarify something.
867. **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.
868. **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.
869. **The Acting Chairperson:** We have listened. Next week, we will get a brief on the legal side, and we will move from there.
870. **Mr Humphrey:** That is far from ideal, Chair. We come here to ask questions; that is our job.
871. **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 —
872. **Mr Clarke:** Amnesty International did not run homes.
873. **Mr Eastwood:** I know that, and we are not talking about our opinion on any of this stuff.
874. **Mr Clarke:** Yes, but it did not run homes.
875. **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.
876. **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.
877. **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 —
878. **The Acting Chairperson:** If you do not do something, and that jeopardises it, it is the same from the other point of view.
879. **Mr Clarke:** No it is not, because the process will continue whether or not we receive the evidence.
880. **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.

881. **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.
882. **The Acting Chairperson:** I am very happy with that, thank you. It will not, because we are all level-headed people.
883. **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.
884. 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.
885. **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”.*
886. 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.
887. **Mr Maskey:** Yes, but it has to be the case that if someone writes a letter, we can take —
888. **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.
889. **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.
890. I call forward the De La Salle Order witnesses.
891. **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?
892. **The Committee Clerk:** If members wish to suspend the meeting, they can do so.
893. **The Acting Chairperson:** Do you want to suspend the meeting?
894. **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?
895. **The Acting Chairperson:** Not that I am aware of.
896. **Mr Clarke:** Can we check that, then? We might have to go into suspension to check that.
897. **The Acting Chairperson:** Do you want to hold up the meeting until we know that?
898. **Mr Clarke:** How long will it take to check that?
899. **The Acting Chairperson:** Is this something that we vote on?
900. **The Committee Clerk:** Yes.
901. **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?
902. **Mr Maskey:** I would rather we tried to moderate the meeting through the Chair and just see how we go.

903. **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.
904. **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.
905. 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.
906. **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.

19 September 2012

Members present for all or part of the proceedings:

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

Witnesses:

Brother Francis Manning *De La Salle Order*
 Mr Joseph Napier *Napier and Sons*

907. **The Acting Chairperson:** I welcome the witnesses and thank them for coming. I am sorry that you had to listen to a debate amongst us, but that is life in this Building.
908. **Mr Joseph Napier (Napier and Sons):** Mr Chairman, thank you. I heard the previous debate, and I know exactly where the two members are coming from and where the grey area in the middle comes from. My points will very much be on the parts of the Bill that I think you need to look at to make sure that the inquiry operates without pollution from judicial reviews and challenges down the line. So, my points will be put forward in good faith. I am not trying to put one slant or another but to highlight the points that I think you need to focus on to make sure you have the legislation right. I say that at the start because I am conscious of the uncomfortableness.
909. **The Acting Chairperson:** Thank you, that is very good. OK, just a second.
910. **Mr G Robinson:** Three members.
911. **Mr Napier:** Sorry, three members. Mr Robinson makes three.
912. I am a solicitor. I represent the De La Salle Order, and have done for 13 years.
- During that time, I dealt with a lot of claims arising out of Kircubbin boys' home and St Patrick's training school. I have spoken with a lot of former residents. I spoke with former staff, former social workers and members of the Departments who interacted with those institutions.
913. I am also very familiar with the types of records that still exist in relation to Kircubbin. The St Patrick's records are with the Youth Justice Agency. That is just by way of background to Rubane and St Pat's.
914. Brother Francis Manning will introduce himself, but I will say that he is the current provincial of the De La Salle Order in Ireland. Brother Francis will give you an overview of the order's perspective on the inquiry. I will then keep my presentation very short with four key points that I think you need to consider in getting the legislation right. Hopefully, we will not stray into the grey area that the three members raised.
915. **Brother Francis Manning (De La Salle Order):** Good afternoon, gentlemen, and lady. I have just a few short comments to make at the beginning. As an order, we welcome this inquiry. We trust that it will be comprehensive and provide a source of comfort and closure for all concerned. We are determined to provide every assistance to the inquiry, as we have done in the past. For instance, we co-operated fully with the Kincora inquiry in 1984, with extensive RUC investigations in 1980 and 1995, and, at present, we provide assistance to the PSNI on ongoing allegations, etc.
916. That is really all I want to say to you today. We appreciate your listening to us, and I would like now to ask Mr Napier to make known those four wee concerns that we have.
917. **The Acting Chairperson:** Thank you very much.

918. **Mr Napier:** The order operated the De La Salle boys' home in Kircubbin, commonly known as Rubane House. The records would suggest that 982 boys attended Rubane. It also operated St Patrick's training school. We are not in a position to identify how many boys attended that school because those records are now with the Youth Justice Agency. That school and home fall within the terms of reference.
919. I will make two points on the terms of reference. One of them, on reflection, may be wide enough to cover it. One aspect is about the state involvement with religiously run homes and how that interacted. I think the legislation refers to institution or state and children in their care but, obviously, as was alluded to here today, all children were in their care. However, I think that is wide enough and, on reflection, probably should not be in the submission.
920. The second point is about Rubane in particular. I know from having read the testimonies of many of the former residents and spoken to them that this will be an issue that I am afraid that somebody may challenge down the line if it is not cleared up. Rubane was unusual in that it was a residential home but there was also a voluntary school attached to it. The home ran under the Ministry of Home Affairs but the school ran under the Department of Education. The terms of reference says that schools other than training school or borstals are excluded. It was not a training school and it was not a borstal. I anticipate that the intention would be that Rubane school and Rubane home would fall within the remit of the inquiry. I think that it is proper that they do, just so that somebody down the line, such as a former teacher, does not bring a challenge. Not all teachers were members of the De La Salle Order, and somebody representing a former teacher could challenge the jurisdiction on that point. Therefore, that needs to be clarified in the terms of reference.
921. In relation to the acknowledgement forum, I am not asking for it here today and I appreciate that it will come later, but there must be clarity with the institutions as to that interaction. It is important for the order and for the Assembly in how it delivers the inquiry. As I see it, from reading the various guidance notes, the acknowledgement forum gives former residents a confidential forum to go to and recount their experiences. There is no difficulty with that. I understand how difficult it is for people to come forward with their stories, and it needs to be confidential. At some point as it passes through, it needs to move into an investigative stage.
922. I have a point about the previous submission from the Sisters of Nazareth about the right to reply where the order has an opportunity to see those allegations and comment on them and perhaps even accept them as being true. That is where the difficulty comes for the Assembly. Article 6 of the European Convention on Human Rights does not generally apply to inquiries. However, there could be a situation in which a prosecution arises out of the inquiry or out of the criminal investigations, which are ongoing, and if something is disclosed as a result of an acknowledgement forum without a right to reply and comes into the public domain, you could undermine the current criminal investigation. That is the last thing that I imagine the Assembly wants to do. It is not so much that the article 6 point would be taken against the inquiry, but the article 6 point would be taken at the criminal investigation, and they would then say that their client has not had a fair trial because he was named in that inquiry without having the right to reply.
923. The second point about that arises from article 8, which is about the right to family life. It is a similar sort of point. Part of the Bill is about the protection of children and young adults. If the name of an individual comes out, there might be a report made in relation to him, and he, too, could apply under article 8 to say that he was named in that inquiry without a right to reply. Therefore, he could say that he could not be prevented

- from seeing his grandchildren, for instance. So, I think that you need to take legal advice on article 6, which relates to undermining a criminal prosecution, and on article 8.
924. The other aspect is a general point about the identification of witnesses. Barnardo's put something in my head that I had not thought of prior to today. In respect of focusing on the terms, I am aware of at least one individual who came to Kircubbin from Scotland. I stand to be corrected, but I think that he was funded by a Scottish board at the time. Would he fall within the remit? I am also aware of at least one from the Republic of Ireland, and I am not sure who he was funded by. So, it falls into that Barnardo's aspect of making sure that there is total inclusion for everybody who attended.
925. Again, I reinforce the point that Barnardo's made about isolated witnesses. We are aware of one in person in England whom I have spoken to. There are also elderly individuals in the United States, who may be in a position to give evidence, but it is unlikely that they are going to be able to travel here in person. However, they could be very valuable witnesses to Sir Tony Hart.
926. I could be wrong, but there seems to be a general perception about which institutions were involved and the perception that the acknowledgement forum is for people who describe themselves as abused and survivors. The Assembly in general should try to widen that to encourage anybody who was a former resident, a former member of staff, a former social worker or involved in a former departmental body. The Ministry of Home Affairs and the Department of Education examined those places and had experience with them. People like that should be encouraged to come forward. We will not have access to them. The only people who will have access to them will be those in the Assembly.
927. I do not want to labour everything too much, but one other point that has not been covered by anyone else is in regard to clause 11, which relates to expenses. It says that expenses will be determined by the Office of the First Minister and deputy First Minister (OFMDFM). I believe that the guidelines to the Bill say that OFMDFM will liaise with the presiding member. There is a conflict there as to whether the role of the presiding member should be included in clause 11. There is no mention of the presiding member in the clause, but he is mentioned in the guidelines.
928. **The Acting Chairperson:** We will try to get that clarification on that.
929. **Mr Napier:** I will turn to the question of civil and criminal liability and the involvement of articles 6 and 8. The Assembly's Research and Information Service drew up a paper dated 25 June 2012 on the Inquiry into Historical Institutional Abuse Bill. From looking at page 25 of that paper, it is quite clear that the Assembly has already identified that difficulty and the paper asks how it would manage the evidence relating to potential criminal and civil liability. It has obviously been in the mind of someone in the Assembly, but I believe that that is probably the strongest weakness in the Bill when it comes to challenges and the pollution of the progress of the Bill.
930. **The Acting Chairperson:** We will put those points to Sir Anthony Hart at one end and to our legal team on the other to get things clarified. Is that the end of your presentation?
931. **Mr Napier:** That is the end, Mr Chairman.
932. **The Acting Chairperson:** Thank you very much indeed. Do members have any questions that they wish to ask? *[Interruption.]* I am afraid you cannot ask questions from the Public Gallery, but thank you.
933. I thank the witnesses very much. We will note what you said and it will be put to the various people next time.
934. **Mr Napier:** Thank you.

26 September 2012

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

Witnesses:

Mr Andrew Browne	<i>Historical</i>
Mr Patrick Butler	<i>Institutional Abuse</i>
Sir Anthony Hart	<i>Inquiry Panel</i>

935. **The Chairperson:** We welcome back to the Committee the chairperson of the inquiry, Sir Anthony Hart, with Mr Andrew Browne, secretary to the inquiry, and Mr Patrick Butler, solicitor to the inquiry. Sir Anthony, you are very welcome. I think you know the format, so if we could hand over to you for some brief opening remarks, then we will try to focus on the issues that you know concern us.
936. **Sir Anthony Hart (Historical Institutional Abuse Inquiry Panel):** Mr Chairman and members of the Committee, I take this opportunity to update you and, through you, members of the Assembly about what the inquiry has been doing during the two-and-a-half months since my first appearance before your Committee on 4 July.
937. During that time, we have been working very hard on a number of fronts. First of all, Geraldine Doherty and David Lane have been appointed to act as panel members with me in the public inquiry component of the inquiry. Both have very considerable experience in the practice, management and regulation of social work and social care services in Great Britain, including residential childcare services. I am delighted that they have agreed to devote their time and talents to the inquiry.
938. Secondly, as you indicated, Mr Chairman, we appointed Patrick Butler as solicitor to the inquiry. With us is our secretary Andrew Browne who, as you may recall, accompanied me on the last occasion. We are in the process of appointing permanent administrative staff, a process that will continue over the next few weeks. We have secured the help of a number of experienced individuals on a temporary basis in the meantime.
939. Much of our time has been devoted to moving into new premises, which were a bare shell, and to the mundane but essential work of making it ready for occupation by installing furniture and, in particular, installing telephones and computers. At the same time, we have been pressing ahead with work on the design of our data-handling systems, so that when we invite those who wish to tell us of their experiences in residential institutions, we will be able to deal with them efficiently, expeditiously and sensitively.
940. Our primary focus over this period has been on getting ready to start the work of the acknowledgement forum, which, you will recall, I said we hope to have in operation well before the end of this year. All of this has involved a great deal of detailed preparatory work on the design of our website and on other matters such as drafting leaflets and application forms. Although we are very anxious to start work, all the background work is essential before we can provide a proper service to those who wish to recount their experiences to us.
941. I do not want to weary you with every detail of what this has involved. However, I am pleased to be able to announce that in a few days, barring any last-minute technical hitches, we

will publish advertisements in the major newspapers in Northern Ireland and in the Republic inviting members of the public who wish to recount their experiences to the inquiry, and to the acknowledgement forum in particular, to contact us. They can do so either by going to our website to download the necessary material or by ringing a free phone number, after which they will be sent a leaflet explaining how the various parts of the inquiry will operate and a form for them to fill in and return to us by Freepost stating whether they wish to speak only to the public inquiry or only to the acknowledgement forum or to both. All applications will be treated in confidence. It will be only at that stage that we will get a clearer picture of the numbers of individuals with whom the inquiry, in both its parts, will have to engage.

942. Once we receive completed application forms, we will be able to plan who we should contact first and when. Depending on how many people wish to contact us, the process may take a little time, but we plan to offer the first appointments for the acknowledgement forum in a few weeks' time. We intend to give priority to those who are oldest or in poor health. The acknowledgement forum will then start its programme of listening to those who want to recount their experiences. Between then and the end of the year, the inquiry staff will also collate and analyse the information we receive from those who wish to speak to the statutory inquiry element of the inquiry, and we will be preparing for the next stage, which will commence in earnest with the enactment of the legislation that you are considering.
943. As you indicated, Mr Chairman, there are a number of specific points that I know you or members of your Committee wish to raise. I am quite content to take them in whichever order you wish. There are, I think, three or four that appear to me to be of particular significance, but I am content to take them in whichever order you wish.
944. **The Chairperson:** OK, Sir Anthony. Thank you. I think that we have no fewer than

19, although, obviously, the significance of them may be varied. I am sorry to add a twentieth, but you mentioned your headquarters without telling us where they are. Are you intending to make your headquarters known?

945. **Sir Anthony Hart:** We will make the headquarters known to those who have reason to contact us. The primary consideration for us in all these matters is to ensure that the premises that we have moved to are suitable for those who will have to contact us.
946. Perhaps I should say that the reason we moved is that we found that these premises are much more suitable for those who wish to come and speak to the acknowledgement forum. There were features in the previous building, which, on consideration, we realised were not entirely suitable for that particular purpose. So we went for somewhere that is more suitable. It is still in the centre of Belfast, and it is still easily accessible.
947. We are anxious that the headquarters should remain relatively anonymous, so that those who want to come are not, perhaps, stigmatised in the eyes of others by being picked out. As I said on the previous occasion, we do not intend to put a big sign outside. Those who ring up to contact us and who are coming will, of course, be told where to come, but we would prefer not to make it widely known, in general terms. In the next few days, while we are still putting in place the last pieces of equipment, and so on, we want to be absolutely ready when we make ourselves open to the public, in the sense of placing advertisements. Of course, I will supply yourself and the Committee with the address, in confidence, if you wish. It is something that I do not want you to press me on, unless you really need to know.
948. **The Chairperson:** No, you are addressing my concern, which, I think, goes back to when I was in the Victims' Commission. At that time, we chose a building that contained many non-departmental public bodies. That meant

- that it was possible for somebody to go in and out without anybody being able to say that they knew what the individual was doing there. That differs from a stand-alone premises, where some people would feel that they were wearing a virtual sandwich board.
949. Sir Anthony, we have the 19 issues that you are aware of. Perhaps, you would like to pick out those that you have already identified as being of primary concern.
950. **Sir Anthony Hart:** There are four in particular that I should, perhaps, deal with. Coincidentally, they are the first four on your list. The first issue is the possibility of there being a formal right for me as inquiry chairman to request amendments of the terms of reference. It may be useful for that to be spelt out in the Bill. I believe that it is always open to the chairman of any inquiry to approach the sponsoring Minister to ask for the terms of reference to be amended. Then it is for the Minister to decide whether that will be accepted. It may help, particularly in the eyes of the public, if that were to be clearly spelt out in the Bill.
951. **The Chairperson:** Twice you have said “may”. Can I push you? Would it be useful to have the terms of reference in the Bill, even as a schedule? Are you saying that you would welcome that?
952. **Sir Anthony Hart:** The only caveat I would enter, and I think I entered it on the previous occasion, is that if they are in the legislation and there is to be any change, it has to come back before the Assembly for an amendment. That process is lengthy and complicated. So it is easier not to have them in the legislation. Ultimately, it is a matter for the Assembly and the Executive.
953. The second issue is the right to request an extension of the two-years-and-six-months period. I think the answer I have just given covers that one as well. It is open to any inquiry chairman to come back to say that the time has not proved to be sufficient, regardless of whether it is set in legislation, but, in this particular instance, I think it would be helpful to have that clearly stated in the Bill. However, I have no reason to believe that, if I did not have that power in the Bill, any request I made would not be considered. I am not saying that it would be prevented. I have no doubt that it would be considered, but it might well help if it is in the Bill. I would not have a problem with that.
954. The third issue is the possibility of recommending changes to the law of practice and procedure arising out of the investigations of the inquiry panel. It would be helpful to have that spelt out. I am satisfied that it is inherent in the terms, but, again, it may allay concerns in certain quarters if it were clearly stated. The fourth issue is one of very considerable importance, and I see that a number of the submissions you have received have particularly touched on it. I can understand why they have raised those concerns, because they, of course, inevitably, are not privy to the discussions that I have had with my colleagues. It is very helpful for us to have the opportunity, therefore, to put the view that we take about this on public record. We have discussed the need for “abuse” or other terms to be defined. If I could particularly deal with abuse. I have discussed this at some length with my fellow panel members — all six of them — and we are strongly of the view that defining “abuse” is not only unnecessary but may be positively unhelpful. We will, of course, pay very careful attention to definitions in international conventions and those adopted in comparable inquiries in other jurisdictions. However, our view is that we should take a generous interpretation of what may constitute abuse.
955. To judge by experience elsewhere, the principal forms of abuse that we may encounter are likely to take the form of neglect or sexual, physical or emotional abuse. However, if the Bill were to contain a very precise definition of what constitutes abuse, our concern is that that may cause more problems than it solves. It really

- is impossible to define absolutely every form of ill-treatment in advance. If I may say so, in my experience in the criminal courts over many years, there were constant surprises about what people can do to other people. One obviously got to recognise the more usual forms of abuse, but, every so often, something is bound to crop up that we will not have thought of. There may also be arguments about whether this or that falls within particular types or definitions, and, ultimately, many of those disputes may be rather sterile. We are very strongly of the view that the working definition we have sought to give you today is sufficiently comprehensive and, yet, flexible.
956. **The Chairperson:** I believe that the Department has said that the terms of reference are clear with regard to abuse, and that abuse relates to the failings of institutions in their duties to the children in their care. I wonder again whether we will be dancing on a pin over what we mean by “failings” or “duties”.
957. **Sir Anthony Hart:** We will have to investigate those terms in some detail as we take our work forward. We are only at the stage of assembling information to see what exactly the responsibilities of government were. At present, we are going back to 1945, and I cannot say with complete confidence and in every single respect what the responsibilities of government were in 1945, what the systems of inspection were and who carried out those inspections. Those are all things that we will have to dig down into. I think that the terms of reference are as comprehensive and as clear as it is possible to make them.
958. **The Chairperson:** OK. Thank you very much. Were those the first four questions, Sir Anthony?
959. **Sir Anthony Hart:** Yes.
960. **The Chairperson:** We will pause for a second. I think that Colum is keen to come in.
961. **Mr Eastwood:** I do not mind if you want to continue, Chair. I have a number of questions on other issues. Do you want me to ask them now?
962. **The Chairperson:** Do they relate to any of the first four issues?
963. **Mr Eastwood:** No.
964. **The Chairperson:** OK. We will press on.
965. **Sir Anthony,** I am interested in your views about the possibility of producing an interim report, particularly if, quite early in your inquiry, it strikes you and your panel that this is so awful and there is such a clear need for interventions, be they financial or some other form of assistance, that you see no need to wait to the end to make a call. What is your view on that?
966. **Sir Anthony Hart:** I am still of the view, which I expressed on 4 July, that if we are still in the midst of hearing evidence, producing interim reports will involve arriving at a decision before we have received all the information that we can. I can well understand that if one were dealing with an inquiry into, say, a failure in some sort of medical environment — in a hospital or an emergency service — where there is a very clear risk to life and limb if something were not put right immediately, one would have a form of interim report. Here we are looking at a wide range of things and a very complex environment. Although there may well be emerging findings within our work, there will be many nuances that will have to be considered and reflected on. Clearly, if the Assembly considers that there should be some form of interim report, my colleagues and I will do our best to comply with it, but we are, at present, dealing with matters that stop in 1995, which is nearly 20 years ago. It may be that something will be so urgent that it will need to be dealt with —
967. **The Chairperson:** Let me put a scenario to you. Say, within the first three to six months, a significant number of people come forward who were abused but whose big concern is not about themselves any more, or indeed about their children who were impacted because of that abuse, but they are now concerned about their grandchildren

- who perhaps are not achieving what they might achieve at school and need urgent interventions. Would you be sympathetic to that?
968. **Sir Anthony Hart:** It would certainly be something that we would have to look at very carefully.
969. **The Chairperson:** The next issue was around the idea of redress or reparations. What are your current views on compensation, in financial terms or from rehabilitation or service provision?
970. **Sir Anthony Hart:** It is always very tempting to indicate what one might think, but I do not consider that it would be proper for me to express an opinion before we have even started our work. Those are all issues that the terms of reference require us to look at, and we are going to have to do that, with the victims as well as everybody else. Many people will feed into that process. I certainly do not think it proper to pre-empt what we might say.
971. **The Chairperson:** OK. Next is the publication of the report. Who, when and in what form? Have you any views?
972. **Sir Anthony Hart:** To allay any public concern there may be about that, I think that there is much to be said for the chairman of any inquiry being the person who is responsible for the publication of the report. There may be some reports involving matters of national security or very considerable commercial issues where there may be issues to be discussed before the matter comes into the public domain, but, by and large, I think that there is much to be said for the chairman being responsible for publishing the report. Obviously, those who would be affected by it would be given notice of what is in the report and given the opportunity, when it is at a draft stage, to comment on any facts that may be wrong — not to rewrite the report, but to correct any factual mistakes there may be. My view on how it will be published is that I expect it to appear in hard copy form and to be put up electronically on the internet. That is virtually a given these days.
973. **The Chairperson:** Next, Sir Anthony, is the question of whether the scope of the inquiry should be extended to take in abuse that did not occur in institutions. Since you were with us, we have heard a variety of views and, perhaps, the Committee is coming towards a conclusion that, even if we stick with what is intended for yourself and your panellists, there will, at some point, be a requirement for another process to satisfy those who do not come under your ambit.
974. **Sir Anthony Hart:** Again, Chairman, that is something that I have discussed with my panel colleagues in some detail. We understand the concerns of those who may wish to see the scope of the inquiry extended to include abuse outside institutions, but, as far as the scope of our inquiry is concerned — and I stress our inquiry — we do not support that. Let me explain why. If, for example, we were tasked with considering issues involving abuse in foster care, in schools or in families, that would have enormous implications for the scope of our work — the scope of the inquiry — and it would require a complete restructuring of the way we are going to go about our work and that, in turn, would require very much greater resources in money and staff. All of that would certainly mean that the inquiry would take very much longer to produce its report. The implications for the acknowledgement forum would be equally significant, because everything I have said would apply with just the same degree of force. Those who, quite understandably, wish other areas of abuse to be included in our remit by our remit being widened would have to understand that the implications are very considerable, and it would take much longer and a great deal more time and money to carry out that inquiry.
975. **The Chairperson:** The next issue is around privilege — somebody who comes and gives evidence in front of the inquiry panel. What are the implications for any potential subsequent civil or criminal proceedings?

976. **Sir Anthony Hart:** The draft legislation makes it clear that we are prohibited from making any findings as to civil or criminal liability. My view is that, as the law stands, if there were to be litigation afterwards, the findings of the inquiry would not be admissible as a matter of law because it is not a court, it is an inquiry. If there were to be a criminal prosecution, for example, and somebody wanted to say to the jury, “Well, the inquiry found that there was abuse in this particular home”, the judge would have to stop that and say to the jury, “You will decide the case on the evidence that you hear”. Judges have always found that juries are very good and very faithful in following the instructions that they are given and they leave things out of account. There are no technical implications, as it were, in that sense, in my view. However, I should say — and it is, perhaps, appropriate that I should take this opportunity to say this — that we are alert to the possibility that people may say things to us that indicate that criminal offences have been committed, and we will have no hesitation in making that known to the police where it is our legal duty and, indeed, we have already opened discussions with the PSNI as to how we would do that if that should happen. There would be no question, first, of us ignoring such matters and, secondly, we would have to give way, as it were, because my view is that the public interest is best served by those matters being investigated by the police and not by us.
977. **The Chairperson:** So, is there an inherent risk of self-incrimination from a witness?
978. **Sir Anthony Hart:** Yes, that could certainly arise. I see that that is an issue that is further on in your list, so perhaps —
979. **The Chairperson:** I skipped ahead because you took me to it.
980. **Sir Anthony Hart:** — I will deal with it now. If a person refuses to answer a question on the basis that it might incriminate him or herself, the inquiry would not compel someone to answer the question. Indeed, just as one, as a judge, has occasionally had to do, you would say, “You don’t have to answer that question if you don’t wish to in case you incriminate yourself.” However, it would always be open to the inquiry to draw an inference from the fact that a person would not say something.
981. **The Chairperson:** And you would assume that it would excite the interest of the PSNI.
982. **Sir Anthony Hart:** That depends. I cannot say what view the PSNI would take. If someone said to us, “I saw my abuser in the street the other day. I haven’t seen him for 20 years. I then spoke to a friend, and they said that that person is working in another institution.”, there are two possibilities that we would have to consider. The first is alerting the relevant social authority, whether it is a trust or the employer, to the fact that there may be allegations against an individual. Depending on the nature of the allegation, if it were a reportable offence, we would have to tell the PSNI. Our preference would be to ask the individual first whether they have reported it to the police. If they say no, we will tell them that we think that they should. That would not relieve us of our duty, which is the duty that any citizen faces under the Criminal Law Act 1967.
983. **The Chairperson:** Institutions and individuals will stand accused of some pretty heinous acts. What level of disclosure — what detail — will they be given?
984. **Sir Anthony Hart:** Although we have not worked out every detail of this because we have devoted much of our time to getting the acknowledgement forum and related things that I have described going, I envisage that the inquiry will make available to each individual or each institution whose conduct is being investigated all the material that the inquiry has gathered relating to that person or institution. We will do that in sufficient time to enable the individual or institution to prepare to deal with any possible issues that may be revealed

- by the material on the face of it, such as an allegation of an individual act or a course of ill treatment by a particular individual at a particular place, or issues that the inquiry has identified. It is only after the person or institution has had what we would regard as a reasonable period of time to prepare whatever they want to say about it that we then move to the point of having the public hearing.
985. Perhaps I should explain that that, in turn, will mean that hearings will not start on day one because the process will require those who may find themselves being questioned to have time to prepare what they wish to say.
986. **The Chairperson:** On a related matter, have you got your head around data protection and those processes and how they impact?
987. **Sir Anthony Hart:** Yes. We have been very alert to the data protection implications in everything that we do. We take that very seriously. We are building precautions into our procedures to ensure that information is kept properly secure and is not disseminated in a way that puts individuals' information that should not be publicly available into the public domain.
988. **The Chairperson:** The next issue, Sir Anthony — one that the Human Rights Commission described as being unworkable — is the idea of cutting the time available to mount a judicial review from the normal to 14 days.
989. **Sir Anthony Hart:** I regard the 14-day time limit as extremely important to our work. Any judicial review, by its very nature, will involve a certain degree of delay. Of course, that depends on the nature of the challenge to whatever the decision is that is being made. It may result in consequential appeals, for example. All of which could have the effect that I would have to go back to the Executive and say,
- "We now need an extension of time because so much time has been taken up with those challenges."*
990. The concern that you specifically recount on behalf of various people, including the Human Rights Commission, is that a 14-day time limit inhibits access to the courts. I am afraid that I regard that suggestion as completely without merit and quite unfounded. The High Court is well used to dealing with applications for judicial review at a matter of a few hours' notice. It is not unknown for people to come into the High Court late on a Friday afternoon and produce an urgent judicial review, and arrangements are made to deal with it, either that night or the next day. The suggestion that is inherent in that argument, which is that any competent practitioner cannot frame the argument that they are going to make within 14 days, is simply unsustainable. Competent practitioners are doing that from time to time.
991. A 14-day limit does not mean that the court will decide on the issue in 14 days. All that it means is that you have to put in what the courts call an "order 53 statement", which is essentially the points that you want the court to decide and the remedy that you seek. It is an important document because it is the main framework of the case, but it can be done overnight if necessary, and to suggest that you cannot do it within 14 days is simply wrong.
992. **The Chairperson:** I think that you are pretty clear on that.
993. The next two points I will group together. There is the notion of being open and transparent, but the risk is that your inquiry airs an allegation that is unfounded or cannot be stood over, and the damage that that will cause to an individual or an institution, as against how you might bring in reporting restrictions and whether you would do that in consultation and liaison with victims and survivors.
994. **Sir Anthony Hart:** By its very nature, any inquiry looks into a matter of public concern, and it is perhaps more than probable that any inquiry — I do not think that ours is any different — will involve allegations that will be made in public. That is why inquiries sit in public

- so that everyone can know what point is being made.
995. Of course, that process involves the risk that there may be wild or unsubstantiated allegations. My view is that it is open to the inquiry, and indeed it is its duty, to ensure as far as possible that only allegations that appear to be of substance are made, and then, if they are explored and found to be justified, the inquiry makes that clear. Equally, if they are found to be unjustified, the inquiry makes that clear. It is impossible, in my view, to have a situation in which one cannot air allegations in public. If that were the case, we would not have any inquiries at all.
996. **The Chairperson:** Some concerns have been raised over the witness support service, which, I am sure, the Committee considers to be absolutely vital in offering support to witnesses if they come forward. Take a look at the concern raised by the Sisters of Nazareth about extending that service to vulnerable and elderly witnesses. Perhaps I can also ask you to expand that into the case of, say, someone who may not be able to come to you. How will that person be able to submit evidence?
997. **Sir Anthony Hart:** One has to distinguish between the witnesses called by the inquiry and those who may be called by individuals or institutions that have been given a right of representation before the inquiry. In other words, they may want to call someone in their own defence.
998. So far as any individuals who come to the inquiry are concerned, no matter who calls them, we will treat them all exactly the same. If they are elderly or infirm, we will try to adopt measures that will make it as easy as possible for them to give evidence. We take the same view for anybody. It does not matter whether people are called by an institution or the inquiry. They will all be treated exactly the same and, I hope, fairly.
999. So far as the exact mechanisms that we may use are concerned, we have certainly given consideration to, and are anxious to use, modern technology. For example, where somebody is in a nursing home in Australia, we would try to have them give evidence by video link if at all possible. If people are not able to come at all to give evidence, we may have to send someone to take a statement from them, which would then be read out. However, those are problems that are, regrettably, not unknown in the courts. There are various mechanisms that we can use to make it easier for people to give evidence. Those will apply, I stress again, just as much to those who may be called by the institutions as they will to anybody else.
1000. **The Chairperson:** If I may just press you a little bit, the witness support service will obviously be around your headquarters and where the inquiry takes place. Let us say that the witness in Australia is not in a home but is just a citizen living in Australia. What support is there for such people should they come on a video link and discover that giving their evidence is not cathartic but, in fact, traumatising, and they are thousands of miles away and you do not know that they cannot go to bed at night because they have traumatised themselves?
1001. **Sir Anthony Hart:** Support will be offered through two separate avenues. The avenue that is our responsibility we are calling the witness support service. Those are the people whom we will employ who will help individuals as they come to give evidence on a particular day, and we will contact them afterwards to find out how they are feeling. We will then direct them to whatever the appropriate source of help may be.
1002. However, the Executive intend to set up a separate body — a victim support service — that is not our responsibility. Therefore, there is a good deal of commonality and possibly risk of confusion in the titles. The victim support service, as I understand it, will perhaps follow up in greater detail the sort of issues that you described.

1003. **The Chairperson:** Barnardo's raised the issue of children sent by Barnardo's to care provision in England and Scotland, and outwith Northern Ireland. Will you be looking at potential abuse that happened outside the jurisdiction of Northern Ireland?
1004. **Sir Anthony Hart:** We could not, Chairman, because our terms of reference and the legislation will apply only in Northern Ireland. If we were to investigate allegations of abuse outside Northern Ireland, we could do that only really with the assistance of the authorities in whatever jurisdiction it was, whether it be the Republic of Ireland, Scotland, England or Wales.
1005. What we will of course do is investigate such aspects of any such allegations that happen in Northern Ireland. What I mean by that is if, for example, there is material to show that someone was abused outside Northern Ireland, and that was reported to the authorities in Northern Ireland, we will be pursuing in our inquiries what they did about that, how they reacted to it, and so on. The mere fact that it happened outside Northern Ireland does not mean that we will never look at it. We can look at it up to only that extent, but we certainly can look at it in that area. Therefore, if somebody were to come back into Northern Ireland, report abuse and nothing were done about it, we would certainly be looking at that very carefully.
1006. **The Chairperson:** The nineteenth and final issue deals with the acknowledgement forum and the question of whether you would, as it were, quality-assure submissions to see whether they were consistent with previous narratives that are already out there and are clearly being gathered up.
1007. **Sir Anthony Hart:** I have discussed that. The acknowledgement forum is there to offer individuals the opportunity to unburden themselves and describe their experiences. It is not an investigative body. Its function is not to decide whether somebody is telling it the truth. That can be the function of the public inquiry side, with which I will be most directly concerned. We will certainly look at whether people have given contradictory accounts, if that is suggested in the material placed before us. That is inherent in any form of court, or inquiry or in any other body that looks at the reliability of what people say. The fundamental thing is that you check whether what they say squares with what they have said before and whether there is an obvious explanation if both accounts do not match word for word. That is not the function of the acknowledgement forum. It will not in that sense, if I may adopt your phrase, quality-check what people say, because that is not what it is there for. Of course, if somebody says, "I went to the police before and told them", the acknowledgement forum may ask, "Well, what did you tell the police?". I do not see the forum as being able to engage — nor should it engage — in the type of investigation that the other part of the inquiry will be responsible for.
1008. **The Chairperson:** You will be glad to hear that that is the full 19, Sir Anthony. I know that at least a couple of members want to ask follow-up questions, if you do not mind. Members, can you keep it relatively brief? As I said, we have a lot more to get through today.
1009. **Mr Eastwood:** Do not worry, I intend to be brief. Thank you very much for your evidence so far, Sir Anthony. It has been very useful. Perhaps I missed this, but I did not see it in that list: have you any viewpoint on 1945? I know that a number of elderly victims will be excluded by that date. I think that the Department said that it is willing to look at that. Would you be comfortable with seeing that date extended back to, say, the foundation of the state?
1010. **Sir Anthony Hart:** I have discussed that with my panel colleagues. We have no difficulty with the starting point being altered from 1945 in some way. We really do not know very much about this because we go by what is said in the papers and what is recounted on occasions such as this, but from what we have learnt, the number of individuals concerned appears to be

- quite small, and they have made, what appears to us, a compelling case. The only drawback, of course, is if that you go back to 1921, it will be more and more difficult to find out what happened. I do not imagine that many people who were children in institutions in 1921 are still alive, but it is certainly possible, I suppose.
1011. Therefore, in a word, the answer to your question is yes. I want to take the opportunity to add to that. We would have very great concerns if the 1995 date were changed, because that would very significantly increase the scope of what we have to do. There are concerns, which I already mentioned, about time and resources, and those would apply in great force there.
1012. **Mr Eastwood:** You set out the difficulties around the possibility of an interim report on redress. Is there a possibility in your mind that if you felt able to produce an interim report, you should be allowed the scope to do so?
1013. **Sir Anthony Hart:** I have to say that I would prefer not to be under an obligation to provide an interim report, but if that is what the Assembly considers necessary, we will of course do everything that we can to provide that.
1014. **Mr Eastwood:** What if there were no obligation but you were given the opportunity to do so because you thought it would be useful?
1015. **Sir Anthony Hart:** I think that that perhaps carries the implication that we should do it.
1016. **Mr Kinahan:** Sir Anthony, you said that if hints of a criminal act came forward, you would refer those to the PSNI or another appropriate group. Does that mean that you would stop investigating there, or would you still be thorough and carry out a complete investigation right to the end? What is going through my mind is that if you meet a great deal of crime, we will never actually get to the point of identifying thoroughly whether there was institutional abuse.
1017. **Sir Anthony Hart:** If there were institutional abuse, I doubt very much whether we would be prevented from finding out its extent. There are already a number of instances in the public domain going back a number of years where proceedings have been completed. We know that it has happened in certain instances. Our concern is to avoid prejudicing, to any extent, the police inquiry. We will simply have to look at each one as it comes up.
1018. **Mr Maskey:** Thank you for your very comprehensive responses. They are very helpful. I have a couple of points. I want to reverse the question and make it more simple. My understanding is that the terms of reference in particular would have been discussed and perhaps agreed with you and agreed in the Executive before they were announced. Therefore, if you take that in reverse, any changes to that would have to go through the same process. A lot of people have expressed concerns about the latitude that the Office of the First Minister and deputy First Minister might have with regard to the terms of reference. My view is that it is better to have these things as non-prescriptive as possible, as long as they still enable the scope for you and your panel members to proceed. I think that we can deal with the terms of reference by a simple amendment, with the terms of reference going to the Assembly for negative or affirmative resolution. Is there anything in the current terms of reference that you or your panel would see as prohibiting you from taking some of the latitude that you referred to earlier? You did not use that word, but I expect that you, as chair, are required to do and say things based on what you discover in the process. I am more interested in establishing whether there are things that you would not be able to do under the current terms of reference.
1019. **Sir Anthony Hart:** I do not think so. The terms of reference, as they had been drafted, were given to me. I was asked whether I agreed, and having considered them, I did agree. That is the usual practice in these matters. I did

not draw them up, but I looked at them, and I was content with them. So far as the terms of reference are concerned, I do not see any problem in carrying out the inquiry's work. There are obviously issues of principle, such as whether we move beyond 1945. The legislation is somewhat different, and I have expressed some of my views on that, but no, I do not have a problem with the terms of reference.

1020. **Mr Maskey:** I have one final question, which will be very brief. In some of the submissions, people were asking about those who were located in institutions outside this jurisdiction. I believe that to be the position, but I am interested to hear your view. I do not think that we could pass any legislation here that would give you any authority in any other jurisdiction. I think that that is important.
1021. **Sir Anthony Hart:** I agree entirely. It is an elementary principle that the power of any law-making body is effectively limited to its own territorial area, unless you get the agreement of the Government and the Parliament in the other area.
1022. **Mr Humphrey:** Thank you very much for your presentation, Sir Anthony. I welcome what you have just said about the terms of reference. My party colleagues and I have been uncomfortable in recent weeks regarding contributions, in the sense that religious orders have come along with senior people from those orders and read out a statement, and then solicitors have answered questions. Therefore, we very much welcome the move to your inquiry carrying out its work in the near future. I think that that is very important, because my party has got the sense that some people are coming here and thinking that this is the inquiry, and they are making contributions on that basis.
1023. May I return to point 16 that you mentioned, which concerns witnesses? I want to get absolute clarification on this, because a witness can be somebody who is elderly, infirm, unable to travel or whatever, as can someone who

has been abused. However, that can also be someone who, it is alleged, is an abuser. It is very important, in the context of some of the letters that I have read from solicitors or statements from orders, that we, or you, look at it in that context. It can be someone who has been wronged, but it can potentially be somebody who has been involved in wrongdoing.

1024. **Sir Anthony Hart:** Yes, I think that that puts very well what I was trying to say earlier. We will treat everybody the same. They will not be treated less favourably when it comes to access, courtesy, consideration or any special measures that we feel are necessary, and that we can adopt.
1025. **The Chairperson:** Sir Anthony, Andrew and Patrick, thank you very much for being with us today. That was very useful.
1026. **Sir Anthony Hart:** May I conclude, Chairman, by thanking you for the opportunity to put in the public arena what it is that we are trying to do and what we hope to do in the next while? I think that it is only right that I should, at this stage, thank Ministers Bell, Anderson and McCann, because we have had a lot of very determined support from them. It has helped us to move to where we hope to be in the next not too many days.

26 September 2012

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

Witnesses:

Ms Patricia Carey	<i>Office of the First</i>
Mrs Cathy McMullan	<i>Minister and deputy</i>
Ms Maggie Smith	<i>First Minister</i>

1027. **The Chairperson:** We have with us, from the Department, Cathy McMullan, Patricia Carey and Maggie Smith. Maggie, let us start with the delivery, which, I understand, was at 10.00 am today. I think it would be fair to say that it has not been well received at such short notice. Would you like to tell us why?
1028. **Ms Maggie Smith (Office of the First Minister and deputy First Minister):** We are talking about the announcement that Ministers made today?
1029. **The Chairperson:** We are talking about your responses in annex 1.
1030. **Ms Smith:** I beg your pardon, but I did not realise. I just heard outside that you had not got it until today, and I can only apologise for the fact that it did not reach you sooner. What we have tried to do in that annex is to pick out —
1031. **The Chairperson:** Sorry, you have apologised, but why was it late?
1032. **Ms Smith:** I understand that there may have been some delay in getting it from our system to yours.
1033. **The Chairperson:** Because —
1034. **Ms Smith:** I do not know. I genuinely did not know until you told me just now that it did not arrive.
1035. **The Chairperson:** So you have no idea why —
1036. **Ms Smith:** In fact, the gentleman told me outside that it had just reached you today, but I did not know that that was the case.
1037. **The Chairperson:** Can you perhaps get back to us as to the reason for that?
1038. **Ms Smith:** I certainly can. I would be glad to.
1039. **The Chairperson:** OK. What would you like to tell us?
1040. **Ms Smith:** First, thank you very much for inviting us here to talk to you. You have already introduced Cathy McMullan and Patricia Carey. I should also say thank you for sharing the stakeholder submissions with us, because it is very useful for us to see the material that is coming in from the contributors. You have now got our table of responses, which covers up to 12 September. We now have the Hansard reports from 19 September, and clearly there will be a Hansard report from today, so we will update that table and get it back to you on the basis of the further information.
1041. We found the tone of the submissions very encouraging. I know that people had lots of points that they wanted to raise, but what seemed to come out of the submissions was the very sincere and warm support for the inquiry. We see that as highly significant. We are here to answer your questions today, and we will make sure that we cover the points in the table as well as we possibly can. We look forward to supporting you in your informal and formal clause-by-clause scrutiny sessions.

1042. There has been some other news today. When the Ministers announced the terms of reference on 31 May, they said that the inquiry would start in the autumn, with the acknowledgement forum starting its work as soon as practicable, and with as many preparations as possible being done for the judicial element of the inquiry before the legislation comes into effect. Significant progress has been made over the summer since we last spoke to you. Ministers have today announced that the acknowledgement forum will begin its work on 1 October. Its first task will be to invite the victims and survivors to register an interest in coming to the acknowledgement forum. They also announced today that Geraldine Doherty and David Lane would join the chairman as panel members in the judicial element of the inquiry. Also, following requests to Ministers from victims and survivors, Ministers announced today that, each Friday morning, the WAVE Trauma Centres in Belfast and Derry/Londonderry will provide temporary meeting facilities for victims and survivors. There will be a room available, as well as refreshments. There will be a trained counsellor on hand, should one be required.

1043. **The Chairperson:** Sorry, did you say WAVE in Derry/Londonderry and Belfast?

1044. **Ms Smith:** Yes.

1045. **The Chairperson:** What about Ballymoney, Armagh, etc?

1046. **Ms Smith:** It is just in those two centres that this has been set up.

1047. Those are the developments to date. Clearly, a lot of progress has been made over the summer. The acknowledgement forum is starting its work on 1 October, and perhaps the best thing that we can do at this stage is to help you with the points raised in the submissions. We are keen to answer your questions.

1048. **The Chairperson:** OK. Let me kick off with what is in the cover letter of 26 September. We asked whether the Attorney General was content that the Bill as introduced was compliant with

the European Convention on Human Rights, and, as you know, that comes from evidence from the Northern Ireland Human Rights Commission. Your response is that there is a convention that you do not even disclose whether the Attorney General has been consulted, never mind what his advice is, which makes it difficult. You go on to say:

“Notwithstanding, it is a matter of protocol for Ministers to seek advice from the Attorney on the competence of legislation.”

1049. Can I read into that that you are content that it is human rights compliant and you have taken what you would consider to be appropriate legal advice on that matter?

1050. **Ms Smith:** We have taken legal advice on the human rights compliance of the legislation, and we are content that it is human rights compliant. Our drafting of the Bill is done very much in co-operation with, and under the guidance of, the Departmental Solicitor’s Office, which is clearly there to make sure that it is human rights compliant, among other things. The Bill has been drafted by the Office of the Legislative Counsel, which, again, is very aware of human rights and other issues. Before it was introduced to the Assembly, Assembly legal advisers would have looked at it as well. If any of those three groups had had concerns about the human rights compliance, they would have raised them.

1051. **The Chairperson:** OK, but you are aware of the evidence that we got from the chief commissioner of the Human Rights Commission, who said — I paraphrase, and I hope I do it reasonably accurately — that he felt that there was a high likelihood of success should somebody mount a legal challenge, which, clearly, given what we all want to achieve, would be disastrous.

1052. **Ms Smith:** We have read his evidence very closely and with great interest, but, again, having consulted our legal advisers on that, we have been assured that the Bill is human rights compliant.

1053. **The Chairperson:** There has been a lot of debate about the terms of reference and whether they are outwith the legislation in a ministerial statement. You seem to be saying that you are content that any amendments to the terms of reference would require an affirmative vote in the Assembly, having been agreed by the Executive rather than by a number of Ministers.
1054. **Ms Smith:** Yes. It is worth recapping on the process that Ministers went through to agree the terms of reference before they announced them. They were developed in the Office of the First Minister and deputy First Minister (OFMDFM) but with the agreement of the chair. They were then agreed by the Executive before they were announced by a written statement to the Assembly. Ministers are now proposing that, in the event of an amendment, as well as having the agreement of the chair and the Executive, we would seek an affirmative vote in the Assembly, so the Assembly would have scrutiny.
1055. **The Chairperson:** Is that consistent with advice from the Examiner of Statutory Rules?
1056. **Ms Smith:** The terms of reference are not in the Bill at the moment, so, basically, what Ministers are saying is that they would want to put in that additional step and additional level of scrutiny of the terms of reference.
1057. **The Chairperson:** For the inquiry's ability to recommend changes to law and practice, am I right in saying that you are saying that that is not precluded in the Bill, although it is not explicitly sought?
1058. **Ms Smith:** Yes, the terms of reference set out the four areas that Ministers and the Executive particularly have asked the chair and his panel to work on and make findings and recommendations on. Some stakeholders raised the issue of whether that would include making recommendations about current statute policy and practice. As far as Ministers are concerned, that is implicit in the terms of reference. I believe also that
- that is a clear understanding between the chair and the Ministers.
1059. **The Chairperson:** What about 1945, Maggie, as a starting point?
1060. **Ms Smith:** Lots of people have raised that. Ministers are very sympathetic to the removal of that parameter.
1061. **Mr Maskey:** Thanks, Maggie, for your responses. The last point you raised was raised by a lot of people. Everybody around this table a couple of weeks ago was very mindful of that point. I think Jon McCourt, when he addressed us, suggested in his own way that this Committee may be the vehicle to propose such an amendment to the Bill. That is a matter for us to consider once we finish all these discussions. I think everybody around the table is, broadly speaking, happy enough that we will resolve the issue of that parameter.
1062. The question I put to Anthony Hart about the content of the terms of reference was whether anything in them precluded him and his panel from taking certain courses of action during the inquiry. His answer was clearly no, I think. I do not want to misrepresent him, but I was satisfied that what he meant by his response was that as the inquiry progresses, under the terms of reference, if they see or detect something, they can raise it and deal with it in whatever way they do that.
1063. I appreciate and like the additional hook on which to hang changes to the terms of reference, because a lot of people were concerned about the terms of reference and about too much power resting with OFMDFM and all the rest of it. Although I do not accept that because I think it was OK given the way it was dealt with and the way in which it would have been dealt with, I am more than happy to support an additional check and balance on that. So, if the terms of reference need to be changed for whatever reason, that can be done by consultation with, or even at the request of, the panel itself and the chair in particular, then by the Executive, and then by way of affirmative resolution in

- the Assembly. That gives the protection that everybody seems to be seeking, namely that we need to have greater accountability in regard to this. I am satisfied that you have responded to that in that way.
1064. **Ms Fearon:** Thank you for your responses. My question relates to the point in the cover letter about the estimated cost of the inquiry. Do you have any idea what it is going to be?
1065. **Ms Smith:** Yes, the business case has now been cleared by the Department of Finance and Personnel. The costs of the inquiry are now standing at £15 million to £19 million.
1066. **The Chairperson:** Starting out, was it £7 million to £9 million?
1067. **Ms Smith:** Yes, the £7.5 million to £9 million estimate was produced in March, which was very early in the development of the process. At that stage, the Department was able to cost some parts of the inquiry, but not all of it. We believe that the costs that are now available reflect the full complexity of the project that we have before us.
1068. **The Chairperson:** Can you give us some sense of the information and knowledge you have now that you did not have then?
1069. **Ms Smith:** When the first set of costs was done, it was very much focused on the acknowledgement forum. Now, the costs cover the full gamut of the inquiry, including, in particular, the judicial elements, where there will be, for example, costs for legal representation for witnesses, and so on. There are also communication elements. I should also stress that, clearly, when we are looking at the costs, we are making sure that we are delineating them in a way that will take account of the full numbers that we expect to come forward. As we learn more and get further into the inquiry, we will be constantly refining those costs.
1070. **The Chairperson:** We discussed with the inquiry chair whether there should be an interim report. You could see a situation arising where, once the inquiry starts talking to people and hearing stories, there is a clear narrative of people saying, "I was abused, but it is now my children and grandchildren who are suffering". They could be suffering in very practical ways; perhaps their education and basic numeracy and literacy have been affected. There are very practical steps that the Executive could take to get in there to break that intergenerational cycle of suffering. It could be argued that there is no need to wait for a final report a couple of years down the road and that urgent action could be taken now. Is the Department open and sympathetic to that view?
1071. **Ms Smith:** The way that the Ministers have envisaged the inquiry taking place is as set out in the terms of reference. The terms of reference set out a very clear timescale, with a report being published at the end. So, the terms of reference clearly state that there are two and a half years for the chair and his panel to do their investigation and six months for them to deliver the report. That is the Minister's expectation.
1072. **Ms Fearon:** In a situation where redress or reparation payments are to be made, will that be included in the figure given? Will they be paid by the Executive or will the institutions involved also be contributing?
1073. **Ms Smith:** One of the purposes of the inquiry, as set out in the terms of reference, is to look at:
- "The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims."*
- They go on to say:
- "However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report."*
1074. So, one of the purposes of this inquiry is to advise on the requirement or desirability for redress. At no time have Ministers ever pre-empted that conclusion by making a statement about redress. So, it is a matter for the inquiry

- to advise on, and then it is a matter for the Executive to decide on.
1075. **The Chairperson:** Maggie, I want to continue on that issue. You will be aware that the Survivors and Victims of Institutional Abuse's (SAVIA) submission dealt with the use of the term "desirability of redress". It asked why the word "desirability" was used, because there is no such ambiguity in international law. It said that victims of human rights abuses have a right to an effective remedy and to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. How do you respond to that?
1076. **Ms Smith:** The terms of reference are asking the panel to consider whether there is a requirement for redress and whether it is desirable. It seems that that is a very reasonable and laudable thing to ask the panel to do.
1077. **The Chairperson:** Yes, but SAVIA is arguing that it is not and that there is a much greater onus on the Executive in international law. That is what it would argue. Maybe the response is in your document, but I have not had the chance to go through it in great detail. I will leave that now. I am sure we will have to come back to some issues.
1078. **Mr Lyttle:** Thank you for your presentation. Most of what I was going to seek clarity on has been asked. This afternoon's two sessions have been helpful in clearing up some of the issues. I want to be absolutely clear about the correspondence we received today. The Department is saying clearly that the issue of non-residential clerical abuse will not be considered within the inquiry.
1079. **Ms Smith:** That is right.
1080. **Mr Lyttle:** And there is a firm no to an interim report as well.
1081. **Ms Smith:** Again, I refer back to the terms of reference, which are very clearly saying that the report will be produced at the end of the inquiry.
1082. **Mr Lyttle:** OK. I welcome the clarity around the criminal proceedings, recommendations and timescale. That has been helpful.
1083. **Mr Eastwood:** I will be very brief. Sir Anthony's evidence was quite useful in that he agreed that certain things, such as the potential for making recommendations and the potential for an extension to the inquiry, should be spelt out in the Bill. He also said that he thinks it would be useful to spell out that the inquiry chair should publish the report. What is your view on that?
1084. **Ms Smith:** In due course, we will be talking in much more detail about the amendments that may or may not be made to the Bill, and that is something that we can certainly look at in that context.
1085. **Mr Kinahan:** I want to explore a little of what I asked before. We seem to have a split; if a crime is committed, the case goes to the PSNI and the courts to be dealt with, yet if the findings of the inquiry are such, it will go to the Ministers to decide whether there is a need for reparation. However, am I right to say that, at the same time, if it goes to the civil courts, there will be a chance of further reparation and judicial payments at the end of a different system? We seem to be going in two directions.
1086. **Ms Smith:** Maybe we can unpick those a bit. As regards criminal activity, if the panel comes up against clear evidence that a crime has been committed, there is a statutory duty to report that to the police. That statutory duty is nothing to do with this inquiry; it is a very longstanding statutory duty. That will apply in respect of individual cases. You talk about recourse to the courts. The existence of the inquiry does not remove the opportunity for people to go to the courts, if that is what they wish to do.
1087. **The Chairperson:** Maggie, Cathy and Patricia, thank you very much. I hope it will seem reasonable if I say that we would like to reserve the right to ask you back next week. In the meantime, we

would like to take our own consultation responses document and fuse it and compare it with the document we received from the Department this morning, so that by this time next week, we will have a very clear view of the extent to which the departmental document addresses the concerns and the comments from our consultees. On that basis, we can make a decision about whether we think that it would be a good use of Maggie's time to ask her to come back. In any event, I think that she will be available to us as we start our informal clause-by-clause consideration of the Bill.

1088. **Ms Smith:** Absolutely; yes.
1089. **The Chairperson:** Thank you very much indeed.
1090. **Ms Smith:** Thank you very much, Chair.

26 September 2012

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

1091. **The Chairperson:** Members, before we focus on next week's activity on the Inquiry into Historical Institutional Abuse Bill, does anybody have any comments on what we have heard in our evidence sessions today?
1092. **Mr Lyttle:** I think that you summarised it well, Chair, when you said that we have clear information on some of our concerns. We probably need to go away and have a think about what the implications are.
1093. **The Chairperson:** Are we all happy enough with that? I made this point right at the beginning of the meeting, but I know that some members have joined us since then: next week, the intention is to start informal clause-by-clause scrutiny of the Bill. Given the limited timescale that we have, it would be useful if members could come briefed and ready to go with their concerns, comments and questions.
1094. **Mr Clarke:** We will not be here next week. As of today, we are leaving the Committee.
1095. **The Chairperson:** Who is?
1096. **Mr G Robinson:** We are being reshuffled.
1097. **The Chairperson:** Oh my goodness. Three of you? That is a major reshuffle. Was it something I said? *[Laughter.]*
1098. **Mr Clarke:** I think it was your aftershave. *[Laughter.]*
1099. **Mr Maskey:** Do not take it personally.
1100. Chair, on behalf of our group, I will say that we are broadly happy that what we have heard so far has addressed most of the issues of concern. Clearly, there is the issue of victims of abuse who would not fall within the terms of reference of the inquiry. You heard from the chairman of the inquiry today, and he said that he would be very concerned if we tried to widen the scope of the inquiry. I understand that there will be people who will not fall within this particular inquiry. Although the Committee has not properly formalised anything, I think that there was a general view that we would like something that deals with that as time goes on. The Bill Clerk put it very well in her briefing earlier, and the Committee may well make recommendations or propose amendments to the Bill. So, for example, I can envisage us proposing an amendment or whatever and also recommending that that issue is dealt with so that people who fall outside this inquiry do not feel that they are being treated adversely. That is an important point that we would make, and I offer that as one way of dealing with it.
1101. Anthony Hart referred to three or four examples of what he might like to see in the Bill. Perhaps we could have those points picked out, because I could not pick up on some of what he specifically referred to. It would be helpful if we could be reminded of what those are for our discussion next week. Equally, at the same time, we should ask the Office of the First Minister and deputy First Minister (OFMDFM) whether it is prepared to take those on and whether it needs to amend that or we need to.
1102. **The Chairperson:** If we are fusing together the consultation responses with the document we got this morning,

we could also put in the comments from Sir Anthony's evidence today. That will give us one document and an overview of where we stand at the moment.

1103. **Mr Maskey:** Rather than even waiting until next week, I wonder whether there is a need for people to look at the report that we got from OFMDFM, subject to what Sir Anthony said. If there is any doubt about some of the responses, perhaps some of the officials could deal with OFMDFM before next week.
1104. **The Chairperson:** Yes, if you want to put that through to the Committee Clerk.
1105. **Mr Maskey:** Yes, between yourselves or whatever. I would welcome that. It would help to expedite it. We are all concerned about getting this dealt with as quickly as possible, notwithstanding the need for full scrutiny.
1106. **The Chairperson:** Would any member object if we invited those in the Public Gallery to help themselves to a coffee?
1107. **Mr Humphrey:** Of course.
1108. **Mr Maskey:** I do not know. It is £1 a cup.
1109. **The Chairperson:** Do not be shy.
1110. **Mr Eastwood:** Leave some for us. Do not take it all.
1111. **Mr Kinahan:** The only problem, Chair, is that I offered it last week and it ran out.
[Laughter.]
1112. **The Chairperson:** We will just take a five-minute comfort break, folks.

3 October 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Colum Eastwood
 Ms Megan Fearon
 Mr Paul Givan
 Mr Danny Kinahan
 Mr Alex Maskey
 Ms Bronwyn McGahan
 Mr Stephen Moutray
 Mr George Robinson

Witnesses:

Mr Michael Harkin	<i>Office of the First</i>
Mrs Cathy McMullan	<i>Minister and deputy</i>
Ms Maggie Smith	<i>First Minister</i>

1113. **The Chairperson:** We welcome Michael Harkin, Cathy McMullan and Maggie Smith from the Office of the First Minister and deputy First Minister (OFMDFM). Maggie, we have your updated responses to the Bill. Do you want to take a couple of minutes to talk us through what you consider to be the points that we should really focus on?

1114. **Ms Maggie Smith (Office of the First Minister and deputy First Minister):** Yes. To make sure that we are keeping up with you and giving you everything that you need, I want to establish that you are starting your informal clause-by-clause scrutiny today and that you will be working through the Bill from beginning to end. Is that correct?

1115. **The Chairperson:** Yes. We hope that you will stay with us so that we can call on you.

1116. **Ms Smith:** Absolutely; yes. We are more than happy to give whatever support we can. I am glad that you received the updated annex that we sent to you.

1117. One of the things that I commented on at our previous meeting was the commonality of the issues that were coming up. There is also quite a correlation between the issues that we

identified from the stakeholders, those that the inquiry chair identified and those from our discussion last week.

1118. You asked about the issues that seemed important to us. The parts that we updated relate to new information about new organisations having raised similar points to those of the bodies that were covered previously. I am also conscious that you have some new members here. Would it be helpful if I said something about the background to the inquiry?

1119. **The Chairperson:** Stephen and Paul?

1120. **Mr Givan:** Yes.

1121. **Mr Moutray:** Yes.

1122. **Ms Smith:** I will mention some of the things that are in the inquiry's terms of reference. The terms of reference set out that this is an inquiry into historical institutional abuse. They define what an institution is and that the abuse was child abuse. As the terms of reference are written, they cover the period between 1945 and 1995. The definition of a child is a person who was under the age of 18 at the time that the abuse took place. We are talking about institutions such as children's homes, borstals, training schools, and so on, in Northern Ireland.

1123. The terms of reference were very much driven and informed by the victims and survivors themselves. That is very much reflected in the comments that have come back from the various stakeholders. As a result, there are three elements to the inquiry. There is an acknowledgement forum, which is an opportunity for the victims and survivors of historical institutional abuse to give testimony about their experiences and to talk to people who have particular skills and experience that qualify them as listeners. The aim is to give people an opportunity to gain acknowledgement

- for their experiences. A certain amount of evidence will come through from there, and, with the permission of the people who have given the testimony, some of that evidence may be used at other stages in the process.
1124. The other main stage in the process is a public inquiry that is headed by a judge. That will look at the evidence that is coming from the acknowledgement forum and from victims and survivors and other sources. It will test that evidence and bring forward conclusions about what happened in the institutions. It will also inform the Executive and Assembly about the nature of an apology and a memorial, whether there were systemic issues in the various institutions, and about the requirement and desirability for redress. The terms of reference also make it very clear that, at the end of the day, the Executive will make decisions that result from the report. That is particularly highlighted for redress.
1125. The Bill provides the framework within which the inquiry can take place. It does two main things. It gives OFMDFM the power to establish the inquiry, to pay for the inquiry, to manage the inquiry as a sponsor and to make sure that it has what it needs in people, staff, accommodation, and so on. The Bill also gives certain powers to the inquiry's chairman. It establishes that the procedure and conduct of the inquiry are to be directed by the chairman. It makes it clear that, in making decisions about the procedure and conduct of the inquiry, he must have regard to the principle of fairness. He must also be mindful of the need to avoid unnecessary expense to the state, victims or others. In addition, it gives the chairman certain powers. It enables him to take oaths and evidence under oaths, and it allows him to make proceedings public. At the same time, it allows him to issue notices that restrict access to particular parts of the proceedings of the inquiry or to particular documents or other evidence. It gives him powers to compel witnesses to come to the inquiry to give information by speaking to the inquiry or by providing documents or other evidence. The Bill is crucial in the establishment of the inquiry, the Department's management of it and the chairman and his panel's ability to carry it out.
1126. It is probably worth mentioning that, as of Monday this week, the inquiry is publicly up and running. The panel members and the chair have been working for quite some time, but the inquiry is now publicly up and running. People who are victims and survivors can now register with the inquiry and make it clear that they want to come forward and contribute to its work.
1127. **The Chairperson:** Maggie, thank you very much. Paul and Stephen, are you content?
1128. **Mr Givan:** Yes.
1129. **Mr Moutray:** Yes.
1130. **The Chairperson:** Today, we are informally walking through the Bill clause by clause with a view to coming back next week to formally agree our position. We have heard from stakeholders, the Department and the chair of the inquiry. We now have to decide whether we are content with the clauses, whether we want amendments agreed by the Department, or whether we want to bring forward our own amendments or seek assurance in writing from the Department or clarification from Ministers during Consideration Stage. Those are the sort of options that I think that we need to examine today.
1131. **Mr Maskey:** We obviously have new members today, but, until this point, everyone appeared to agree that we want to do something about the 1945 date. In other words, we want to delete it. I am happy enough, subject to advice, to have an open-ended inquiry up to 1995 or to set a date at 1922. I am open to suggestions on that, but we have all agreed, prior to this meeting, that we will do away with the start date of 1945.
1132. The second point for me is that I want a little information, if I can get it. Obviously, OFMDFM has agreed that

- any changes to the terms of reference will be done by way of consultation with the chair of the inquiry and with the Executive. Further to that, it should come back to the Assembly by way of the affirmative resolution procedure. How do we amend the Bill accordingly? Do we need to?
1133. **The Chairperson:** Alex, if you do not mind, we are going to go through the Bill literally clause by clause, so we will come to those points in order. Members, you have the Bill and the terms of reference. You also have the paper from the Department and our latest updated summary table with departmental responses and responses from Sir Anthony, the chair of the inquiry.
1134. Clause 1 brings us straight to the inquiry's terms of reference. We had a number of issues that were raised in written submissions and oral evidence. As we work through the Bill, we will need to consider what changes, if any, we want to see.
1135. Do members have any comments on the terms of reference? If not, we will go on to the first issue, which is that that Alex raised — the 1945 start date. You will see in the summary table —
1136. **Mr Maskey:** I am sorry, Chairman. Are you asking about the substance of the terms of reference? I am happy enough with their substance. However, going back to my earlier point about the way that they may be changed, can we deal with that now?
1137. **The Chairperson:** I think that we are going to come to that as we work our way through, Alex.
1138. **Mr Maskey:** I thought that we were at that point. Where will we be dealing with it? We are on clause 1.
1139. **The Chairperson:** We have some issues that we want to go through, and we will then start the clause-by-clause scrutiny.
1140. **The Committee Clerk:** Clause 1 brings in the terms of reference, and I thought that we would look at them at that point.
1141. **The Chairperson:** We have some preliminary stuff to go through, Alex, but we can do that.
1142. **Mr Maskey:** I am sorry. I thought that we were at that point.
1143. **The Chairperson:** If we are going to go through the Bill clause by clause, we should start with the Long Title, which states that the Bill will:
- “Make provision relating to an inquiry into institutional abuse between 1945 and 1995.”*
1144. So, do we want to change the start date to 1922?
1145. **Mr Moutray:** Our party's position is that we would prefer the inquiry to go back to 1922.
1146. **Mr Eastwood:** Yes. We agree with that. My party is open-minded about the end date. We might decide upon that today, however.
1147. **The Chairperson:** Danny, we are of that mind as well. So, we are unanimous on that.
1148. Maggie, that will come as no surprise. Does the Department have a position on that point?
1149. **Ms Smith:** Yes, and, as I said at the previous meeting, the Ministers are very sympathetic to changing the start date. We will certainly take that back to the Ministers and take it from there.
1150. **The Chairperson:** So, how do we effect this? Is it the Committee drafting an amendment, or is this issue something that is to be agreed with the Department?
1151. **Ms Smith:** I would be happy to go back to the Ministers and suggest that we draft an amendment.
1152. **The Chairperson:** OK. Thank you. Clause 1(2) states that the terms of reference of the inquiry are outside the Bill. A number of stakeholders raised that issue on the matter of Assembly scrutiny. It seems to me that it is perhaps awkward to have the terms of reference outside the Bill if it comes to making any changes that we might see

- as desirable. One option could be to put the terms of reference into a schedule. Members will note that the chair of the inquiry expressed concern that bringing the terms of reference into the Bill would mean that you would require more time to amend, if that proved necessary. However, OFMDFM has already agreed to amend clause 1(3), meaning that any change would require an affirmative order passed by the Assembly. Are there any comments either on clause 1(2) as it stands or on a proposed amendment to the terms of reference?
1153. **Mr Eastwood:** I would like to see the terms of reference in the Bill in some form.
1154. **Mr Givan:** I would not support that. Our view is that it is not necessary. Clause 1(3) already allows for changes to be brought forward, so the Bill is broad enough to allow us to make those changes if it becomes necessary.
1155. **The Chairperson:** Clause 1(3), Maggie, would be subject to the draft affirmative procedure, so the Assembly would have its say.
1156. **Ms Smith:** It certainly would. The issue that seems to be coming out from the points that stakeholders are making concerns the Assembly's having the opportunity to vote on or influence any change. The table that we sent you shows that our Ministers have conceded that, so we are content to amend clause 1(3).
1157. **The Chairperson:** The terms of reference also refer to 1945, so that will require —
1158. **Ms Smith:** Yes, I think that we can just take it onwards from the point at which 1945 is mentioned.
1159. **The Chairperson:** As a schedule? There is no consensus.
1160. **Mr Eastwood:** I want to consider it further and come back next week.
1161. **The Chairperson:** Yes, but at the moment, it looks as though there is no consensus for putting the terms of reference as a schedule to the Bill or in the Bill.
1162. **Mr Maskey:** I think that we heard from Anthony Hart that he was not enamoured with that one either.
1163. **The Chairperson:** Clause 1(4) refers to 1945, but we are taking the revised date as read.
1164. **The Committee Clerk:** This is the key point at which the terms of reference are brought in to the Bill, and there are a number of issues around that, not just the 1945 start date. It might be worth looking at those issues now, given that this is the point in the Bill at which the terms of reference are referenced.
1165. **Mr Maskey:** We are not agreeing to put the terms of reference in the Bill.
1166. **The Committee Clerk:** No, but a number of issues came up in the evidence submissions that we heard over the weeks that relate to the terms of reference themselves, as opposed to clauses. Such issues include the inquiry's power to make findings and recommendations, which is set out in the terms of reference.
1167. **The Clerk of Bills:** It may be worth noting that, in addition to the changes to the terms of reference with regard to the 1945 date, this may be a relevant point in the Bill for the Committee to seek to amend the terms of reference via the Bill. So, this may be the point at which you would wish to consider any issues with the terms of reference that have arisen.
1168. **Mr Givan:** If the Committee does not want to have the terms of reference explicitly in the Bill, it is not necessary for the Committee to look at the terms of reference. That is ultimately a matter for the Ministers. If the Bill is not going to not spell out the terms of reference, you are asking us to do a piece of work that I suspect will not be necessary.
1169. **The Clerk of Bills:** It is entirely a matter for the Committee, but it could seek to use the Bill to amend or make other changes. It could use its report to make other recommendations if it did not wish to amend. So, a number of options are open to the Committee, but this is a

- relevant point in the issues about the terms of reference that you discussed.
1170. **The Chairperson:** It is a question of whether we want to go through the terms of reference and take on board the responses to the consultation process that we ran, or whether we are, effectively, going to ignore them.
1171. **Mr Kinahan:** What will decide whether they are in the Bill?
1172. **The Chairperson:** The terms of reference?
1173. **Mr Kinahan:** Yes.
1174. **The Chairperson:** We will have to form an opinion, but I do not see quite where it is sitting.
1175. **Mr Givan:** I do not have an issue with discussing the terms of reference. To me, these are two separate pieces of work. If we decide that the terms of reference will not be explicit in the Bill, we will go through what will be in the Bill clause by clause. Perhaps we can compile the overall Committee report and consider all the issues that relate to that paper as a strand of work. However, that then means that that becomes separate from the Bill.
1176. **The Committee Clerk:** It is the fundamental nature of the terms of reference, because the Bill, obviously, refers to them. The issues form a significant part of the evidence that the Committee heard. Whether the Department is minded to make any changes to the terms of reference is maybe something that the Committee would want to elicit from officials or ask officials to find out from the Ministers at this stage.
1177. **Mr Eastwood:** Your point is valid. A lot of the issues that we have been talking about over the past number of weeks are in the terms of reference. One of my concerns at the very beginning was, for example, whether we will be able to talk about the terms of reference. Will we be able to amend them if they are outside the Bill? Some of these questions may be answered if the Department is willing to change the terms of reference. I suppose that we would need to know that at the outset. Sir Anthony Hart said last week that it would be very useful even if making recommendations for legislation were spelt out. There are a number of other issues.
1178. **The Chairperson:** We have spent considerable time asking people to respond to our consultation process, and they have put in a degree of effort to respond. Would members be content if we very quickly ran through —
1179. **Mr Maskey:** My real concern is that most people who made their submissions did not say, “I do not like that bit of the terms of reference.” What they actually said — I do not agree with this — is that they thought that OFMDFM was taking too much power on itself and that, therefore, we needed some checks and balances. In my view, if we are going to discuss the terms of reference, we will be here for a month and we will probably not agree on them. Maybe we will, or maybe we will not; I do not know. The idea of putting the terms of reference in the Bill will hold this up. Anthony Hart made the point that if you want to change it, it is in legislation, it is prescriptive and it is a much more difficult job. So, on that basis, I am happy with them as they are. I am further happy that any changes to the terms of reference will have to be done through OFMDFM or inspired by the chair of the panel’s seeking to change them by putting them through the Executive and Assembly by affirmative procedure, which is quicker. I am not sure what we are now —
1180. **The Chairperson:** There are two issues. It is clear that the Committee’s mood is not to put the terms of reference in the Bill. The other issue is whether we are listening to what people whom we asked to respond are saying about the terms of reference.
1181. **Mr Eastwood:** With respect, Alex, you are not happy with the terms of reference because you said that you do not think that 1945 is a suitable date. That is in the terms of reference. With

- all the comments that have been made in the past number of weeks, it may be useful if the Department could tell us what changes or proposals it is finally prepared to make, given what we have said about the terms of reference. That might inform this debate a bit more.
1182. **The Chairperson:** Maggie, do you have anything to say about where the Department is with the terms of reference? The date of 1945 has been moved. What about the end date of 1995?
1183. **Ms Smith:** Ministers have no plans to change the end date. The inquiry chairman talked about that in his previous meeting with you. Changing the end date would change the inquiry quite significantly. We talked previously about the change in regime that happened as a result of the Children Order and about the importance of the core meaning of the terms of reference, which are about dealing with historical issues.
1184. **The Chairperson:** We had about a dozen responses about the inquiry's power to make findings and recommendations. Sir Anthony said that although it was implicit in the Bill, he would not have difficulty with its being made explicit.
1185. **Ms Smith:** Yes, this is the inquiry's latitude to make recommendations that are about current legislation, policy or practice. Again, the Ministers' view is that that is implicit in the terms of reference, and there is an expectation that it would be reasonable for an inquiry, in making its report, to cover quite a lot of ground and to make recommendations. Inquiries make findings and recommendations about systemic failure, so that gives you a certain amount of latitude to comment on the system.
1186. **The Chairperson:** We also discussed with him the idea of redress and delay, particularly the fact that some victims are now older.
1187. **Ms Smith:** Yes, that included the discussion that you had about an interim report, which may be what you are referring to. The inquiry was set up to inform thinking. Ministers and the Executive set out in the terms of reference what they wanted to be informed about, and they set the inquiry a three-year timescale for bringing forward its report. Redress is one of the areas that the inquiry has been asked to make recommendations about. Sir Anthony made the point that, if there were an interim report, he would be being asked to make conclusions without actually completing his inquiries. The Ministers' view is that the inquiry has been put in place to fulfil the terms of reference, and that includes bringing forward reports that deal with all the areas on which recommendations are required and the idea that there would not be any expectation of an interim report. We are not expecting any conclusions in the middle of the inquiry.
1188. **The Chairperson:** Are members content with that?
1189. **Mr Eastwood:** I am not completely content. I have seen other inquiries run and run, and I am constantly mindful that a lot of the people involved in this are of a certain age. I know that Sir Anthony Hart's response last week was that he did not want to be obliged to do it, but we could allow him to do it without obligation if he felt that it were possible at a particular point. The quicker that we get to the redress issue, the better. There are people out there who are at the end of their life, and they want something to pass on to their children. I understand that it may be very difficult, but, if possible, there should be an opportunity for an interim report.
1190. **Mr Maskey:** I understand the sentiment entirely, but who is to say that the inquiry will take as long as is set out in the Bill? With a bit of luck, it could conclude earlier; who knows? It could end up requiring more time, in which case the panel will make that request. Broadly speaking, I was satisfied with what I heard, including from Anthony Hart. I specifically asked him whether anything in the Bill or the terms of reference would preclude him doing a very thorough job. I think that I heard

- him say “No” very clearly, and that, in a way, gives me some confidence. This will be a public issue, and the Assembly is, rightly, well across it. I do not think that anyone will be able to hide from this one, and I do not think that anyone intends to try, for that matter.
1191. I am very confident about the way in which the Assembly has dealt with it so far. It is a very difficult and complex issue. You could feel the emotion in this room a couple of weeks ago, and that is even before the inquiry, or the acknowledgement forum, has sat.
1192. I accept your understanding of an interim report. Who knows? There might be. It may well be that, at some point, Sir Anthony Hart and the panel feel the need to do or say something. I believe that they will do it, if that is the case. There is nothing to stop them from doing so. So, I am satisfied from that point of view.
1193. **The Chairperson:** I think that I have been clear, Alex. My view is that although I accept that all the victims are individuals and that you cannot class them as an homogenous group, it could easily be the case that, early on, Sir Anthony may reach an opinion that something could be done that would help a majority of victims, possibly even a large majority of them. In that case, I would not want the process to hold him back. He should not have to wait until the very end of the process before any action is taken. Is that a reasonable point, Maggie? Has the Department taken it on board?
1194. **Ms Smith:** Yes. The terms of reference set a very clear timescale within which the inquiry must report. This is a big issue, and lots and lots of work needs to be done. The inquiry must do a lot to produce its report within the timescale that is set out in the terms of reference.
1195. Although we understand the sense of urgency, if there were a built-in requirement for an interim report with conclusions, that would make the inquiry’s job very difficult. It would also build in an extra step, which would be an extra report that is not required at the moment and that would make it more difficult for the inquiry. It would build in the extra time that the inquiry would need to reach its final conclusion. So, it would actually lengthen the process.
1196. **The Chairperson:** OK. Let us leave aside the submission of a formal report. What if Sir Anthony and his team concluded after three months that a specific action in the area of redress could be taken? Could he go to the Ministers? Would he get a sympathetic ear?
1197. **Ms Smith:** I cannot comment on specifics or on what he may or may not think within three months of starting the inquiry. I can tell you that there is open communication, and it is clear that, if Sir Anthony had an issue or point that he wanted to bring to the Ministers, they would, I am sure, be very pleased to hear from him. However, that is a general point. I cannot say anything about specifics.
1198. **The Chairperson:** There does not seem to any great appetite around the table for an interim report, although Colum, you —
1199. **Mr Eastwood:** I just do not want the inquiry to be precluded from providing an interim report if it were possible. I accept the point that it might not be a good idea to oblige it to do so.
1200. **The Chairperson:** On the previous point, are members content that the power to make findings or recommendations about how current systems operate is implied and does not need to be written in explicitly?
1201. **Mr Eastwood:** Again, Chair, I would like to see it written in explicitly. I think that Sir Anthony Hart agreed with that.
1202. **The Chairperson:** Yes. I think that he felt that it would do no harm. Does anyone else wish to comment? Shall we say that we would like it to be made explicit?
- Members indicated assent.*
1203. **The Chairperson:** Maggie, can I take you on to the question of the nature of reparation or redress? You know that Survivors and Victims of Institutional

Abuse (SAVIA) has challenged the use of the word “desirability” and pointed to international law. It says that this goes beyond desirability and is an obligation. What is the Department’s position on that?

1204. **Ms Smith:** Our position is that the terms of reference are asking the inquiry to look at the system that pertained at the time, listen to people’s experiences, reach certain conclusions about whether there were systemic failings and think in that context about whether there is a need or desirability for redress. That is a different context from that of international law, to which SAVIA may have been referring. If I understand it correctly, the point that SAVIA is making refers to situations in which liability has been established, whereas, in our case, we are talking about an inquiry. It is very clear in clause 1 that it is a public inquiry, not a mechanism for establishing either civil liability or criminal liability. The point that SAVIA is making does not apply in quite the same way in the context of the report.

1205. The junior Ministers are saying that it is an open question and are telling the inquiry to explore the issues and tell them what it sees as being required and what it sees as being desirable for redress. It will then be up to the Executive to decide the way forward.

1206. **The Chairperson:** Are members content?
Members indicated assent.

1207. **The Chairperson:** We have had some submissions on the definitions of “institution” and “abuse”.

1208. **Ms Smith:** The Ministers feel very strongly that it is important not to define “abuse”. There are many different forms of abuse. I have read the reports coming out of some of the institutions, and it seems that there are all sorts of permutations and possibilities and dreadful things that people have experienced. To try to tie those down and fit them within particular definitions could prevent some people from being heard in the inquiry. The people who come to the inquiry will know that they

have been abused; they will know what their experiences were. If the inquiry is to discover what happened in the institutions, it is important that it be open in its approach and that it have the opportunity to hear a wide range of experience.

1209. I was particularly struck by what Sir Anthony said to you last week when, given his extensive experience as a judge, he talked about the things that people do to one other and the fact that even he could come up against new, dreadful things that people do to one another. That underlines the point that the definition should be as open as possible.

1210. **The Chairperson:** Are members content?
Members indicated assent.

1211. **The Chairperson:** What about the definition of “institution” and the scope of the Bill?

1212. **Ms Smith:** We are talking about institutions in which children lived all the time. We are talking about children’s homes, borstals, training schools, and so on. We are not talking about foster care or adoption settings, schools, holiday camps and those sorts of things. The inquiry will focus on the institutions of the type that are set out in the definition.

1213. **The Chairperson:** We have received many submissions that state that the process will, hopefully, bring comfort to a block of people but that there will be another block who remain on the outside. Is it too early to ask whether a second process is under consideration?

1214. **Ms Smith:** A second process is not under consideration at the moment.

1215. **The Chairperson:** Are members happy with the definitions of “institution” and “abuse”?

1216. **Mr Maskey:** We are, given what we are trying to do here. It is likely that the Committee will want to make some recommendations on how other elements might be dealt with. Maggie is saying that no other process is under

- consideration, and we have to get through the Bill, but, after that, we would all like to see something else to deal with the concerns of other people who will fall without the process.
1217. **The Chairperson:** Clearly, there will be people observing our deliberations who want to hear us say that.
1218. **Mr Maskey:** Absolutely.
1219. **Mr Kinahan:** They want us to leave the door open.
1220. **The Chairperson:** There was some debate about the publication of the report, Maggie. Can you offer us clarity? Sir Anthony was pretty clear that, as a general rule, the chair will have charge of the publication of the report.
1221. **Ms Smith:** Yes; absolutely. That is the expectation.
1222. **The Chairperson:** On the duration of the inquiry, can Sir Anthony not only say that he needs more time to write the report but that he needs a little bit more time because so many people are coming forward?
1223. **Ms Smith:** He can. The terms of reference state that if the chair asks for a reasonable extension, it will be granted. That applies to any stage in the inquiry.
1224. **Mr Eastwood:** Can it be written in that the chair, Sir Anthony, will be publishing the report?
1225. **The Chairperson:** Members?
1226. **Mr Eastwood:** I have seen cases in which months have been spent trying to get a Government to publish a report. We may see that again, so it is far healthier to ensure that responsibility for publication is explicit. I am not saying that it will happen this time, but we have to be aware of precedents.
1227. **The Chairperson:** There are no objections to that.
1228. **Ms Smith:** We are happy to take that suggestion back.
1229. **The Chairperson:** Members, are we happy that the existing drafting allows the necessary scope when it comes to the duration of the inquiry?
1230. **Mr G Robinson:** That was Sir Anthony's consideration.
1231. **The Committee Clerk:** Therefore, members are happy with the assurance on the duration of the inquiry.
1232. **The Chairperson:** The long title will be amended with regard to "1945".
1233. We are content with clauses 1(1) to 1(4) and the amendment to the start date.
1234. Clause 1(5) makes it clear that the inquiry panel must not rule on, and has no power to determine, any person's civil or criminal liability. I refer members to page 16 of the consultation responses. The Department's response and the inquiry chair's comments are there as well, both of which anticipate the inquiry working with the police and social services where appropriate. Where an investigation is to ruling and determination of civil or criminal liability, do members have any comments? Are members content with clause 1(5) as it stands?
- Members indicated assent.*
1235. **The Chairperson:** Clause 2 deals with the appointment of members to the inquiry panel. No issues were raised during our consultation. Are members content with clause 2?
- Members indicated assent.*
1236. **The Chairperson:** Clause 3 deals with the duration of inquiry members' appointments, including Ministers' powers to terminate appointments. Submissions on the clause are on page 18 of the summary table and highlight the impact on the inquiry's independence. The Department's response emphasised the reasonable grounds that the First Minister and the deputy First Minister would be required to demonstrate in order to terminate the inquiry. Those grounds, in the Department's view, could not threaten independence. Moreover, the

Department's response emphasised the requirement to consult the chair before taking that action. Are members happy with the clause?

Members indicated assent.

1237. **The Chairperson:** Clause 4 deals with assessors. No issues were raised. Are members content with the clause?

Members indicated assent.

1238. **The Chairperson:** Clause 5 gives Ministers a power to bring the inquiry to an end. Again, the consultation highlighted concerns about the powers of the First Minister and the deputy First Minister to end the inquiry and the effect of that on the inquiry's independence. I refer you to the bottom of page 18 of the summary table, where the Department has advised that the clause is seen as "a safeguard for unforeseen circumstances".

1239. **Mr Eastwood:** I am still uncomfortable with that.

1240. **The Chairperson:** Do you have an alternative proposal?

1241. **Mr Eastwood:** I will come back to you on the wording.

1242. **The Chairperson:** An option would be to suggest that any ending of the inquiry be subject to affirmative resolution by the Assembly. Therefore, the Ministers would have to come to the Assembly to make the case, after which the Assembly would decide.

1243. **Mr Eastwood:** That would be much more preferable.

1244. **Mr Maskey:** I am not entirely sure about that. The terms that I have read set out the circumstances in which the inquiry could be ended, which are OK. I am prepared to look at an alternative option, such as that suggested. We have to strike a balance between allowing the inquiry to proceed and allowing normal good governance arrangements to be in place without having to run to the Assembly every five minutes. If we were to get to a situation in which someone was talking about bringing the inquiry to

an end, it would be a major issue, so it is not something that is going to happen with the stroke of a pen.

1245. **Mr Eastwood:** That is the point. If it is such a major issue, the Assembly should have some sort of control over it.

1246. **The Chairperson:** Another option would be to say that the inquiry could be brought to an end on the decision of the First Minister and the deputy First Minister, with the agreement of the chair.

1247. **Mr Eastwood:** I prefer your first option.

1248. **Mr Maskey:** Theoretically, the chair could be a problem.

1249. **The Chairperson:** That is true.

1250. **Mr Maskey:** We are talking about unforeseen circumstances. The clause is a safeguard.

1251. **The Chairperson:** It is such a big issue, Alex. Would you not expect it to come to the House?

1252. **Mr Maskey:** I would expect there to be massive uproar in the first instance. I do not have a problem with the clause. I am prepared to look a reasonable alternative.

1253. **The Chairperson:** If the terms of reference could be changed only through affirmative resolution, it would be consistent to do the same with bringing the inquiry to an end.

1254. **Mr Eastwood:** You have to think about the potential for future inquiries that OFMDFM or any other Department might have more of a stake in. I am not sure that setting a precedent whereby the relevant Ministers could close the inquiry down is a good idea.

1255. **The Chairperson:** I would certainly support a requirement for any end to the inquiry being subject to affirmative resolution.

1256. **Mr Maskey:** I would like to hear the Department's thoughts on this.

1257. **Ms Smith:** As we have explained before, the clause is very much a safeguard. Our expectation is that the inquiry will

- run its course, complete its terms of reference, publish its report, and all the rest of it. We do not really see the need for affirmative resolution on this.
1258. **Mr Eastwood:** Therefore, you do not expect it to happen?
1259. **Ms Smith:** No.
1260. **Mr Eastwood:** What is the harm in having it in, then? I do not expect it to happen either, but legislation is about ensuring that, if you get to that point, there is a measure that you can take. It should be done properly. If you do not consider it to be a possibility, what is the harm in ensuring that there is the extra safeguard of the Assembly?
1261. **The Chairperson:** It would probably bolster public confidence if, instead of being the decision of the two MLAs in the highest positions, all 108 MLAs had input.
1262. **Ms Smith:** You mentioned the agreement of the chair. As the Bill is drafted, clause 5(3) states:
- “the First Minister and deputy First Minister acting jointly must consult the presiding member.”*
- Clause 5(4)(b) states that they must:
- “lay a copy of the notice, as soon as is reasonably practicable, before the Assembly.”*
1263. Therefore, it is not that they would do it without informing the Assembly. They would inform it.
1264. **Mr Eastwood:** I think that we would all know that they had done it, but the difficulty is that we would not have any say in it.
1265. **The Chairperson:** Yes. Consulting is one thing, Maggie, but agreement is another. I well remember as a victims’ commissioner being told, “Mr Nesbitt, you are free to give me advice, but Ministers do not have to accept it.” Personally, I think that it would boost public confidence if it were subject to affirmative resolution in the House.
1266. **Mr Givan:** At this point, I do not have a position on it. Outside of this particular inquiry, I would be interested to see how other inquiries are established and whether there is ever provision put into legislation that termination of them is subject to the approval of whatever Parliament is involved, not just the Northern Ireland Assembly. I would be keen to have a look at that, because if we do it for this inquiry, it may set a precedent for any future inquiry announced by a Department. That is a technical, or principled, look at whether we should do this.
1267. The issue is whether the First Minister and the deputy First Minister should announce the end to an inquiry. They come at this having established it, in the spirit of establishing it, so I do not think that they are going to end it. To then insist on an affirmative resolution procedure in the Assembly, after the two largest parties had done that, makes no sense. You say that it is an issue of public confidence. However, if the First Minister and the deputy First Minister have done it, it is natural form that the Assembly will do it, by virtue of the way that this place works. I just think that we need to be careful not to make an issue out of something that may not really be an issue.
1268. Before I take a firm position on this, I would be interested to see how legislation applies to other inquiries by other Parliaments with regard to using the affirmative resolution procedure.
1269. **The Chairperson:** What happens with public inquiries? Could anyone have brought the Saville inquiry to a close?
1270. **Mr Eastwood:** I do not know, off the top of my head.
1271. **The Chairperson:** Was it not autonomous?
1272. **Mr Eastwood:** It was, largely, but, then again, Saville was not allowed to publish his report. He had to spend months trying to get the Government to do it
1273. **The Chairperson:** Are members content that we do a bit of research in the next week?

Members indicated assent.

1274. **The Committee Clerk:** *[Inaudible.]*
1275. **The Chairperson:** It is up to Maggie whether she wants to take that back to the Department.
1276. **Ms Smith:** Yes, we can take that back.
1277. **The Chairperson:** Clause 6 deals with evidence and procedure, particularly how the chair must act with fairness and with regard to the need to avoid any unnecessary cost, whether to public funds or to witnesses or others.
1278. The concerns are at pages 19 and 20 in the summary table. It states:
“The Department advised that the Budget has been revised ... to £15m-£19m to reflect complexity of issues and estimated legal costs.”
1279. Have members any points to raise at this stage on that?
1280. **Mr Kinahan:** Will it have to be revised again, Chair, given the fact that we may have just extended it?
1281. **The Chairperson:** Are you asking why it has been revised?
1282. **Mr Kinahan:** No. When it comes to this, the Department will have to be aware that it will cost more. We have extended the scope of the inquiry to 1922.
1283. **The Chairperson:** What are the additional costs of starting in 1922? I would not anticipate huge additional costs. Maggie?
1284. **Ms Smith:** No. If the start date is changed, that will make a difference to the judicial or statutory element of the inquiry, but it will not have any impact on the cost of the acknowledgement forum, because that already has the latitude to hear people who are in the pre-1945 situation.
1285. When we looked at the costs, we built in a certain amount of latitude, as you can see from the range of £15 million to £19 million. The difference that would be made by changing the start date would fall well within those parameters. It would not make a difference to the cost.
1286. **Mr Eastwood:** The chair will avoid unnecessary cost anyway, and I am highly concerned that that should be taken into account but should not necessarily be seen as an overriding factor. Getting to the truth and ensuring that everyone has an opportunity to have their say and to be represented properly should be the most important element of it. I am concerned that the potential is there for decisions to be made that may not allow everyone to come forward, if cost becomes an issue.
1287. **The Chairperson:** Do we have a recommendation for change here?
1288. **Mr Eastwood:** Potentially. I might come back to you.
1289. **The Chairperson:** OK.
1290. **Mr Givan:** I think that it is reasonable if the cost is necessary. The legislation allows for that to take place. There just needs to be a justification given by the presiding member that the expenditure is necessary.
1291. **Mr Maskey:** I think *[Inaudible.]*
1292. **The Chairperson:** OK. Clause 7 deals with public access —
1293. **Ms Smith:** Excuse me. May I register a point here? The Department may bring forward an amendment to clause 6. We will be able to inform you about that next week. It would not be to change what is there but to add in something more, as a result of some discussions that we have been having with the chair. We will know for definite next week what we will be doing.
1294. **The Chairperson:** Will it be possible to get advance copy, if that is the case?
1295. Clause 7 deals with public access to inquiry proceedings. No issues were raised in the consultation. Does any member want to raise one now? No? We note that and move on to Clause 8.
1296. Clause 8 deals with restrictions on public access. The Human Rights Commission was the only respoondee in that regard. In its view:

“The Bill does not provide for representations to be made ... prior to an order being granted”.

1297. The Department’s clarification is that, under normal legal principles:

“anyone adversely affected by the making of a restriction Order should be given an opportunity ... to make a case against the making of the order”.

1298. Do members have a view on the clause? Do I take it that we are content?

Members indicated assent.

1299. **Ms Smith:** We may also be adding something to clause 8. Again, that is to facilitate the chair, and we will come back to you on that next week.

1300. **The Chairperson:** Again, we would like advance notice of that if you can provide it, even by Monday to keep the Committee Clerk happy.

1301. **Ms Smith:** I am not sure whether we will have it by Monday, but we will certainly have it back to you as soon as we can.

1302. **The Chairperson:** Thank you very much.

1303. Clause 9 deals with powers to require production of evidence and the attendance of persons. No comments were made to us on that clause. Are we content?

Members indicated assent.

1304. **The Chairperson:** Clause 10 deals with privileged information. On page 20 of the summary table, the De La Salle Order and the Sisters of Nazareth raised issues about provision for disclosure. The chair advised us:

“the Inquiry will make available to individuals/ institutions under investigation all material relating to”

1305. them and also give them reasonable time in which to consider all such material and prepare what they wish to say to the inquiry, all in advance of moving to the public hearing.

1306. The inquiry chair also advised that the inquiry would not compel anyone who

refused to answer questions, on the basis that it might incriminate him or her.

1307. Have members any views on this clause? Are members content?

Members indicated assent.

1308. **The Chairperson:** Clause 11 deals with the payment of expenses of witnesses by OFMDFM. The Department may award amounts that it thinks reasonable to a person in respect of expenses incurred, including legal expenses. On page 21 of the summary table, some concerns were raised on this issue. The Department confirms:

“The Bill enables OFMDFM to make rules subject to negative resolution”,

1309. which will be subject to consultation. The power to make the rules is in clause 18(1)(c) of the Bill.

1310. The Examiner of Statutory Rules has given advice to the Committee indicating that there is an argument that these rules, relating to awards of expenses:

“should be subject to draft affirmative procedure.”

1311. Clause 11 gives OFMDFM “a wide administrative discretion”. The Examiner also highlights that clause 18(2) deals with the arrangements for the assessment of expenses and for having such assessments reviewed, and suggests that we “may wish to probe” that relationship between clause 18(1)(c) and clause 18(2), and whether there is any conflict between the “wide administrative discretion” in clause 11 and the arrangements envisaged in clause 18(2).

1312. Maggie, can you give us a steer on those issues?

1313. **Ms Smith:** Clause 11 gives OFMDFM the power to pay witnesses’ expenses. That includes the reimbursement of legal fees in certain circumstances. The rules will set out the detail of that. When I say “detail”, I mean that it is extremely detailed; it is down to the minutiae of how that process would work and the details of when applications would be

- made for fees, how the fees would be paid and the sort of information that lawyers or barristers would need to provide when making their claims.
1314. Those rules, as you observe, are made under clause 18. We are drafting those at the moment, and that is something that we will be coming back to the Committee with. The Committee will have the opportunity to go through those rules in detail. They will be subject to public consultation in the usual way.
1315. Although there is a certain latitude in making the rules, they need to reflect good practice in the management of public money. They are much more banal than perhaps they sound in the way in which they have been described.
1316. **The Chairperson:** What about the opinion of the Examiner of Statutory Rules that it would be better to have affirmative resolution procedures than to have negative resolution?
1317. **Ms Smith:** I think that they are very detailed for affirmative, because they are getting down to such things as when lawyers have to produce their claims, where the claims need to be sent to, where information from the inquiry is sent back to them, and so forth. They are extremely detailed.
1318. **Mr Givan:** I have a few points. Maggie, it is good to renew acquaintance with you.
1319. **Ms Smith:** Indeed.
1320. **Mr Givan:** You have moved on to bigger and better things. I worked with Maggie in the Department of the Environment (DOE). OFMDFM is in safe hands with Maggie in charge, from my experience in DOE.
1321. **Ms Smith:** Thank you very much.
1322. **Mr Givan:** When the rules come forward, you will bring forward statutory rules to the Committee. Those statutory rules will then govern the practice of all these payments and expenses. Is that how you intend to do it?
1323. **Ms Smith:** Yes.
1324. **Mr Givan:** Ultimately, the Committee could strike those down, whether by negative resolution or the affirmative resolution procedure.
1325. **Ms Smith:** It could.
1326. **Mr Givan:** Who will assess the award that would be made to lawyers and solicitors in the process? Would it be the presiding officer of the panel? When people submit their fees, who is going to assess whether they are justifiable? Would it be the Department?
1327. **Ms Smith:** It is a two-stage process. First, the Department will set out the parameters and the rules, and they will be subject to scrutiny and public consultation, as I said. If, under the rules, someone is eligible to have legal representation paid for from the public purse, the decision around how much time that person would get would be a decision for the presiding member of the inquiry to make, rather than the Department. The reason for that goes back to the whole idea of the principle of fairness and making sure that people have the opportunity to give their best case and protect themselves from self-criminalisation. It would be the inquiry, the legal team in the inquiry and the chair of the inquiry who would understand the points that have to be answered in any particular case. They will make an assessment of the points and the evidence that they have. On the basis of that, they will be able to judge how much advice, time or representation any individual witness would need.
1328. **Mr Givan:** I accept that Sir Anthony Hart will know very well the type of work involved. That was my question: whether it would be him. I know that the taxing master usually adjudicates on criminal legal expense claims in respect of court proceedings. My question was about whether it was going to be Sir Anthony Hart or the Legal Services Commission and the taxing master that would do it.
1329. **Ms Smith:** In the first instance, it would be the inquiry, because it will be the expert on the information and evidence. In the subsequent situations that we are

- talking about, there would need to be some sort of higher adjudicator, and that would be the taxing master.
1330. **Mr Eastwood:** The Bill states that OFMDFM will be awarding amounts and deciding on all these issues. In answers to questions, you have stated that that will rest with the inquiry itself, but that is not really clear in the Bill, unless I have missed it.
1331. **Ms Smith:** The way in which the Bill is drafted focuses on the higher level and the setting of the parameters. Within and underneath that, there are decisions to be made by the chair of the inquiry.
1332. **Mr Eastwood:** I would need to think a wee bit further about that, Chair, before committing to a decision on it.
1333. **Mr Givan:** For clarity, the legal costs are going to come from the Department; they will not be coming out of the Legal Services Commission's legal aid budget or anything like that. It will be a separate budget to deal with any expenses associated with the inquiry. Is that correct?
1334. **Ms Smith:** That is correct. In fact, there is no legal aid entitlement for inquiries, so it is part of the budget of the inquiry.
1335. **The Chairperson:** To finish this off, members, the Examiner suggested that we might want to move from negative to affirmative resolution. I do not sense any great appetite for that.
1336. Clause 12 relates to the payment of the inquiry's expenses by the Department. Page 22 of the summary table lays out the concerns raised by stakeholders including Amnesty, the Human Rights Commission and others. Again, the underlying issue is one of the independence, or the perceived independence, of the inquiry, given the power to give notice to the inquiry that OFMDFM considers that it is acting outside its terms of reference and that the expenses will not, therefore, be met in relation to those activities. The Department has advised that the withdrawal of funds would happen only in the highly unlikely event of the inquiry persisting in activities that were outside its terms of reference. I suppose that it is not inconceivable that there could be a stand-off over the interpretation of the terms of reference. Have you anything to say on that, Maggie?
1337. **Ms Smith:** In this context, it is perhaps worth reminding ourselves of the process that we went through to reach the terms of reference. The Ministers had quite a detailed discussion with the chair about those. The terms of reference were agreed with the chair before they went to the Executive. I am confident that there is a shared understanding of what the terms of reference are about. Clearly, there is also a shared understanding in the terms of reference that it is for the chairman to direct the conduct and procedure of the inquiry, so we believe that it is highly unlikely that the inquiry will operate beyond its remit. Built into that clause is the first step that the Department would take if it believed that the inquiry were operating outside its terms of reference. The first thing it would have to do would be to draw that to the attention of the inquiry, at which point there would have to be a discussion, and so on. It would be very extreme circumstances if the inquiry were to persist in operating outside its terms of reference.
1338. **The Chairperson:** Are members content with that?
- Members indicated assent.*
1339. **The Chairperson:** There were no comments in relation to clause 13 or clause 14, which concern offences and enforcement by the High Court. Unless members have comments, we will press on to clause 15, which concerns immunity from suit for the inquiry panel members and staff, as well as immunity in relation to defamation for those making statements to the inquiry and for reports of the inquiry's proceedings. The Department has clarified that the acknowledgement forum will feed into the judicial aspect of the inquiry, that the inquiry will test the robustness of the evidence that it considers, and

that those processes are matters for the chairperson. The chair commented that any inquiry into a matter of public interest that sits in public involves the risk of unsubstantiated allegations. It is the duty of the inquiry to ensure that only allegations that appear to be of substance are made. Are members content with that?

Members indicated assent.

1340. **The Chairperson:** Clause 16 concerns the time limit for judicial review of 14 days. We heard legal advice earlier. Some concerns were expressed about the shortening of the timescale. The Department and the chair stated that they felt that two weeks was sufficient, and the legal advice seemed to suggest that one week could probably be stood over legally. Are members content?

Members indicated assent.

1341. **The Chairperson:** No stakeholder submissions were received on clause 17, which concerns the power to make supplementary provisions. The Examiner of Statutory Rules gave advice to the Committee and highlighted that the Department's delegated powers memorandum states that the power could amend, modify or repeal any statutory provision. The Examiner suggests that, given the intended width of the power, it would be appropriate to amend clause 17 so that, where an order amended, modified or repealed any provision of primary Northern Ireland legislation, it should be subject to the draft affirmative procedure. Maggie, would you like to address that?

1342. **Ms Smith:** It is worth saying that that power is not nearly as wide as it may first appear. The purpose of the power is not to give us a broad ability to make any subordinate legislation that we feel like; it is a safeguard. It can be used only to fill in a gap. If, at some point during the process of the inquiry, it were discovered that something that should have been in the legislation is not, and that there is a small gap, that would be the situation in which clause 17 could be used. It could not be used to

introduce any sort of sweeping powers that would fundamentally change things; that would require a full amendment to the legislation.

1343. **The Chairperson:** It is subject, under clause 17(2), to negative resolution, whereas the Examiner says that it should be affirmative. Are members content?

Members indicated assent.

1344. **The Chairperson:** Clause 18 sets out the Department's rule-making powers. We considered earlier the Examiner's suggestion that rules dealing with expenses to be paid to witnesses should be subject to affirmative resolution. We did not actually agree that. On the rules dealing with evidence, procedure and documents created during the inquiry, the Examiner raised no issues about the negative resolution procedure. On that basis, are members content with clause 18?

Members indicated assent.

1345. **The Chairperson:** We will consider a group of clauses next, members: clauses 19 to 23. There were no substantive concerns about those clauses. Two institutions commented on the reference in clause 20 to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. Do members have any issues that they wish to raise in relation to clauses 19, 20, 21, 22 or 23?

1346. **Ms Smith:** We may add something to clause 19 to clarify it. Just as a safeguard — I use that word again — we may need to amend clause 18 as a consequence of the amendments that I mentioned earlier.

1347. **The Chairperson:** Clause 19 states:
"This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland."

1348. **Ms Smith:** We may add some text to that to clarify the point.

1349. **The Chairperson:** That is intriguing.

1350. **Mr Maskey:** It is just that the Crown is likely to abdicate.
1351. **The Chairperson:** I cannot see a run to William Hill on that, Alex. Members, when we are talking, we generally refer to the inquiry “chair” or “chairperson”. Would the Committee prefer to see that terminology used in the Bill? The technical term for Sir Anthony at the moment is “presiding member”. From his first appearance at Committee, he was pretty clear that he was not entirely comfortable with being called a presiding member.
1352. **Mr Givan:** Why not? I was not here for that discussion. I am just curious.
1353. **The Chairperson:** We did not go into huge detail on it, Paul.
1354. **Ms Smith:** Ministers are aware that Sir Anthony is not terribly comfortable with the term “presiding member”. They are open to an amendment that sets out a term with which he is more comfortable.
1355. **Mr G Robinson:** Such as “chairman”?
1356. **Ms Smith:** Yes.
1357. **The Chairperson:** “Chair” or “chairman”.
1358. **Ms Fearon:** “Chairperson”.
1359. **Mr Givan:** It is usually “chairman” or “madam chairman”. The function does not change; it is just the title.
1360. **The Chairperson:** Yes. The Department will look after that. “Chairperson” seems to be the preferred —
1361. **Mr G Robinson:** The buzzword.
1362. **The Chairperson:** There is one more issue, Maggie, on the budget. The estimated cost seems to have risen from between £7 million and £9 million to between £15 million and £19 million. Last week, when we received the briefing on the October monitoring round, we were made aware that there is no actual budget line for this work. Is that the case?
1363. **Ms Smith:** Technically, that is the case at the moment, but it is really an issue of timing. The Department has the money already to see the inquiry through to the end of this financial year. The fact that it does not appear is more to do with the setting up of the systems, and so on, rather than anything else.
1364. **The Chairperson:** So the money exists, but it does not appear in the budget?
1365. **Ms Smith:** The money is in the Department at the moment. The business case kicked in on 1 October. The reason it does not appear in the budget is really more of a timing matter than anything else.
1366. **The Chairperson:** OK. On 1 October, the inquiry opened for business to an extent in asking for expressions of interest. What is the budget for the rest of this financial year?
1367. **Ms Smith:** I do not have those figures with me, but rest assured that the money is there for the rest of the year.
1368. **Mr Eastwood:** In respect of the acknowledgement forum, is there any provision for victims’ groups to be accommodated in some way in the building? Is there office space?
1369. **Ms Smith:** No. The inquiry has premises in the centre of Belfast. The acknowledgement forum, the lawyers and various staff of the inquiry are all in one building.
1370. **Mr Eastwood:** I am aware that the Department has been approached a number of times about some sort of facility for groups. Have you made any progress in that regard?
1371. **Ms Smith:** We certainly have. Michael can elaborate.
1372. **Mr Michael Harkin (Office of the First Minister and deputy First Minister):** WAVE Trauma Centre has been given a contract to provide a service on Friday mornings close to the centre of Belfast and also in the centre of Derry/ Londonderry. It will have a manned room, with some refreshments available for any victims and survivors of historical institutional abuse. It will also have trained trauma councillors on hand should anyone need to avail themselves of their services. That will begin this Friday.

1373. **The Chairperson:** That is a Friday morning session?
1374. **Mr Harkin:** Yes.
1375. **The Chairperson:** I ask members whether they feel it desirable and appropriate to request that the Department to consider, at the inquiry premises, wherever they are, that a discrete facility be made available for victims and survivors that could be their space.
1376. **Ms Smith:** Can I —
1377. **The Chairperson:** Sorry, Maggie. I am not asking you. I am asking members.
1378. **Mr G Robinson:** I agree with that.
1379. **Mr Maskey:** Last week, we were made aware of the WAVE facility. That is very welcome. I am not so sure about accommodation in respect of the acknowledgement forum. I am not against it. Obviously, if there is anything that we can do to facilitate victims and survivors, we should do it. If it is feasible and makes sense, I would certainly support it on my party's behalf. I am just wondering what that will open up. Other people might want to make requests. Could we then have a logistical difficulty in the building?
1380. **Mr Eastwood:** I would be very comfortable with it. In fact, I regard it as almost essential. As far as everyone around the table is concerned, this is all about the victims. I do not think that it should open up a can of worms. There are people doing a lot of voluntary work, and working very hard. They have basically brought about the inquiry. Thankfully, the Department has responded. If there is anything that we can do to facilitate them in their ongoing work, we should do it.
1381. **The Chairperson:** Obviously, WAVE is a great organisation. However, its services will be available on a Friday morning. Something closer to a 24/7 facility may be desirable. The consensus, Maggie, is that we ask you to take that issue back to the Department and liaise with and ask the chairperson to look at providing some sort of permanent facility — just a room — that victims know is their space in the building. It could be difficult because they feel that they are going to an institution of the state, having previously been abused by an institution. Therefore, for them to know that they have their own discrete space may be really important in being properly victim centred in our approach.
1382. **Mr G Robinson:** If victims want to get in touch with people, is there a confidential telephone number that they could use to make contact?
1383. **Ms Smith:** Yes. There is a telephone number that people can ring to register that they would like to get in touch with the inquiry. When people ring that number, some simple information is taken. A little booklet is sent to them that tells them about the inquiry. It explains the acknowledgement forum. It also explains the statutory element of the inquiry. That gives them the opportunity to fill in a form and return it to the inquiry. That allows them to register with the inquiry that they would like to come and speak to it. The form sets out just a little bit about them: who they are, how old they are, and which institutions they were in. The other way that people can get the form is from the inquiry website. Its address is www.hiainquiry.org. If people log on to that website, they can download a copy of the form. Alternatively, they can go onto the NI Direct website, which has a link that will take them to the form. Therefore, people can register an interest with the inquiry through any of those means.
1384. **Mr G Robinson:** Is it all strictly confidential?
1385. **Ms Smith:** It is absolutely confidential; yes.
1386. I would like to return to the point about the inquiry being victim centred in its approach. That is absolutely vital. It has certainly been at the heart of Ministers' thinking throughout the time that they have spent, first, working with the task force and, more recently, in setting up

the inquiry. Ministers have been very conscious of the needs of victims in designing the inquiry and ensuring that the terms of reference reflect the ideas that victims and survivors have contributed all the way through. Part of what will happen when people contact the inquiry, and throughout their involvement with it, whether it is the acknowledgement forum or the statutory element, is that there will be dedicated inquiry support staff to help people through the process. The staff will look after them from the point when they establish appointments, make arrangements to meet the acknowledgement forum, and while they are in the building. They will ensure that they get a cup of tea and that they know their way home — all those sorts of things. There will be dedicated staff to ensure that people are looked after throughout the process.

1387. **The Chairperson:** I have no doubt about that, Maggie. I also have no doubt that the personnel will be the right people for the job.

1388. The facility is a slightly different issue. It would give them a space that they can say is theirs. Ultimately, the inquiry is an organ of the state. Think of the people whom we are trying to help: they were abused by institutions. Otherwise, we would not be here. The Committee has recommended unanimously that we ask the Department and the chair to look at trying to provide that space.

1389. **Ms Smith:** We will certainly take that back to the Department.

1390. **The Chairperson:** I appreciate that. Are we content, members?

Members indicated assent.

1391. **The Chairperson:** Cathy, Michael and Maggie, thank you very much. We will see you next week.

10 October 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Colum Eastwood
 Ms Megan Fearon
 Mr Paul Givan
 Mr Alex Maskey
 Ms Bronwyn McGahan
 Mr George Robinson

Witnesses:

Mr Michael Harkin	Office of the First
Mrs Cathy McMullan	Minister and deputy
Ms Maggie Smith	First Minister

1392. **The Chairperson:** We welcome Mr Michael Harkin, Mrs Cathy McMullan and Ms Maggie Smith from the Office of the First Minister and deputy First Minister (OFMDFM).
1393. Maggie, I am not trying to blindside you, but we were just discussing the idea of a room. Would you be content if we had a brief discussion about that first?
1394. **Ms Maggie Smith (Office of the First Minister and deputy First Minister):** Yes, certainly.
1395. **The Chairperson:** I am just trying to get my head around what happens when someone turns up at the building that will host the inquiry and the acknowledgement forum. For instance, if I were to arrive, could I bring someone with me?
1396. **Ms Smith:** Yes. You would have an appointment to come and speak. Is that the scenario we are in?
1397. **The Chairperson:** Yes, just talk us through that.
1398. **Ms Smith:** First, people will have the opportunity to register, as you know. When they come to give their testimony to the forum, it will be by appointment. From the beginning of their contact with the forum, dedicated witness support officers will make sure that people understand what is going to happen, when and where they have to come, and so forth. When people come to the acknowledgement forum on the day of their appointment, the officer will be there to meet them and to make sure that they are comfortable beforehand and that they have access to some private space. Afterwards, the officer will make sure that they are comfortable before they leave, and if they want to sit and have a rest before they go, they can have the opportunity to do that. The witness support officers will also be able to provide tea, coffee and biscuits, and so on, just to look after them throughout the process.
1399. **The Chairperson:** So, if they want private space, it is available?
1400. **Ms Smith:** For the people who have an appointment with the acknowledgement forum, yes.
1401. **The Chairperson:** If that was me, and I said to the support officer that I need to be alone, that is not an issue either?
1402. **Ms Smith:** I would not think that it would be an issue.
1403. **The Chairperson:** OK. I am a lot clearer.
1404. **Mr G Robinson:** Do you mean a private waiting room of some description, where, perhaps, the person could be accompanied by a relative to talk things over?
1405. **The Chairperson:** If I said that I wanted to be alone, there is a room?
1406. **Ms Smith:** There is a space, yes.
1407. **The Chairperson:** A space?
1408. **Ms Smith:** Well, a room, yes?
1409. **Mr G Robinson:** Is it private?
1410. **Ms Smith:** Yes.

1411. **The Chairperson:** That seems reasonable. Alex, did you want to bring up anything else on that?
1412. **Mr Maskey:** No, I am happy enough from what I have heard so far that there will be facilities. From day one, you could end up having another discussion, but you are just going to have to deal with that as it arises, I presume. You can make all the best preparations, but if they do not work, you will know about it from the first victim who comes into the building for their first appointment. I do not know that you can do much more.
1413. **Ms Smith:** Yes. What I am saying to you now is the bare bones of what is going to happen. Clearly, the detail of the arrangement is something that the acknowledgement forum will have worked out very carefully. As you know, there are people on the forum who have a huge amount of experience of doing this sort of work. They have worked all this out very carefully. Obviously, I do not know all the fine details of how it is going to work.
1414. **The Chairperson:** Without asking where the inquiry will be based, will there be a reasonable amount of room for these sorts of things?
1415. **Ms Smith:** Yes.
1416. **The Chairperson:** You do not have any concerns about that.
1417. **Ms Smith:** No, none whatsoever.
1418. **The Chairperson:** OK. Thank you.
1419. **Mr Eastwood:** Did Alex say that a meeting had already been set up? I am not sure. Unless you have already organised it, have you met victims' representatives to talk them through all this stuff? It would be useful to walk them through the whole process that they are going to have to go through.
1420. **Ms Smith:** We are always happy to meet victims' representatives.
1421. **The Chairperson:** Maggie, can I ask you about the Safeguarding Board Act (Northern Ireland) 2011? The Committee for Health, Social Services and Public Safety alerted us to it. Are you aware of any correlation that we should bear in mind?
1422. **Ms Smith:** I would bow to the Health Committee's greater knowledge of the matter. The Safeguarding Board Act (Northern Ireland) 2011, as I understand it, is there to prevent maltreatment currently, rather than deal with the effects of historical abuse. The 2011 Act is about making sure that children are safe now. I can see that there is a connection, because the 2011 Act is part of the improvements — the new, more recent developments — that have been put in place to keep children safe and prevent abuse, but it does not map on to the Bill that we are looking at today.
1423. **The Chairperson:** OK. We will move on to the question of amendments. There has been quite a lot of correspondence, as might have been expected.
1424. **Ms Smith:** There has been, yes.
1425. **The Chairperson:** May I invite you to walk us through the changes in the first instance?
1426. **Ms Smith:** Certainly. I will highlight the changes first of all, if that would be convenient. Do you want me to go through the Bill?
1427. **The Chairperson:** We should look at the changes first.
1428. **Ms Smith:** OK. I will summarise those first, and then we can look at them individually in detail.
1429. I have a list of issues that you asked us for after the previous meeting. First, there was the issue of the time parameters and our Ministers' willingness to remove 1945 as the beginning of the period of interest and change it. The Committee proposed that it should be changed to 1922, and we have sent you amendments to make that change. That change affects the Bill, but also the inquiry's terms of reference, because, as you know, it was first mentioned in the terms of

- reference. Again, we have sent you amended terms of reference.
1430. When the inquiry chairman was here, you talked about the publication of the report and you had asked us to ask Ministers for an amendment to make it clear that the inquiry chairman would be publishing the report. Ministers have provided that amendment as well as two additional amendments to go along with it. So, there is a sequence of amendments after clause 10, which deal, first of all, with the inquiry chairman giving the report to the First Minister and the deputy First Minister, the publication of the report and the laying of the report in the Assembly by the First Minister and the deputy First Minister.
1431. **The Chairperson:** From memory, Maggie, the report is to be given to the First Minister and the deputy First Minister at least a fortnight —
1432. **Ms Smith:** Yes, it says two weeks or a period to be agreed between them.
1433. **The Chairperson:** — ahead of publication.
1434. **Ms Smith:** Yes.
1435. **The Chairperson:** Was there a timescale for publication?
1436. **Ms Smith:** No, there is not.
1437. **The Chairperson:** OK.
1438. **Ms Smith:** The chairman will give the report to the First Minister and the deputy First Minister about two weeks in advance. The date for publication is open, but the onus will be on the First Minister and the deputy First Minister to lay it in the Assembly as soon as is practicable after it is published. The idea is that the Assembly will officially get the report as soon as possible after it is published.
1439. **The Chairperson:** OK. Are members content?
1440. **Members indicated assent.**
1441. **Ms Smith:** You had also asked — and Ministers have agreed — to bring forward an amendment to clause 1(3) to provide that any amendment to the terms of reference should be by affirmative action. You will see that that amendment is included among the various amendments that we have provided to clause 1. Basically what it is saying is that the First Minister and the deputy First Minister can amend the terms of reference at any time, but rather than just stopping there, it now goes on to say:
- “if a draft of the Order has been laid before, and approved by resolution of the Assembly.”*
1442. So, the Assembly will need to vote in order to bring in the change, and that makes the terms of reference extremely stable.
1443. **The Committee Clerk:** Members may want to have a look at the wording of that in the letter of 9 October, which is in annex 1 of the tabled items. Members may want to cross-reference that with the Bill to see where those clauses will be inserted into the Bill.
1444. **The Chairperson:** Are members content?
Members indicated assent.
1445. **Ms Smith:** It is worth mentioning that, as a consequence of that, we also need to change clause 1(2). At the moment, the terms of reference that the Bill refers to are those that the First Minister and the deputy First Minister published on 31 May. Clearly, we now have amended terms of reference, because we have changed the date from 1945 to 1922, so the new date will have to be inserted while the Bill is in the process of going through the Assembly.
1446. **The Chairperson:** That obviously begs this question: when and how will the amended terms be put into the public domain?
1447. **Ms Smith:** Effectively, people will know now, because we are talking about this, that the Committee and the First Minister and the deputy First Minister are agreed that the terms of reference are changing.

1448. **The Chairperson:** Will the amended terms go to the Floor of the Assembly? Will they be put in Member's pigeonholes? How will that actually be done?
1449. **Ms Smith:** We will need to go back to Ministers about that as a result of this meeting.
1450. In respect of the terms of reference, you asked us whether the chairperson and the panel would have the scope to make recommendations on preventing future abuse. The recommendations are really about current law, practice, policy, and so on. As I said the last time, the Ministers' view is that that is within the scope of the terms of reference as drafted, but they took the point that it is worth bringing out the fact that the panel should be thinking about preventing future abuse. So, in the terms of reference, they have inserted some new text that asks the panel to bear in mind the need to prevent future abuse when they are thinking about their findings and recommendations. It is marked in red in the amended terms of reference.
1451. **The Chairperson:** Members, that is in the tabled papers. The amended terms of reference are on the third page under the headline, "Investigation inquiry panel".
1452. Maggie, I appreciate that we are getting there. I just want to read out the amended text. It says:
- "Bearing in mind the need to prevent future abuse, the report will make recommendations and findings on the following matters:*
- An apology — by whom and the nature of the apology;*
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;*
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;*
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims."*

It says:

"Bearing in mind the need to prevent future abuse, the report will make recommendations and findings on the following matters".

1453. However, none of the four bullet points that follow seems to me to offer the ability to make a forward-looking recommendation for future actions.
1454. **Ms Smith:** These four things are central to the recommendations and findings that the panel will make, but the Ministers and the inquiry chair have said that, within that, it is implicit that it would be acceptable for them to make recommendations that would prevent future abuse. The purpose of that additional text was to bring that point out more strongly.
1455. **The Chairperson:** I thought that there was a feeling, perhaps among a majority, if not unanimously in the Committee, and also from Sir Anthony that making it explicit would be desirable.
- "Bearing in mind the need to prevent future abuse, the report will make recommendations and findings on the following matters".*
1456. Can you say which of the four bullet points you would use to make those recommendations?
1457. **Ms Smith:** I cannot.
1458. **The Chairperson:** Could it be an apology?
1459. **Ms Smith:** I cannot pre-empt how the inquiry is going to frame its recommendations or what it is going to make recommendations about.
1460. **Mr Eastwood:** My reading of it is that it only really allows the inquiry chair to make observations on what happened in the past. I do not see why it would be very difficult to put in an extra bullet point that allows the inquiry to make any recommendations on law, practice or procedure. To me, that would make what we had asked for far simpler and more explicit.
1461. **Mr Maskey:** I am, to some extent, guided by Anthony Hart, who sat in this room and told us that there was nothing

- in the terms of reference that precluded him from doing anything. There is a danger in putting the terms of reference up for discussion by everyone, quite frankly, because you could spend a week getting a form of words, which, we would all be satisfied, allows you to do something.
1462. If I were conducting the inquiry and compiling findings about institutional or state failings, and so forth, I would have plenty of scope to make recommendations if I thought that it was necessary to make them. I am not looking at this from a minimalist point of view. I accept entirely that people might be worried that these terms of reference preclude something, but I have been assured by the chair of the panel that they will not preclude him from doing anything.
1463. I would be aghast if such a report, after such an exhaustive inquiry, did not produce recommendations. Can someone tell me that the inquiry is not allowed to do so? I do not read that into it. I think that the four points allow us to do an awful lot. If I were on the panel, I would be saying, for example, on point two, that I would be doing what I want on point two. There is no full stop and then, “in their care, and if”. It goes on to say, “and if there are failings”. To me, that reads like two parts. There is no comma there, nor is there a full stop. Are we going to get into that type of discussion?
1464. I think that the terms of reference are fine. More importantly, I have heard from the chair of the panel, who has said that he will proceed alongside his panel members. I am satisfied that we will get a result that will also bring forward recommendations. Of course, even when the report concludes, everyone else will have a job of work to do afterwards, including the First Minister and the deputy First Minister, because the report will be handed to them by the panel to be published, and so forth.
1465. People will have to make their minds up about what they are going to do afterwards. It does not stop with the report. The report, when it is finally produced, does not mark the end of the process. People will have to act on the back of the report. We are satisfied that the terms of reference do not preclude the types of things that we are looking for. I accept entirely that everyone wants to make sure that we get recommendations to prevent future abuse.
1466. **The Chairperson:** From memory, you are right to say that Sir Anthony said that the terms of reference did not preclude him, but I think that he also went on to say that he saw no harm in making it explicit.
1467. **Mr Lyttle:** Concerns were raised by Amnesty International, Barnardo’s, Contact, etc, that the Bill does not provide for making recommendations beyond that. The Department’s response contained the phrase:
- “This provides broad scope for the Inquiries recommendations and does not exclude the Inquiry making recommendations about the future.”*
1468. Perhaps that sentence would be worth considering for inclusion in the terms of reference. If there are people with concerns, it would make it explicitly clear that those types of recommendations would not, in any way, be prohibited.
1469. **Mr Eastwood:** Like you Chair, Sir Anthony said that it would, maybe, be a good idea if it were explicit. We are going to pay these people, who are experts in the field, a lot of money, spend a couple of years doing it and take all the evidence. If we are all agreed that we want recommendations to come out of it, I do not see the harm in adding an extra line to make it explicit. I do not think that anybody will lose from that.
1470. **Mr Lyttle:** It is in there already.
1471. **Mr Givan:** Chairman, to be honest, I think that we are splitting hairs. I was not here for Sir Anthony Hart’s comments, but I heard what Maggie said. If they can do that, why does it need to be explicit?
1472. I think that Alex made a relevant point. When the work is done, it will be for

- others to take forward and implement, and it will not just be down to the group to recommend how this type of thing should never happen again. There will be a duty on others to do all that work. As it is, I think that it is sufficient. It does not preclude it.
1473. **The Chairperson:** Does anyone have a fundamental objection to a fifth bullet point?
1474. **Mr Maskey:** I do not object to it, and we can put in another 20 paragraphs for all I am concerned. I am satisfied that it can do the job, but I am just pointing out that, if we go down this line, we will spend a month looking over this or that wee sentence. I am satisfied that it addresses our needs. If OFMDFM wants to include another line in it, so be it; I am happy. I am not against it.
1475. **The Chairperson:** Colum, are you suggesting that we should insert a fifth bullet point that says something like “lessons to be learned where appropriate”?
1476. **Mr Eastwood:** I would be content with that. We have spent a month on this and we are not looking to add a whole lot of paragraphs. It is one sentence. I do not see the problem with it if everyone agrees.
1477. **Mr Lyttle:** There is a fairly tidy sentence that the Department has coined that I think could be useful. It is in the table of responses.
1478. **The Chairperson:** Throw it out again, Chris.
1479. **Mr Lyttle:** It is:
“This provides broad scope for the Inquiries recommendations and does not exclude the Inquiry making recommendations about the future.”
1480. I take the point about splitting hairs. The only reason why I think it is worth considering is that a number of organisations that presented to the Committee raised concerns that there was confusion about whether that was going to happen. Given that there is a tidy sentence available, I do not think that its inclusion would, in any way cloud the brevity of the section.
1481. **The Chairperson:** Maggie, do you think it would cause the Department concern or difficulty to add a fifth bullet point?
1482. **Ms Smith:** The amendments that were provided were those agreed by the Ministers. However, if you want to write to us about it, we will certainly pass your thoughts to the Ministers.
1483. **The Chairperson:** Are members content?
1484. **The Committee Clerk:** There was a suggested form of words previously for members to consider.
1485. **The Chairperson:** We have not come to that yet.
1486. **Mr Eastwood:** Was that your proposed amendment? Is that 2B?
1487. **The Committee Clerk:** Yes.
1488. **The Chairperson:** Yes.
1489. **Mr Eastwood:** That is sensible. It only says “may report” as well.
1490. **The Chairperson:** That is one of the draft Committee amendments. It reads:
“Clause 1, page 1, line 7
At end insert—
...(2B) The Inquiry may report recommendations on changes to law, practice and procedure.”
1491. **Mr Maskey:** Sorry, where is that?
1492. **The Chairperson:** It is in Bill, Alex.
1493. **The Clerk of Bills:** These are draft Committee amendments that were prepared for the Committee, based on the decisions it took in principle last week. They are suggested texts that could achieve the objectives, as I understood them, from your decisions last week. However, we understood at that time —
1494. **Mr Maskey:** Are they in this folder?
1495. **The Committee Clerk:** They are in members’ packs at tab 5.

1496. **The Clerk of Bills:** I was aware that amendments may be coming from the Department, but I prepared these ones in advance just in case members needed them. Given what the Department has put forward, a lot of this will not now be required. It is proposed that a draft subsection could be inserted into clause 1 simply stating that the inquiry may report recommendations on changes to law, practice and procedure. That is one way of achieving the aim that has been discussed.
1497. **The Chairperson:** That sits separately from the terms of reference.
1498. **The Clerk of Bills:** It could. There is a little paving amendment just above that, at clause 1, line 5, page 1, that would insert the phrase:
- “subject to this section, the terms of reference are as stated in the statement”.*
1499. That leaves the way clear for you to put in that little statement clarifying that the inquiry could do that. The reason for that approach is that the Committee clearly does not have within its gift the power to directly amend or influence the new statement, but it could insert that into the text of the Bill to clarify its intention.
1500. **Mr Givan:** Let me just clarify, you want us to put one bullet point into the Bill.
1501. **The Clerk of Bills:** No. Clause 1 deals with the inquiry and makes a number of broad overarching structural points, including a reference to the terms of reference. So given that clause 1 reads the terms of reference and the ministerial statement into the Bill, that is where you would go if you sought to make any changes to that. Indeed, that is where the Department's amendments will go to change the reference to 1922, and so on, and to refer to the new statement. If the Committee wished to do anything else on the broad overarching powers and functions of the inquiry, such as providing for this additional power, that is one place where it could register its desire to do so. If a further amendment were made to the terms of reference that achieved that by other means, the Committee would not need to pursue its amendment.
1502. **Mr Givan:** Just to be clear, we would not include the other four bullet points in the Bill, just this one bullet point, because that is the only way that we can enforce that upon the terms of reference. Is that the tactic that is open to the Committee?
1503. **The Clerk of Bills:** This is a legislative mechanism that is open to the Committee. Given that the terms of reference are referred to in clause 1, the Committee could say, “The terms of reference are in the statement subject to the following: the inquiry may also report on x, y and z”. It is a legislative mechanism. Clearly, if the Committee had the power to amend the terms of reference directly, we would do that in preference.
1504. **Mr Givan:** It is clever device to get that forced upon the terms of reference. My only issue with that approach is elevating one issue from the entire terms of reference and putting that into the Bill. I do not think that that is right. If you were going to put the terms of reference in the Bill, you would put all of them in. I do not think that it would be wise for the Committee to take one bullet point because that is the only tactical way, legally, that we could get that in the terms of reference. That is my only observation on that.
1505. **Mr Eastwood:** That goes back to the original problem at the beginning of all this: the terms of reference are not in the Bill. There are reasons for and against that. So, I suppose that we have no other choice, unless the Department accepts our amendment as its amendment to the terms of reference.
1506. **Mr Maskey:** Taking on board some of the observations that have been made, I would prefer to ask the Department whether it wants to put in another point. I appreciate that the Clerk of Bills prepared this; it is very helpful, so thank you for that. However, if we go down the road of changing the terms of reference by way of legislation, we will start

- opening other doors. I do not think that that is the right way to go, so I do not support it at this point in time. If, next week, we are really concerned that the terms of reference as they are preclude the type of outcome we want, I am happy to support something else. However, at this stage of the game, I would prefer to ask the Department to reconsider this. Perhaps an extra sentence would satisfy people, but I would prefer to let the Department reconsider it and come back next week. Then, we will look at the legislative alternatives if needs be.
1507. **The Chairperson:** We will be looking for agreement next week.
1508. **Mr Maskey:** Absolutely.
1509. **The Committee Clerk:** To clarify, for a decision next week, we can have an amendment of this sort and we will see what the Department’s reaction is as well.
1510. **Mr Givan:** Just to be clear on this, Chairman, we will not support the inclusion of the terms of reference in the Bill, nor will we support a particular bullet point if you get it forced on the terms of reference by including it in the Bill.
1511. **The Chairperson:** Would you look at a fifth bullet point in the terms of reference?
1512. **Mr Givan:** I am happy for the Committee to ask the Department whether it would willingly put that in as part of their terms of reference. What I would not agree to — I think it is very clever and I am quite impressed with how you came up with this idea — but I would not support that approach.
1513. **The Clerk of Bills:** To clarify, the third option is, of course, to leave this as a recommendation in the Committee report. If the Committee does not wish to recommend an amendment and has not had satisfaction from the Department on the issue as it sees it, the Committee can make a recommendation that this be addressed by way of an amendment directly to the terms of reference in the forthcoming statement, which it understands to be coming from the Department.
1514. **The Chairperson:** Which has to come anyway.
1515. **The Clerk of Bills:** That would move away from the legislative approach on which some members are not so keen.
1516. **The Chairperson:** We have clarified where we all stand, I think.
1517. **Ms Smith:** The next clause for which you specifically asked for amendments was clause 21. You used clause 21 to raise the issue of changing the term “presiding member” and replacing it with “chairperson”. Several pages of amendments have been provided to do that and to make sure that the term “chairperson” is defined and that that person is defined as a member of the panel as well.
1518. **Mr Lyttle:** I am sorry to have to throw a slight spanner in the works, although it is positive. The OFMDFM letter says that the First Minister and the deputy First Minister believe that the terms of reference already cover the explicit provision for making recommendations. However, they:
“are content to make this more explicit to clarify the issue.”
1519. They are, it would appear, content to make that change, but we will go back to them anyway.
1520. **Mr Givan:** They did. That is why they put in the words:
“bearing in mind the need to prevent future abuse”.
1521. **Mr Eastwood:** There is a difference between more explicit and explicit enough.
1522. **The Chairperson:** We will certainly put that in the letter back to them. However, the change from “presiding member” to “chair” is agreed.
1523. **Ms Smith:** Yes, it certainly is.
1524. **The Chairperson:** It is entirely uncontroversial and unanimously accepted. Everyone is smiling.

1525. **Ms Smith:** Also at clause 21, we have provided a departmental amendment that makes clear that harm or damage includes death or injury. It says specifically:
- “harm” includes death or injury;”.*
1526. We have also —
1527. **The Chairperson:** Why was that clarification put in?
1528. **Ms Smith:** The chairperson asked us to put that in.
1529. **The Chairperson:** Can you inform us about his thinking?
1530. **Ms Smith:** In particular, it was to do with the reasons for restriction orders at clause 8. One of the reasons for which he is permitted to make a restriction order is in the case of harm or damage. He wanted to make it clear that it included death or injury. We put it into clause 21 to make sure that it would apply to any point in the Bill where the word “harm” is mentioned. In that way, it will apply to other clauses as well.
1531. Talking of clause 8, we have a departmental amendment that affects clauses 8 and 18, the purpose of which is to protect witnesses’ anonymity. If someone is called to the inquiry to give evidence but is concerned that they may be subject to harm as a result of people even knowing that they are going to give evidence, observing them giving evidence or knowing later that they have given evidence, the chairperson will have the option to make a restriction order saying that their identity cannot be disclosed or published. At clause 18, we have provided that —
1532. **The Chairperson:** Sorry, Maggie. I think that the Committee Clerk wants to make sure that everybody is on the right page.
1533. **The Committee Clerk:** Members, it is the letter of 10 October. The last page of that letter deals with clauses 8 and 18.
1534. **Ms Smith:** First, we have proposed an amendment to clause 8 to allow for a restriction order to prevent the:
- “disclosure or publication of the identity of any person”:*
1535. We have also proposed an amendment to clause 18, so that rules can be made to give the chairperson power to make orders to protect witnesses’ identity. Those orders will be based on orders that already exist in the criminal justice system.
1536. Lastly —
1537. **Mr Givan:** Maybe it has been covered in previous hearings, but where did that come from?
1538. **Ms Smith:** Again that came from the chairman.
1539. **Mr Givan:** So, did he specifically ask for that?
1540. **Ms Smith:** Yes.
1541. **Mr Givan:** When this is used, will it be based on the same criteria as are contained in the Criminal Evidence (Witness Anonymity) Act 2008?
1542. **Ms Smith:** It will be similar. It will provide for orders to be made in situations in which people believe that they may be at risk, another person may be at risk or there is a risk of damage to property. It is a fairly wide-ranging definition of harm. There are various mechanisms for protecting people’s identity under those orders, such as the use of pseudonyms or screening. It is about, if necessary, keeping the name of the person and who they actually are from the public while they are giving evidence.
1543. What I should say is that the chair does not envisage using those powers very often. The way that he explained it to us was that he feels that they will be rarely used, but he sees it as an important safeguard in case it is ever needed.
1544. **Mr G Robinson:** If it is there, it will be at his disposal.
1545. **Ms Smith:** Yes.
1546. **The Chairperson:** Is everyone content?
- Members indicated assent.*

1547. **Ms Smith:** Before I move on, it is probably worth highlighting that OFMDFM will be required to make rules so that, in turn, the chairman can make orders. In the normal way of subordinate legislation, those rules would be subject to public consultation and scrutiny by the Committee. They will be laid in the Assembly and go through the normal process for subordinate legislation.
1548. There will be people who want to or who are being asked to give evidence to the inquiry, who are, perhaps, unable to come to the inquiry. That may be because they are not so well, are old or live a very long way away and it would be very difficult for them to travel. The chairman has been very clear that he wants to use live TV links to facilitate those types of situations.
1549. Clause 6(1) already gives the chairman a lot of scope in how he hears evidence. However, there is an issue about what happens when people are outside Northern Ireland, and he wants to take evidence under oath. Therefore, the Department has proposed an amendment to clause 6 at page 3, line 40 of the Bill. The amendment will apply our perjury laws to anyone who gives evidence under oath from somewhere outside Northern Ireland. It will be as if they are here when they give evidence.
1550. There is some more text in that amendment, but, really, it will just put an explanation of what we mean by live TV links in the Bill.
1551. **The Chairperson:** Is that common practice? Would the Perjury (Northern Ireland) Order 1979 conflict with any laws that apply in the country the witness might be speaking from?
1552. **Ms Smith:** No. The law that will apply will be Northern Ireland law. They will be taking part in a judicial proceeding that is taking place in Northern Ireland under Northern Ireland law.
1553. **The Chairperson:** Right. I presume that the implications would extend to asking for a person's extradition.
1554. **Ms Smith:** That would be in criminal circumstances. The proposed amendment would apply to the inquiry. As it stands, and as you know, under the Bill, the chairman can hear evidence under oath from someone here. Really, the proposed amendment will extend that power to hear evidence from someone who is not physically in Northern Ireland.
1555. **The Chairperson:** OK. Are members happy?
- Members indicated assent.*
1556. **The Chairperson:** Is that it?
1557. **Ms Smith:** That is all that we have brought for you today.
1558. **The Chairperson:** I think that you have covered all the issues.
1559. **Mr Eastwood:** I have a couple of other points. Clause 5 deals with the end of the inquiry. In the same way as you have done with the terms of reference, is there any way that you could bring the Assembly in, rather than it just being left up to OFMDFM? If, for some reason that is not envisaged, the inquiry was to be closed down, the Assembly would have a say in that, rather than it just being laid before the Assembly. I think that the Assembly should be entitled to a view, for whatever reason.
1560. **Ms Smith:** You asked us about that last week, and, as I explained then, we do not expect to have any agreement on that.
1561. **Mr Eastwood:** Is there any reason for that?
1562. **Ms Smith:** The Ministers feel that it is sufficient as drafted.
1563. **Mr Eastwood:** I am just thinking about any future inquiries. It gives quite a significant amount of power to any Minister who has instituted an inquiry to stop it at any given time. In this case, I do not see any real need for it, but we need to be aware that we are laying down a fairly significant precedent. I do not see why you would not envisage the Assembly having any kind of role.

1564. **Mr Lyttle:** I want to seek clarification. Through the Chair, Colum are you suggesting that the affirmative resolution that is used for amending the terms of reference could be used to bring the inquiry to an end?
1565. **Mr Eastwood:** Yes.
1566. **Mr Lyttle:** OK.
1567. **The Chairperson:** The only issue Colum is that the research paper said that that power is consistent with the Inquiries Act 2005.
1568. **Mr Eastwood:** Yes; I know. However, I am still not very comfortable with the precedent that it lays down. That is my position.
1569. **The Chairperson:** The research paper suggests that it is not, in fact, a precedent. It states:
- “In 2007 the Northern Ireland Court of Appeal ruled that the independence of an inquiry could not be said to have been compromised by section 14 of the Inquiries Act 2005” .*
1570. As I understand it, clause 5 mirrors that.
1571. **Ms Smith:** I am not sure that it absolutely mirrors it, but it is certainly similar.
1572. **The Chairperson:** Yes, but there would be an expectation that if it went to the Court of Appeal, there may well be the same result.
1573. **Ms Smith:** Absolutely.
1574. **Mr Eastwood:** Fair enough, Chair, but I do not see the harm of putting that extra safeguard in the Bill. It is my position. You do not have to agree with it.
1575. **The Chairperson:** That is fine.
1576. Maggie, are there any more amendments to come from the Department? Is that possible?
1577. **Ms Smith:** Yes, there is a possibility of some more coming, and we will communicate those to you as quickly as we can.
1578. **The Chairperson:** Actually, did you indicate last week that there will be an amendment to clause 19, which deals with applications to the Crown?
1579. **Ms Smith:** I did.
1580. **The Chairperson:** If you cannot give us the wording, can you give us the thought process behind what principles are likely to underlie that? We want to close this off next week.
1581. **Ms Smith:** Yes, and I understand that and appreciate it.
1582. We expect to bring forward a bit of clarification to clause 19. Also, we are looking at some further protection just to copper-fasten the privacy of the acknowledgement forum. That is basically what we are looking at.
1583. **The Chairperson:** Can you say anything more about clause 19? I cannot process what is required here or what you are trying to achieve. Can you give us any clarity?
1584. **Ms Smith:** The wording used at the moment is quite old fashioned and opaque, so we really just want to modernise the language and clarify what is actually meant there.
1585. **The Chairperson:** Right, OK.
1586. **Mr Eastwood:** Regarding clause 6, which, I think, we talked about last week, too. Clause 6(3) states:
- “In making any decision as to the procedure or conduct of the inquiry, the presiding member”*
- who is probably the chairperson now —*
- “must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).”*
1587. Surely the line about unnecessary cost is unnecessary? Should it not be more about “must act with fairness”? I think that the rest of that is a given. I would rather see the emphasis put on that than on the cost to the public purse, not that I am not considering the cost to the public purse. The concern arises that that leaves the possibility for people not to get particular legal advice or whatever

- depending on what is decided by the inquiry or, as it seems to be in a lot of this, OFMDFM?
1588. **Ms Smith:** Clause 6 is extremely important because really what it is saying is that the chairperson is the person who directs the inquiry, so he is in charge of the evidence, the procedure and the conduct of the inquiry. What clause 6(3) does within that is extremely important. The two parts are what really need to be absolutely central to his thinking. The reference to fairness means that the chairperson, in all his decisions, must always be conscious of the need for people to be able to give their best case and to avoid self-criminalisation. So, it is about making sure that people understand what is being said to them and that they have an opportunity to reply and to explain their position as best they can.
1589. Besides that, every decision that the chairman makes will have cost implications. So, as chair of the inquiry, he is effectively the chair of a small organisation that has all sorts of budgetary considerations, and so on. So, it is doubly emphasising the fact that he is in charge, that he has to take account of all those issues when making decisions and that they are all important.
1590. **Mr Eastwood:** I appreciate that, but my concern is that the second part of the sentence should not impact on the first. People should be entitled to what they need in respect of legal representation or whatever, whatever the cost.
1591. **Ms Smith:** So you are saying —
1592. **Mr Eastwood:** I am trying to get to this point: will cost become an issue? Will somebody be denied their rights on the basis of cost?
1593. **Ms Smith:** That is not what this is saying at all. What the clause does is set the parameters within which the chair will run the inquiry. It is saying that both factors must be taken into account. It is about the whole design of the inquiry: the way it is conducted; what its procedures are; and how it gathers evidence. So it is about the tone of the whole inquiry. It does not say anything about individual rights. It really just sets the framework.
1594. You may be interested to know that among the rules that we will bring forward later on — I think that I mentioned this previously — there will be ones on the way in which decisions are made about witness expenses, including legal expenses, and the administration of expenses. We will be bringing those rules to the Committee.
1595. **The Chairperson:** Thank you very much, Maggie, Cathy and Michael. Can I ask you once again to be available to us next week?
1596. **Ms Smith:** Certainly.
1597. **The Chairperson:** Members, I am minded to say that it would be better to go through the formal clause by clause next week, given the amount of necessary toing and froing there has been. Are members content?
- Members indicated assent.*
1598. **The Chairperson:** I just want to emphasise this again. Members have clearly stated their positions on certain issues. Paul has been very clear, for example, on the terms of reference, where there is flexibility, where there is a position. That is perfectly right and proper. I just do not want somebody coming in next week with a new set of proposals or a new line in the sand.
1599. **Mr Eastwood:** I mentioned before that I have some concerns about witnesses' expenses. I am also concerned about the fact that "chairperson" is not written in here anywhere and that it is all about OFMDFM. I do not want to open a can of worms. I just want to —
1600. **The Chairperson:** You have put down a marker.
1601. **Mr Givan:** You do not want to pay them too much.
1602. **The Chairperson:** Are you going to propose an amendment next week?

1603. **Mr Eastwood:** I will do so if that is necessary.

1604. **The Chairperson:** Perhaps you could do that in advance, if you can.

1605. Members, I know that we have a lot of papers here, but are you content with annexes 1, 2 and 3 of the letter in your tabled papers dated 9 October, with the proviso on annexe 3 that we will write to the Department to see whether it would consider a fifth bullet point in the paragraph headlined, “An investigation inquiry panel”?

Members indicated assent.

1606. **The Chairperson:** Perfect. Thank you very much.

1607. **Ms Smith:** Thank you very much, Chair.

1608. **The Chairperson:** Are members also content with annexe A of the letter dated 10 October, which we just talked about?

Members indicated assent.

1609. **The Chairperson:** Thank you.

17 October 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
 Mr Chris Lyttle (Deputy Chairperson)
 Mr Colum Eastwood
 Ms Megan Fearon
 Mr Paul Givan
 Mrs Brenda Hale
 Mr John McCallister
 Ms Bronwyn McGahan
 Mr Stephen Moutray
 Mr George Robinson

Witnesses:

Mr Michael Harkin	<i>Office of the First</i>
Mrs Cathy McMullan	<i>Minister and deputy</i>
Ms Maggie Smith	<i>First Minister</i>

1610. **The Chairperson:** Members should have copies of the amendments bundle, which was e-mailed to you this morning. Those amendments have been provided mostly by the Department, and we have seen those before. They are at annexes 1, 2, 3 and A. Colum Eastwood wishes to propose draft amendments. They have been labelled annex Y. Annex Z on page 13 of your bundle contains a possible Committee amendment, which is designed:

“to make explicit the Inquiry’s power to make recommendations ... to prevent future abuse”.

1611. We also have the three amendments from the Department that we discussed in closed session. There, you will find the Department’s response to the Committee’s request to explicitly provide the inquiry — by way of a further bullet point in its terms of reference — with the power to make recommendations about changes to the law, procedure and practice to prevent future abuse. It states:

“Ministers are of the view that the Terms of Reference already have considerable scope. They consider that the Committee’s proposed amendment would take the inquiry well

beyond the scope of what it was set up to do, and so they will not adopt it.”

1612. **Mr Lyttle:** May I make a quick comment on that?

1613. **The Chairperson:** Yes.

1614. **Mr Lyttle:** It seems a bit contradictory to say that the scope of the inquiry is already sufficient but that this short clarifying comment would take it “well beyond the scope”. Perhaps we can draw that out in our discussions, but I found that quite strange.

1615. **The Chairperson:** I welcome John McCallister to the Committee.

1616. **Mr McCallister:** Thank you, Chair.

1617. **The Chairperson:** Do members have any comments?

1618. **Mr Eastwood:** I agree with Chris. I still think that, if nothing else, it does no harm to have it in the report. I know that the Children’s Law Centre has not sent us much information about what they talked about, but if there are issues that should be dealt with, and if there are proposals that could be made by the inquiry, I do not see what problem there would be in doing that. I, like Chris, would still like to see an additional bullet point.

1619. **The Chairperson:** OK; I think that it would be fair to say that the Department had previously offered to amend the terms of reference, rather than the Bill, to address this issue. On page 8 of the amendment bundle, there is a reference to inserting:

“Bearing in mind the need to prevent future abuse”.

1620. So, the option is to accept that line in red in the proposed amended terms of reference or to consider a Committee amendment at page 13, annex Z.

1621. **Ms McGahan:** I am not sure how that suggestion can prevent abuse.
1622. **The Chairperson:** I think that it is a question of whether the chairperson and his panel want to explicitly say, “We make the following recommendations to minimise the prospect of future abuse”.
1623. **Ms McGahan:** I would be cautious about that, because I do not know how we can prevent future abuse. We can certainly put mechanisms in place, but I do not feel that we can prevent future abuse. I just think that we need to —
1624. **The Chairperson:** To whom do you refer when you say, “we”?
1625. **Ms McGahan:** I mean that I cannot prevent future abuse; maybe somebody could explain to me how we do that. I am open to suggestions, but —
1626. **Mr Eastwood:** I do not think that what this does is say that we can, in all cases, definitely prevent any future abuse. This says that the inquiry should be allowed to make recommendations that ensure that the state does everything in its power to fulfil its responsibility to prevent future abuse. I think that that makes sense.
1627. **Mr Givan:** Chairman, did you say that the Department had sent a written response to this issue somewhere? I may have missed it, and I am trying to find it.
1628. **The Chairperson:** Have you got a line in red on page 8 of the amendment bundle?
1629. **Mr Givan:** Yes; but I mean a response to our letter to the Department last week, asking whether that was something that we could put in the Bill or the terms of reference. Did it officially come back to us?
1630. **The Committee Clerk:** I think that that is in members’ tabled items.
1631. **The Chairperson:** Yes; it is the second-last document in your tabled items, Paul. It is dated 16 October and came from the departmental liaison officer.
1632. **Mr Givan:** I indicated last week that my view was that the terms of reference would cover this. I think that we all agree that the purpose of all of this is, yes, to deal with what happened in the past but also to do what we can to make sure that something like this does not happen again. So, there is no division among us about what we want the outcome of all of this to be.
1633. There is a difference on which mechanism best deals with it. Would that be by putting the bullet point in the inquiry’s terms of reference or through the legislation that cites the terms of reference, which can be amended much more readily and quickly than legislation ever can? My view is that the terms of reference will allow us to deal with all of this. I think that the legislation will pinpoint:
“Bearing in mind the need to prevent future abuse”.
1634. That will be cited. We have that covered in the terms of reference. So, this is more a difference of opinion on mechanism than principle, and, on this side, our view is that the terms of reference will cover that, as opposed to the proposed Committee amendment.
1635. **The Chairperson:** We are all agreed, I think, that Paul’s analysis applies; we are all agreed on the outcome and the question is one of the mechanism.
1636. **Mr Eastwood:** That is right. It would have been more helpful of the Department to say that it would change the terms of reference, but it has not and that is its view.
1637. **The Chairperson:** But it is changing the terms of reference.
1638. **Mr Eastwood:** Not to what we wanted.
1639. **Mr Lyttle:** The Department had crafted a concise, neat phrase that could have been inserted into the terms of reference. It put that in writing in its submission to the Committee. I read that submission in the record last week, but I do not have that to hand this week. To me, that did not take the

- scope of the inquiry “well beyond” that originally intended. It merely clarified that it is not precluded from making recommendations. I think that it was a very balanced phrase that could have gone into the terms of reference. I agree that this does not have to be done by way of amendment per se, but many people who gave evidence to the Committee were concerned that there was an omission or a lack of clarity around the scope for making recommendations. Indeed, they went as far as to ask for the 1995 barrier to be removed for that very reason. As far as I can see, we are not changing that 1995 limit, but nor are we going even that slight bit further to clarify that recommendations can be made. I think that the request was reasonable, so I am surprised by the response.
1640. **Mr Givan:** I disagree with Chris’s analysis because the terms of reference clearly cite, prior to the recommendations in bullet points:
- “Bearing in mind the need to prevent future abuse”,*
1641. and then it states that it will make recommendations and findings on “the following”. So, it puts the issue of preventing future abuse upfront. Whether in the legislation or the terms of reference, it will have the same impact. We are in danger of arguing over technical mechanisms when the same objective will be achieved, and the terms of reference are a much more flexible mechanism. If we need to amend other aspects, the terms of reference will be the place to do it, as opposed to amending primary legislation, which, as we all know, will take much longer. So, I caution members —
1642. **The Chairperson:** Before you come back in, Chris; there is one other factor that we must bear in mind, and that is that we have had testimony from Sir Anthony Hart, who will chair the inquiry, saying that he is content that the current framework will allow him to make recommendations, and I have no doubt that he will do so if he sees fit.
1643. **Mr Lyttle:** I agree with a fair amount of what Mr Givan said about not needing an additional legislative mechanism, but my point was about seeking straight-forward clarification. Also, there is concern that the terms of reference state:
- “Bearing in mind the need to prevent further abuse, the report will make recommendations and findings on the following matters”.*
1644. It then restricts the types of recommendations that it will make. I understand the concern to clarify that there is scope for making recommendations, if necessary, given the weight of evidence requesting that clarification. That is my opinion.
1645. **The Chairperson:** The officials are with us again. We welcome Cathy McMullan, Michael Harkin and Maggie Smith. Maggie, can you add anything on that specific issue?
1646. **Ms Maggie Smith (Office of the First Minister and deputy First Minister):** We sent through amended terms of reference in recognition of that point. Ministers have taken on board that it is important that the inquiry has the necessary scope and that this does not prevent it from making recommendations for the future. By putting in the sentence beginning “Bearing in mind the need”, the Ministers recognise that it is important that the inquiry bears in mind the need to safeguard children in the future and prevent future abuse. However, the scope of the inquiry is to focus on the four issues set out in the bullet points. The inquiry was designed to do that, and the planning for the legislation and the whole set-up are focused on those four areas. The bullet point that you suggested would require going much further than that. It would require an in-depth inquiry into how things operate now, which would be a different exercise entirely.
1647. **The Chairperson:** Maggie, I propose that, if you are agreeable, you will speak to the amendments, particularly the ones that arrived with the Committee today. Colum will then propose some amendments of his own. If you can stay

- on, we will let Colum speak to those, and we might ask for an opinion or clarity from you. Then, when we go to the clause-by-clause scrutiny, perhaps you would withdraw but remain in the room in case we need to seek further clarity. Is that OK?
1648. **Ms Smith:** Certainly. We sent you some new amendments. I am conscious that the version that we have is slightly different from yours. We will start with the first of the amendments dated 17 October, which are at annex B.
1649. **The Chairperson:** Are those the amendments dealing with the privacy of the acknowledgment forum and making it an offence to convene a restriction order?
1650. **Ms Smith:** Yes. These amendments are about protecting the people who come forward to the acknowledgement forum. Clause 7 concerns the scope of the forum chairman to allow the proceedings of the inquiry to be public. Clearly, it would be completely inappropriate for any aspect of the acknowledgement forum to be held in public. So the amendment ensures that the part of clause 7(1) that makes the proceedings public does not apply to the acknowledgement forum.
1651. **The Chairperson:** Are members happy?
- Members indicated assent.*
1652. **Ms Smith:** I will move on to the contravention of a restriction order. A restriction order is an order that the chairperson can make to restrict access either to the proceedings of the inquiry or to evidence. Clause 13 had been drafted in a way that it would be an offence not to comply with a restriction order. The amendment simply tightens that up. It broadens the scope by stating that, if people contravene a restriction order, that is also an offence. It is an additional safeguard. An example of that might be where a restriction order is in place and a journalist gets access to information, by whatever means, and puts it in the paper. That would be a contravention, and it was not covered in the original wording. This amendment makes it stronger.
1653. **The Chairperson:** Are members content?
- Members indicated assent.*
1654. **Ms Smith:** Next is a rule-making power to protect —
1655. **The Chairperson:** Sorry to interrupt, Maggie, but is there not an amendment to clause 14?
1656. **Ms Smith:** Yes, I beg your pardon. Still at annex B, the amendment to clause 14 is about enforcement against the offence. It states that, if the order is contravened, that can be enforced through the High Court.
1657. **The Chairperson:** Are members content?
- Members indicated assent.*
1658. **Ms Smith:** The next amendment is to clause 18 and concerns powers to protect documents. Again, that is to do with the acknowledgement forum and reflects the chairman's concern that we ensure that there is maximum protection for records of the inquiry, particularly those generated by the acknowledgement forum. The Department is taking rule-making powers to make rules stating that the papers generated during the inquiry will be available only to the chairman, who can then decide whether they are made available to other parts of the inquiry or made public. They would be made public only in circumstances required under the Human Rights Act 1998.
1659. **The Chairperson:** Are members content?
- Members indicated assent.*
1660. **Ms Smith:** I turn now to clause 11, which is to do with the payment of expenses. By expenses, we mean legal and other expenses associated with attending the inquiry, or otherwise in relation to the inquiry. As I have mentioned to the Committee a couple of times before, we will set out in regulations — subordinate legislation that will come to you — the parameters for the way in which expenses are dealt with. That includes the rate of expenses, the criteria against which decisions will be made and the administrative

- arrangements for the payment of expenses. As drafted, clause 11 did not make it entirely clear that OFMDFM will, of course, pay the expenses but the decisions will be made by the chairperson of the inquiry. What had been drafted as “OFMDFM”, and appears as such a number of times, should correctly be “the chairperson of the inquiry”.
1661. We also have an amendment to clause 11 as a result of some of the amendments already discussed. Last time, we discussed an amendment that would allow the chairperson to take evidence via live TV links from outside Northern Ireland. So we are broadening the wording of clause 11(3)(a) so that not only people attending the inquiry to give evidence will be eligible for an award but those who give evidence by whatever means. So they do not need to be in the room but, clearly, they still need legal advice.
1662. As a consequence of that, we also make it clear in clause 12 that OFMDFM must pay any amounts awarded under clause 11. That makes it crystal clear that, of course, OFMDFM will pay those bills.
1663. Then we come to the rules that OFMDFM is making. They will be made not under clause 11 but under clause 18. So we have a small amendment to clause 18 to clarify that it is the chairperson making the decision.
1664. **The Chairperson:** Are members content?
- Members indicated assent.*
1665. **The Chairperson:** Three points arise. Is the chairperson, Sir Anthony, content with all this?
1666. **Ms Smith:** He is, yes.
1667. **The Chairperson:** Is the protection of documents only for the acknowledgement forum, or does it cover everything?
1668. **Ms Smith:** Its original purpose was to protect the documents that emerge from the acknowledgement forum. However, as you can see, it now refers to documents “of the inquiry”.
1669. **The Chairperson:** So it becomes global.
1670. What about clause 19?
1671. **Ms Smith:** That is as far as we have got.
1672. **The Chairperson:** So there will be something?
1673. **Ms Smith:** This is all we have at the moment.
1674. **The Chairperson:** You are still looking at clause 19?
1675. **Ms Smith:** Yes.
1676. **The Chairperson:** Colum, you are proposing an amendment, are you not?
1677. **Mr Eastwood:** I will not take up too much time. We have been through all these points in quite a bit of detail already.
1678. My first amendment relates to the possibility of an interim report on redress. We have had fairly compelling evidence from victims that they would like something on that, because many of the victims are quite elderly. The proposed amendment would not compel Justice Hart to provide an interim report, but it would allow him to do so if he felt that the circumstances were correct and that it would not get in the way of his work. So I do not think that there is any harm in it. I do not want it to be exhaustive, but I think that it is a good idea, and victims would be fairly happy with it.
1679. My second amendment covers a number of technical changes, but the final bit is the important bit. It means that, if the inquiry were terminated, there would have to be a draft of the Order laid before and approved by resolution of the Assembly. It is just an extra safeguard. We talked about that last week as well.
1680. Those are the two amendments.
1681. **The Chairperson:** Maggie, have you any comments from a departmental point of view?
1682. **Ms Smith:** We discussed the second amendment previously. We came back from one of the previous discussions

- and said that that was not an amendment that the Ministers were planning to take on.
1683. As to the first amendment, our position has been that we would not ask Sir Anthony to produce an interim report on redress.
1684. **The Chairperson:** Have members any comments on Colum's proposed amendments?
1685. **Mr Givan:** I explained last week why we were not supporting either of the proposed amendments, and that remains our position.
1686. **Mr Lyttle:** I think that his proposals are made in good faith, and I would have supported them, Chair.
1687. **The Chairperson:** It remains open to Colum to propose them as we go through the Bill clause by clause.
1688. Maggie, thank you very much. Please stay with us, but take your ease.
1689. Members, before we begin our formal clause-by-clause consideration, I want to clarify whether we want to stick with the page 8 amendment to the terms of reference or go with the possible Committee amendment at annex Z. I think that members seated to my right were in favour of the terms of reference. Is there any contrary view from those on my left?
1690. **Mr Eastwood:** I would support the Committee amendment.
1691. **Ms Fearon:** We are happy with the page 8 amendment to the terms of reference.
1692. **Mr Lyttle:** The sensible option would have been to insert a brief bullet point into the terms of reference, but that has not been done. I take it that there is no longer time for that to happen. The Department has said that there is not. However, I agree that the legislative proposal may not be the ideal option.
1693. **The Chairperson:** The fact that Sir Anthony is content that what is proposed gives him sufficient scope makes me content that the proposal on page 8 is good enough. Unless you want a recorded vote —
1694. **Mr Eastwood:** I know that we will probably not win, but, for the record, I propose the Committee amendment.
1695. **The Chairperson:** We will come to that at the time, if that is OK, Colum. First, do members agree to proceed to the clause-by-clause decision-making phase?
- Members indicated assent.*
1696. **The Chairperson:** As we proceed, members, please indicate if you have any other amendments or clauses that you would like to insert. The purpose of the session is to work our way through the Bill, clause by clause, and take decisions. You have a copy of the Bill and explanatory memorandum, and you will want to have them to hand as we consider the clauses. You should also have to hand the amendment bundle and the additional three amendments provided today.
1697. The Bill has 23 clauses. Each clause and the long title will need to be considered in turn, in conjunction with the Department's proposed draft amendments and Colum's draft amendment. In relation to decision-making on each clause, the Committee has four options. The first is to agree that the Committee is content with the clause as drafted. The second option is to agree that the Committee is content with the clause, subject to an amendment proposed by the Department. That could be an amendment that the Committee requested from or agreed with the Department or one that the Department produced of its own volition. Members will remember that, at last week's meeting, we said that we were largely content with the Department's proposed amendments. In the absence of agreement with the Department, the third option is to recommend a Committee amendment, which members can propose as we move through the clauses. Finally, the Committee may agree that it is not content with the

clause as drafted, and, although the Committee may not be proposing an amendment, it can actively oppose the inclusion of such a clause by tabling opposition to its standing part of the Bill.

1698. We can reach a decision on each clause by consensus or by division. Members will have the opportunity to consider any amendments to each clause following the reading of that clause. We will first take a decision on any proposed draft amendments. If the Committee is content with a proposed amendment or amendments to a clause, the question put will be whether the Committee is content with the clause, subject to the proposed amendments at annex 1 or annex A, and so forth. Where there are no amendments, the question will be whether the Committee is content with the clause as drafted. If members are content, shall we proceed with clause-by-clause scrutiny?

Members indicated assent.

Clause 1 (The inquiry)

1699. **The Chairperson:** The explanatory and financial memorandum states:

“This clause authorises the First Minister and deputy First Minister acting jointly to set up an inquiry into historical institutional abuse between 1945 and 1995, the terms of reference for which were announced to the Assembly on 31 May 2012 and which the Ministers acting jointly may amend.”

1700. There were a number of areas where the Committee was minded that changes be made to the Bill, and most would impact on clause 1 and the terms of reference, namely, changing 1945 to 1922; the inquiry’s right to make recommendations on changes to the law to prevent future abuse; and Ministers’ powers to amend the terms of reference to control by way of draft affirmative order. The Department’s proposed amendments to clause 1 are in annexes 1 and 2. Are members content with those amendments?

Members indicated assent.

1701. **The Chairperson:** We have put forward a Committee amendment, and we have Colum Eastwood’s proposed amendment.

1702. **Mr Eastwood:** I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 5, leave out “subject to this section,”.

1703. **The Chairperson:** Are you proposing the Committee’s amendment?

1704. **Mr Eastwood:** The possible Committee amendment.

1705. **The Chairperson:** As I understand it, we can vote in favour or against, or members can abstain, which is an active abstention, rather than simply not voting. Those are the four options.

Question put.

The Committee divided:

Ayes 2; Noes 7.

AYES

Mr Eastwood, Mr Lyttle.

NOES

Mr G Robinson, Mr Givan, Mr McCallister, Mr Moutray, Mrs Hale, Ms Fearon, Ms McGahan.

Question accordingly negatived.

1706. **Mr Eastwood:** I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 16, insert

“(6) Without prejudice to any finding it may make in its final report, the inquiry panel may publish an interim report on the requirement or desirability for redress to be provided by the Executive to victims of historical institutional abuse.”

Question put.

The Committee divided:

Ayes 2; Noes 7.

AYES

Mr Eastwood, Mr Lyttle.

NOES

*Mr G Robinson, Mr Givan, Mr McCallister,
Mr Moutray, Mrs Hale, Ms Fearon,
Ms McGahan.*

Question accordingly negatived.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendments.

The Committee divided:

Ayes 8; Noes 0; Abstentions 1.

AYES

Mr G Robinson, Mr Givan, Mr Lyttle, Mr McCallister, Mr Moutray, Mrs Hale, Ms Fearon, Ms McGahan.

NOES

No members voted no.

ABSTENTIONS

Mr Eastwood.

Question accordingly agreed to.

Clause 1 agreed to.

Clause 2 (Appointment of members)

1707. **The Chairperson:** As stated in the explanatory memorandum, clause 2 enables the Ministers, acting jointly, after consulting the presiding member, to make further appointments, either to fill vacancies that arise or, if necessary, to increase the number of panel members. Members raised no issues during Committee deliberations on 3 October. The Department's proposed amendments are to leave out "presiding member" and insert "chairperson" at five points in the clause, which have been listed for members.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 2 agreed to.

Clause 3 (Duration of appointment of members)

1708. **The Chairperson:** This clause deals with the duration of an inquiry member's appointment, including the Ministers' power to terminate appointment. Members will recall that officials emphasised the reasonableness of the grounds needed for Minister's to exercise their power. Members raised no issues when the clause was discussed on 3 October. The Department's proposed amendment, at annex 2, changes "presiding member" to "chairperson" in a couple of places. Are members happy with the proposed amendments?

Members indicated assent.

1709. **The Chairperson:** If there are no other amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 3 agreed to.

Clause 4 (Assessors)

1710. **The Chairperson:** Clause 4 allows for the assessors to be appointed to provide the inquiry with the expertise needed to fulfil the terms of reference. Members raised no issues. The Department's proposed amendments are at annex 2 and change "presiding member" to "chairperson" on three occasions. Are members content with the amendments?

Members indicated assent.

1711. **The Chairperson:** If there are no other amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 4 agreed to.

Clause 5 (End of the inquiry)

1712. **The Chairperson:** Clause 5 provides that the inquiry ends when its report has been submitted and its terms of reference fulfilled. It further provides

that Ministers acting jointly after consulting the presiding member, may bring the inquiry to a close. The Department's proposed amendments change all instances of "presiding member" to "chairperson". Are members content with those?

Members indicated assent.

1713. **The Chairperson:** Do members have any more amendments?

1714. **Mr Eastwood:** My amendments are at annex Y.

1715. **The Chairperson:** I will give members a moment to read Mr Eastwood's seven proposed amendments to clause 5. Are members content with those amendments?

Members indicated dissent.

1716. **The Chairperson:** So, Colum Eastwood and Chris Lyttle are in favour, and everybody else is against. If there are no other amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

Clause 5 agreed to.

1717. **The Chairperson:** Colum Eastwood abstained; everybody else voted in favour.

Clause 6 (Evidence and procedure)

1718. **The Chairperson:** Clause 6 deals with evidence and procedure, in particular how the chair must act with fairness and with regard to the need to avoid any unnecessary cost, whether it is to public funds, witnesses or others. A concern was raised that the requirement to give regard to the need to avoid any unnecessary cost might impact on the requirement on the chair to act with fairness in so far as that touched on legal representation. However, most members were broadly content with clause 6.

1719. There are proposed departmental amendments at annex A on the use of live television links to hear evidence from victims. That will facilitate the hearing of evidence from witnesses who, because of age, infirmity, distance or whatever, would have difficulty attending the inquiry in person. It also provides for the Perjury (Northern Ireland) Order 1979 to apply in such cases. Members discussed those proposed amendments with officials last week and raised no issues with them. Are Members content with those amendments?

Members indicated assent.

1720. **The Chairperson:** There are also amendments at annex 2, once again, changing all references to "presiding member" to "chairperson". Are members content with those amendments?

Members indicated assent.

1721. **The Chairperson:** As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 6 agreed to.

Clause 7 (Public access to inquiry proceedings and information)

1722. **The Chairperson:** Subsections (1) and (2) require the presiding member to take whatever steps he judges reasonable to ensure that the public can attend the inquiry, or see and hear a transmission of it, and can access evidence available to it. Members raised no issues in relation to the clause.

1723. The Department's proposed amendments are at annex 2: once again, changing "presiding member" to "chairperson". This is the first clause for which there are also amendments in today's correspondence at annex B. There are two proposed amendments to clause 7. Members have had time to consider those. Are Members content with those amendments?

Members indicated assent.

1724. **The Chairperson:** As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 7 agreed to.

Clause 8 (Restrictions on public access, etc.)

1725. **The Chairperson:** Subsections (1) to (8) enable the presiding member, during the course of the inquiry, to issue restriction orders. The purpose of such orders is to restrict attendance at all or part of the inquiry, or to restrict disclosure of information in the context of the inquiry, or to restrict disclosure by those who have received information only by virtue of it being given to the inquiry.

1726. During our consideration of clause 8, members were content with the clarification provided by officials that normal legal principles would require anybody affected by an order to be given an opportunity to make a case before an order restricting access was made.

1727. The Department's proposed amendments are at annex A, in relation to protecting witnesses' identities, and at annex 2, once again, changing "presiding member" to "chairperson".

1728. In relation to the proposed amendment at annex A on orders restricting the disclosure or publication of the identity of any person, at our deliberations last week, there was some discussion on that. Officials advised that the inquiry chairperson had sought that amendment. Paul, I think that you raised that issue.

1729. **Mr Givan:** I am content.

1730. **The Chairperson:** Officials also advised that OFMDFM would make rules so that the chairperson could, in turn, make orders, and that the rules would come before the Committee for consideration.

1731. Members indicated last week that they were broadly content with the

Department's proposed amendments to clause 8. Are Members content with those amendments?

Members indicated assent.

1732. **The Chairperson:** As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 8 agreed to.

Clause 9 (Powers to require production of evidence)

1733. **The Chairperson:** Subsections (1) and (2) give the presiding member powers to compel by notice witnesses and evidence. Subsection (4) enables the presiding member to vary or to revoke a notice. Members raised no issues in relation to the clause. The Department's proposed amendments are at annex 2, once again, changing all references to "presiding member" to "chairperson". Are members content?

Members indicated assent.

1734. **The Chairperson:** As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 9 agreed to.

Clause 10 (Privileged information, etc)

1735. **The Chairperson:** Subsection (1) ensures that witnesses before the inquiry have the same privileges, in relation to requests for information, as witnesses in civil proceedings.

1736. Members raised no issues and there are no proposed departmental amendments. As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

New Clauses

1737. **The Chairperson:** We come to new clauses that the Department has brought forward in response to the Committee's request that the inquiry chairperson's role in publishing the report be made explicit. These are at Annex A, pages 9 and 10, and they deal with the delivery of the report to Ministers two weeks before publication, to make it clear that the chairperson must publish the report in full, but providing certain limited grounds for withholding certain material from publication. They also deal with the laying before the Assembly of the inquiry report by the First Minister and the deputy First Minister.

1738. Members indicated at last week's meeting that they were content with these new clauses. Members have had a chance to read annex A.

Question, That the Committee is content with Department's proposed amendment to insert a new clause after clause 10, "Submission of reports", as set out at annex A, put and agreed to.

Question, That the Committee is content with the Department's proposed amendment to insert a new clause after clause 10, "Publication of reports", as set out at annex A, put and agreed to.

Question, That the Committee is content with the Department's proposed amendment to insert a new clause after clause 10, "Laying of reports before the Assembly", as set out at annex A, put and agreed to.

Clause 11 (Expenses of witnesses, etc.)

1739. **The Chairperson:** Subsections (1) to (4) enable OFMDFM to award reasonable amounts to cover witness costs. These include the legal costs of certain witnesses called to the inquiry. This was discussed at our meeting on 3 October, and my sense was that most members were broadly content with it. There will be rules dealing with expenses, which will come before the Committee in due course.

1740. There are proposed departmental amendments, which came to us today, and are at annex D. There are no other proposed amendments, so I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 11 agreed to.

Clause 12 (Payment of inquiry expenses by OFMDFM)

1741. The Chairperson: Subsections (1) to (5) require the Department to meet the expenses of the inquiry and delineates the circumstances in which these will not be paid. We heard from officials on this provision on 3 October, and members indicated that they were content with the clause. Before today, the Department had proposed one amendment, which is at annex 2, changing "presiding member" to "chairperson", but we now have further amendments, which are outlined at annex D.

1742. There are no other proposed amendments, so I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 12 agreed to.

Clause 13 (Offences)

1743. **The Chairperson:** Subsections (1) to (8) make non-compliance with notices served under clause 9 or clause 8 an offence. The clause also deals with evidence and privileged information. Members raised no issues in relation to this clause.

1744. As members are aware, the Department's proposed amendments are at annex 2, again, changing "presiding member" to "chairperson". The Department has drafted further proposed amendments at annex B. There are no further proposed amendments, so I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 13 agreed to.

Clause 14 (Enforcement by High Court)

1745. **The Chairperson:** Subsections (1) and (2) provide that, where a person breaches a restriction order or a notice issued under section 9, or threatens to do so, the presiding member may certify the matter to the High Court, which can then take steps to enforce the order.

1746. Members raised no issues in relation to clause 14. The Department's proposed amendment at annex 2 is, again, to change "presiding member" to "chairperson". There is also a proposed amendment to clause 14 at annex B.

1747. There are no other proposed amendments, so I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 14 agreed to.

Clause 15 (Immunity from suit)

1748. **The Chairperson:** Subsections (1) to (3) provide immunity for the inquiry panel, the inquiry's legal advisers, assessors, staff, and anyone else engaged to assist it, from any civil action for anything done or said in the course of carrying out their duty to the inquiry. Members raised no issues. There are no proposed departmental amendments.

1749. As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Time limit for applying for judicial review)

1750. **The Chairperson:** Subsections (1) to (4) provide for a time limit for judicial review of 14 days, subject to the 14 days being extended by the High Court. The

explanatory and financial memorandum states:

"The time limit of two weeks in this section runs from the date on which the applicant becomes aware of the decision, not from the date on which the decision was made."

1751. In light of the advice to the Committee and the view of the inquiry chair, no issues were raised in relation to clause 16 when the Committee considered it on 3 October. There were no proposed departmental amendments.

1752. As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Power to make supplementary, etc. provision)

1753. **The Chairperson:** Subsections (1) and (2) provide that OFMDFM may, by order, make such supplementary, transitional, incidental or consequential provision as it considers appropriate, subject to negative resolution. We discussed clause 17 on the 3 October, when members were content.

1754. As there are no proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Rules)

1755. **The Chairperson:** Subsections (1) to (3) enable OFMDFM to make rules, subject to negative resolution, in relation to evidence and procedure; to the return or keeping of documents; and, in particular, to the award of witness expenses. Members raised no issues at our meeting on 3 October. The Department's proposed amendment to clause 18 is at annex C, and it supersedes the previous proposed amendment. There are further proposed departmental amendments at annexes C and D, members.

1756. As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 18 agreed to.

Clause 19 (Application to the Crown)

1757. **The Chairperson:** It is worth bearing in mind, Clerk, that the Department has indicated the likelihood that it will bring forward an amendment to clause 19.

1758. **The Committee Clerk:** That is correct, Chairman, but I think that we have to consider the clause as currently drafted.

1759. **The Chairperson:** With that in mind, we will stick to what we have in front of us.

1760. This clause binds the Crown so that the powers conferred by the Bill can be exercised in relation to Departments. Members raised no issues in relation to clause 19.

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

Clause 20 (Consequential amendments)

1761. **The Chairperson:** Subsections (1) to (3) provide detail of consequential amendments. Members raised no issues. There are no departmental amendments, and, as there are no other amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Interpretation)

1762. **The Chairperson:** Members raised no issues in relation to clause 21, other than, again, the change in terminology from “presiding member” to “chairperson”. The Department’s proposed amendments at annex 2 provide for that change.

1763. Annex 2 also provides for the insertion of the following definition on page 10, line 11:

“‘chairperson’ means chairperson of the inquiry”.

1764. Annex 2 also provides for another insertion on page 10, line 15: “‘member’ includes chairperson”.

1765. Also, on page 10, annex 2 makes provision to leave out line 18, which was the definition of presiding member.

1766. Finally, annex 2 proposes, on page 10, line 22, to leave out “presiding member” and insert “chairperson”.

1767. In annex 1, there is another proposed departmental amendment to clause 21. It proposes to insert, on page 10, line 12, this definition of harm: “‘harm’ includes death or injury”. With officials on 10 October, we discussed that definition and how it related to clause 8, in particular. It was inserted at the request of the inquiry chair. Members indicated that they were broadly content with all the annex 1 amendments at the conclusion of that meeting.

1768. Are Members content with those departmental amendments to clause 21?

Members indicated assent.

1769. **The Chairperson:** As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 21 agreed to.

Clause 22 (Commencement, etc.)

1770. **The Chairperson:** Subsections (1) and (2) provide detail of when the Bill comes into effect, which is on the day after the day on which it receives Royal Assent. Members raised no issues.

1771. As there are no other amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Short title)

1772. **The Chairperson:** This Act may be cited as the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2012. Members raised no issues. There are no departmental amendments.

1773. As there are no other proposed amendments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 23 agreed to.

Long title

1774. **The Chairperson:** The long title of the Bill is:

“A Bill to make provision relating to an inquiry into institutional abuse between 1945 and 1995”.

1775. The Department’s proposed amendment to the long title is to leave out “1945” and insert “1922”, as set out in annex 1. Are members content with that amendment?

Members indicated assent.

Question, That the Committee is content with the long title, subject to the proposed amendment, put and agreed to.

Long title agreed to.

1776. **The Chairperson:** That concludes our clause-by-clause scrutiny of the Bill. I thank the officials.



Northern Ireland
Assembly

Appendix 3

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Amnesty International UK



Inquiry into Historical Institutional Abuse Bill 2012

Submission to the Committee of the Office of the First and deputy First Minister

Northern Ireland Assembly

July 2012

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Amnesty International

Submission to the Committee of the Office of the First Minister and deputy First Minister

Inquiry into Historical Institutional Abuse Bill 2012

Preface

1. Amnesty International has campaigned alongside victims since February 2010 in pursuit of an effective and independent inquiry into institutional child abuse in Northern Ireland.
2. We wish to take this opportunity to commend all those victims of abuse for the courage and tenacity which they have shown in their pursuit of justice.
3. In October 2010, Amnesty held a conference¹ in Belfast which brought together key actors - victims and survivors, campaigners, commissioners and counsellors - from the inquiry and redress processes in the Republic of Ireland and Scotland to share their experiences so that lessons may be learned in Northern Ireland.
4. We have worked with the Survivors and Victims of Institutional Abuse, brought them together with legal experts and offered advice in the preparation of their submission to the OFMdFM Taskforce on historic institutional child abuse. Separately, Amnesty International made its

1 Time for justice: Delivering a human rights compliant inquiry for the victims of historical institutional child abuse in Northern Ireland, October 2010. Report available at: http://www.amnesty.org.uk/uploads/documents/doc_21110.pdf

own submission² to the Taskforce and has met with and written to Junior Ministers from OFMdFM on a number of occasions during the period since 2010.

5. Amnesty International welcomes the publication of the Bill and the Terms of Reference for the Inquiry. These steps should represent significant moves in the direction of vindicating the rights of victims to truth and justice.
6. However, we have a number of concerns regarding the Inquiry into Historical Institutional Abuse Bill and the Terms of Reference for the Inquiry.
7. We make this submission to the Committee of the Office of the First Minister and deputy First Minister to assist their scrutiny of the Bill and our representatives are happy to make themselves available to give oral testimony to the Committee should this be invited.

Terms of Reference

Accountability and consultation

8. The Terms of Reference for the Inquiry are central to its chances of success or failure to meet the needs of victims and wider society, yet are not contained within the Bill itself, but rather are incorporated into a written Ministerial Statement to the Assembly³. As such, by not being included as an integral part of this Bill, the Terms of Reference are not open to direct scrutiny by the Assembly. This may be seen as less than optimal in terms of democratic accountability of the Executive to the Legislature and may be considered by some as a lessening of the primacy of the Assembly in passing meaningful legislation. This presents a precedent which may be of concern to some Members.
9. For the record, Amnesty International specifically requested, at a meeting with Junior Ministers in December 2011⁴, that draft Terms of Reference should be made available for public consultation. No such agreement was forthcoming.
10. Amnesty International then specifically requested, at the same meeting, that it and other stakeholder groups, in addition to victims groups, should have the opportunity to comment on draft Terms of Reference. Again, no such agreement was forthcoming from OFMdFM.
11. The Bill could be amended so that the Terms of Reference are brought within the legislation, with an enabling clause to give the Ministers power to amend the Terms of Reference with the prior agreement of the Inquiry Chair, should that subsequently prove to be necessary. Such an approach would fulfill the twin objectives of ensuring Assembly scrutiny over this key aspect of the enabling architecture for the Inquiry, while ensuring an improved but reasonable procedure for amending the Terms of Reference, should this prove to be necessary.

Scope and adequacy

12. The Terms of Reference are currently quite narrow, confining the Inquiry to investigate and report on whether or not there were systemic failings and on recommendations as to a possible apology, a tribute or memorial to victims, and the possibility of redress. We are concerned that the current Terms of Reference could prove restrictive and limit the possible effectiveness of the Inquiry. The Terms of Reference should be amended to have more built-in flexibility to enable the Inquiry itself to determine in more detail the matters that come within its scope, including matters it considers relevant to the issues it is investigating. This is

2 Proposed Inquiry into Historic Institutional Abuse in Northern Ireland, Submission to the Historical Institutional Abuse Taskforce of the Northern Ireland Executive from Amnesty International UK, May 2011. Available at: http://www.amnesty.org.uk/uploads/documents/doc_21546.pdf

3 Written ministerial statement: Office of the First Minister and deputy First Minister - Historical Institutional Abuse Inquiry: Terms of Reference, Chair and Acknowledgement Forum Panel Members, May 31 2012

4 Meeting with OFMdFM Junior Ministers, advisors and officials, Stormont Castle, December 15 2011

currently not possible as only the First and deputy First Minister have the powers to amend Terms of Reference, not the Inquiry Chair.

13. We recommend that the Bill should be amended to grant Ministers the power to amend the Terms of Reference, should that subsequently prove necessary, but only with the consent of the Inquiry Chair. This would enable the Chair to request changes to the Terms of Reference should that prove necessary. For comparison, it may be useful to note that legislation in the Republic of Ireland⁵ requires the consent of the inquiry chair to amend Terms of Reference, which can act as a safeguard against any perceptions of inappropriate interference by Ministers.
14. The Terms of Reference do not currently provide for the Inquiry to make recommendations, including for changes in law, political or administrative procedures and practice, to ensure that such abuse is prevented effectively in future. Such recommendations will be of fundamental importance to securing to individuals their right to adequate and effective reparation, which include guarantees of non-repetition.
15. The Terms of Reference offer no definition of the term ‘abuse’, nor guidance as to its definition. Neither does the Bill. We would recommend that this omission be addressed and that the definition of abuse reflect the breadth of Article 19 of the Convention on the Rights of the Child⁶: “to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”, and Article 34: to “undertake to protect the child from all forms of sexual exploitation and sexual abuse”.

Potential for OFMdfM interference in the independence of the Inquiry

16. The Bill and the Terms of Reference give the First and deputy First Minister significant powers to intervene in the running of the Inquiry.
17. Such powers include:
 - the power to amend the terms of reference of the inquiry at any time (Sec 1 (3));
 - the power to terminate the inquiry (Sec 5 (1), (6));
 - the power to withdraw funding for the Inquiry if it acts outside its terms of reference (Sec 12 (2), (3), (4));
 - the power to terminate the appointment of an inquiry panel member on specific grounds (Sec 3 (3));
 - the power to withhold payment of expenses of an inquiry panel member and others assisting the inquiry (Sec 12 (1), (3), (4));
 - the power to set terms by which a witness may or may not be eligible to expenses, including legal representation (Sec 11, Sec 18 (1)(c), (2));
 - the power to determine whether and when the Inquiry Report should be published, rather than that power sitting with the Inquiry Chair (Terms of Reference);
 - the power to decide if the Inquiry Report shall be published in full, or whether to withhold sections from publication (Terms of Reference).
18. It is worth pointing out that many of these powers are similar to those provided for by the Inquiries Act 2005. Amnesty International had originally suggested to Ministers that this inquiry could be held under the Inquiries Act 2005, but, given our concerns about the

5 Tribunals of Inquiry Bill, 2005

6 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations

ability of that legislation to provide for a truly independent inquiry, we proposed that the government should make a formal statement at the outset committing itself to the principle of independence of the inquiry.

19. In the context of this inquiry, Members may be concerned that these powers, individually and / or collectively, amount to a degree of control over the Inquiry which has the potential to undermine its independence, risk public confidence in its effectiveness, or risk its actual effectiveness.
20. Members may wish to consider the appropriateness of the powers, not just in respect of this particular inquiry, but for any precedent which may be set for other inquiries established in the future by the Northern Ireland Assembly to inquire into other historic activities.
21. Regarding publication of the report of the findings of the Inquiry, it may be useful for the legislation to be amended to make clear that it is part of the role of the Inquiry to publish its report, rather than simply to furnish a report to Ministers.

Historical scope of Inquiry

22. Victims of institutional child abuse in the years before 1945 or after 1995 face exclusion from this Inquiry⁷. Of particular concern may be those victims, now of very advanced age, who face exclusion from this inquiry. This could be regarded as indirect discrimination based on age. One victim known to us, now in her eighties, is reported to be very upset at the thought that her abuse as a child, and her years of suffering and feelings of hurt ever since, will now be not simply ignored, but exacerbated by exclusion from full consideration by the Inquiry, given its timeframe.
23. We consider the cut-off date(s) of 1945 (and 1995) to be arbitrary. Officials from OFMdFM have informed the OFMdFM Committee⁸ that the 1945 starting point for the Inquiry was adopted, as this was the date of the creation of the Welfare State. However, the 1945 legislative changes do not lessen the institutional or State responsibility for that abuse in the period before 1945, nor lessen the impact of or scale of suffering as a result of that abuse.
24. It is proposed by Ministers that the panel for the Acknowledgment Forum strand of the Inquiry is to be granted some discretion in hearing stories from those whose abuse falls outside the timeframe⁹.
25. This is problematic as firstly, this seems to be a 'second class' form of inclusion by the Acknowledgment Forum, to be granted at the discretion of the Acknowledgment Forum panel, rather than as a right of the victim.
26. Secondly, neither the Bill nor the Terms of Reference grant such similar discretion to the Research and Investigation Team, or the Investigation and Inquiry Panel, to take evidence and consider individual or systemic cases of abuse, outside the 1945-95 time period. Again, this is allocating a secondary status to those who suffered abuse prior to 1945 or post-1995, who may be allowed to have their abuse *acknowledged*, but apparently not *researched, investigated or inquired* into.
27. It may be worth noting that for the Ryan Commission (The Commission to Inquire into Child Abuse)¹⁰, the 'relevant period' of the inquiry was from 1940 to 1999, but the Commission

7 See Terms of Reference - Written ministerial statement: Office of the First Minister and deputy First Minister - Historical Institutional Abuse Inquiry: Terms of Reference, Chair and Acknowledgement Forum Panel Members, May 31 2012

8 Committee for the Office of the First Minister and deputy First Minister, Official Report (Hansard), June 6 2012

9 "If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1945 -1995." - Written ministerial statement, May 31 2012

10 See Ryan Report, Section 1.19. Available: <http://www.childabusecommission.ie/rpt/pdfs/>

had power to extend it in either direction, a power which it exercised both in respect of its Investigation Committee and its Confidential Committee. The Investigation Committee exercised this power by extending the beginning of the period back to 1936. The relevant period for the Confidential Committee was determined to be between 1914 and 2000, being the earliest date of admission and the latest date of discharge of those applicants who applied to give evidence of abuse to that Committee.

28. Amnesty International recommends that, if the state is agreeing to investigate historic abuses in Northern Ireland, it should not do this in a way which arbitrarily excludes some cases.

Lifespan of the Inquiry

29. The Terms of Reference stipulate that the Inquiry and Investigation will conclude within a 2 year and 6 month period following the commencement of the legislation. This may be a reasonable timeframe within which the Inquiry can complete its work, but it is possible that the scale of evidence for consideration and / or number of witnesses who come forward with evidence for consideration may mean that additional time is necessary.
30. Ultimately, an arbitrary time limit may prove unhelpful to the interests of truth and justice, so the suggested 30 month time limit should be open to revision should the Chair decide this is necessary in the interests of an effective and thorough inquiry.
31. It is worth noting that the Smithwick Tribunal¹¹ in the Republic of Ireland, currently investigating allegations of state collusion, has had its lifespan extended by the Irish Government at the request of the Tribunal Chair. Justice Smithwick's request for an extension was supported by Amnesty International¹² and also received widespread support among political parties in Northern Ireland, recognising the need for the inquiry to have sufficient time and resources to fulfill its mission.
32. OFMdFM has already conceded the principle of extending the time period available to the Inquiry Chair to provide his report¹³; this principle should also be acknowledged with respect to the lifespan of the Inquiry itself so that he may request and be granted an extension to the time period for the work of the Inquiry, should he deem that to be necessary.

Reparation and redress

33. The Terms of Reference, as currently framed, postpone a decision on reparation, including compensation, for consideration by the Executive until after the Inquiry reports.
34. This is likely to mean that no decision on reparation, including compensation, will be taken by the Executive until 2016, with a further process of consultation and implementation possibly to follow before victims may be able to receive redress, should any be forthcoming.
35. We know that this is an issue of concern to many victims, some of whom are now of advanced age, and who fear that they will not live long enough to enjoy redress or receive any

11 Smithwick Tribunal of Inquiry into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20th March, 1989

12 Amnesty International Ireland letter to the Irish Minister for Justice, Equality and Defence, 27 May 2011
'Amnesty International criticises time limit for Smithwick Tribunal', press release June 1 2011
'Amnesty calls for Smithwick deadline to be lifted', press release July 1 2011

13 "The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable." - Written ministerial statement, May 31 2012

compensation to pass on to their families, who have also suffered as a result of the abuse experienced¹⁴.

36. We would recommend that consideration be given to how to give effect to the different elements of the right to reparation, which includes the right to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹⁵. Decisions on aspects of the right to reparation need not necessarily be dependent on the ultimate outcome of the Inquiry nor await its final report. The Inquiry could be tasked with making an interim report on these matters, with recommendations for the Executive to consider in advance of a final report. The Bill already makes provision for the publication of an interim report of the Inquiry¹⁶. An interim report focused on the question of reparation would mean that recommendations on redress are based on evidence presented to the Inquiry but not delayed unduly by the other requirements on the Inquiry.

Civil and criminal liability

37. While we agree that the inquiry panel must not rule on and has no power to determine any person's civil or criminal liability¹⁷, it must be made clearer in the Bill that it is possible for criminal investigation and prosecution to flow from evidence uncovered during the inquiry process. Prosecutions must not be precluded, should sufficient evidence be available, and if the Inquiry obtains information indicating that identified individuals may have been responsible for criminal offenses, that information should be passed to the relevant law enforcement bodies for investigation.

Financial constraints

38. The Bill requires the Inquiry Chair to "avoid unnecessary cost" in making any decision as to the procedure or conduct of the inquiry¹⁸. The Explanatory and Financial Memorandum from OFMdFM for Clause 6 states that "Every decision to hold a hearing, to call for evidence or to grant legal representation adds to the cost of the inquiry". It is important that financial constraints in themselves do not act to somehow justify victims being denied the opportunity to have their voices heard, witnesses being denied adequate legal representation or otherwise for the Inquiry being unable to fulfill its role effectively. The Bill should make clearer that these over-riding objectives should be the key guidance for the Inquiry Chair in decision-making.

Clerical abuse in non-institutional settings

39. The Bill does not cover victims of clerical child abuse outside the setting of a residential institution. OFMdFM currently has no plans for a similar process of inquiry for victims of clerical child abuse outside institutions. This means, for instance, that some of the Northern Ireland victims of Fr Brendan Smyth's serial child abuse will be covered by this Inquiry, while others will not. To those victims, that will seem inherently unjust. This is now an issue which should receive urgent political attention.

14 Private representations to Amnesty International during 2010-2012

15 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 (Basic Principles).

16 Section 12 (2)

17 Section 1 (5)

18 Section 6 (3)

Conclusion

40. We commend Ministers and officials for their work in bringing the Bill to this stage and ask that Members now bring forth proposals for appropriate amendments to ensure that the Bill fulfills its ultimate purpose of making provision for an inquiry which can vindicate the human rights of victims.

Barnardo's

20 August 2012



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

Dear Sirs

Historical Institutional Abuse Inquiry Bill

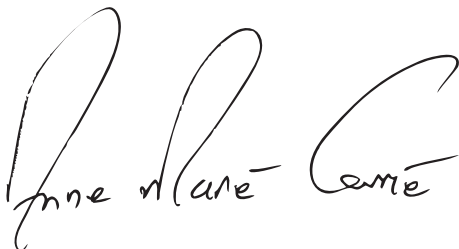
Please find enclosed Barnardo's submission to the Committee of the Office of the First Minister and Deputy First Minister – Inquiry into Historical Abuse Bill 2012.

As requested, our submission provides detailed comment on the terms of reference and the Bill clauses. We have also taken the opportunity to provide the Committee with some background information and issues to consider to ensure that Barnardo's, and other organisations who have cared for children over the relevant time period, have the clarity and parameters of the Inquiry clearly defined in order to provide all the information required by the Inquiry in a timely manner.

We would be pleased to make ourselves available to give oral evidence to the Committee should this be invited.

If you require further information, or if you have queries on the enclosed, please do not hesitate to come back to me directly, or to my Director in Northern Ireland, Lynda Wilson.

Yours sincerely



Anne Marie Carrie

Chief Executive

Patron: Her Majesty The Queen
President: HRH The Duchess of Cornwall
Barnardo's (a company limited by guarantee).
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Registered Charity Nos. 216250 and SC037805

Barnardo's adheres to the Fundraising
Promise and Fundraising
Standards Board guidelines.





1. Preface

1.1 Barnardo's welcomes the opportunity to make this submission to the Committee of the Office of the First Minister and Deputy First Minister to assist their scrutiny of the Inquiry into Historical Institutional Abuse Bill 2012.

1.2 Barnardo's representatives would be pleased to make themselves available to give oral testimony to the Committee should this be invited. Barnardo's makes this submission from a platform of three perspectives:

1. as a children's organisation operating in today's regulatory, safeguarding, children's rights and standards of practice environment;
2. as a children's organisation which has delivered residential care provision over a broad sweep of historical context; and
3. as a children's organisation with a strong sense of the heritage of responsibility for those we have cared for, and direct experience with victim survivors.

1.3 Our submission provides detailed comment on the terms of reference and the Bill clauses, and we have also taken the opportunity to provide the committee with some background information and issues to consider to ensure that Barnardo's, and other organisations who have cared for children over the relevant time period, have the clarity and parameters of the Inquiry clearly defined in order to provide all the information required by the Inquiry in a timely manner.

2. Summary recommendations

2.1

- The Terms of Reference should be brought within the Bill, alongside an enabling clause to allow the First Minister and Deputy First Minister the power to amend the terms of reference with consent of the Inquiry Chair. This would allow the NI Assembly scrutiny over a key part of the Inquiry process.
- There should be a greater degree of flexibility in the Terms of Reference to enable the Inquiry to determine the matters within its scope.
- The Inquiry should be required to directly publish its report.
- There should be provision for the Inquiry to make recommendations, including changes to regulation, practice or policy.
- The term 'abuse' must be clearly defined. We believe that this should reflect the breadth of Article 19 of the UN Convention on the Rights of the Child.
- Provision should be made to allow for a request from the Chair for extension of the Inquiry's time period.
- Learning regarding historical institutional abuse should be sought from other Inquiries.

2.2 Greater clarity needs to be provided about:

- Whether potential criminal proceedings could follow on from evidence uncovered in the Inquiry process
- Whether victim survivors who are currently in prison both inside and outside NI for abuse crimes against children are included within the scope of the inquiry
- Further potential redress where compensation has already been made through civil proceedings
- Jurisdiction – for example where residential provision was operated on an all-Ireland basis, and children from NI were often cared for or trained in Britain, or were migrated

3. Commentary on Terms of Reference and specific Bill Clauses

3.1 Terms of Reference

3.1.1 Accountability and consultation – The Terms of Reference for the Inquiry are not included as an integral part of the Bill, but incorporated as a written Ministerial Statement to the NI Assembly. The Terms of Reference could be brought into the Bill, with an enabling clause to give the Ministers power to amend the Terms of Reference with the Inquiry Chair's prior agreement, allowing greater responsiveness as issues emerge, but also ensuring NI Assembly scrutiny over a key aspect of the Inquiry process.

3.2 Scope and Adequacy

3.2.1 The proposed terms of reference allow for the Inquiry to investigate and report on whether or not there were systemic failings; and on recommendations as to apology, a tribute or memorial to victims and possibility of redress. Given the potential enormity of this Inquiry and response to it, a level of boundary is, at first consideration, viewed as positive. However, given the nature of such inquiries and the need for demonstrated responsiveness, the scope of the Inquiry could be viewed as potentially limited. The Terms of Reference should have a greater degree of flexibility to enable the Inquiry itself to determine the matters within its scope.

3.2.2 In Barnardo's view, the Bill should give Ministers the power to amend the Terms of Reference with the consent of the Inquiry Chair. This will enable the Inquiry Chair to request amendments as the Inquiry process unfolds and issues emerge.

3.2.3 The Terms of Reference do not currently provide for the Inquiry to make recommendations, including for changes in regulation, practice or policy. Given the potential for learning and improvement the potential to make such recommendations for consideration would seem to be a critical outcome of the Inquiry.

3.2.4 The Terms of Reference do not give a definition for the term abuse; or any guidance on definition. Barnardo's view, one held by a number of Children's organisations, is that a definition should be included in the Bill and it should reflect the breadth of Article 19 of the UN Convention on the Rights of the Child

“to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”, and Article 34 to “undertake to protect the child from all forms of sexual exploitation and sexual abuse”.

3.3 Independence of the Inquiry

3.3.1 Barnardo's hope is that the critical focus of this Inquiry will be on the voice of the victim survivor, their opportunity to bear witness to their experiences, receive redress where appropriate and for that distilled knowledge be made available for wider learning and policy for the future care of children.

3.3.2 The Bill and Terms of Reference give the First Minister and Deputy First Minister significant power to intervene in the running of the Inquiry and we are confident that these will be exercised with integrity and transparency.

3.3.3 At minimum, amendment of the legislation should be considered so that the Inquiry **publishes** its report rather than **furnishes** a report to Ministers.

3.4 Historical scope of the Inquiry

3.4.1 Again, at first consideration, there is an apparent imperative to place time boundaries on the scope of the Inquiry simply on the basis of effectiveness. For organisations such as Barnardo's, clarity of time boundaries facilitates our capacity to prepare for positive engagement with the Inquiry process.

- However, we respect the position other organisations such as Amnesty International and the Childrens Law Centre have taken on this matter naming arbitrary cut off dates as excluding.
- We recognise the potential negative impact of exclusion for some victim survivors and in particular those of advanced age (given our contact with some elderly ex-residents).
- We understand that Ministers have proposed that the Acknowledgement Forum exercises discretion in hearing the stories of adults outside the time frame, but this might be perceived as suggesting a hierarchy of victim status.
- The Ryan Commission¹ had power to extend the initial 'relevant period' both within its Investigation Committee and its Confidential Committee, a power that it exercised. A similar approach could be incorporated into the Northern Ireland legislation.

3.5 Lifespan of the Inquiry

- The Terms of Reference stipulate that the Inquiry and investigation will conclude within a two and a half year period following enactment of the legislation. Given the scale of the Inquiry our view is that this is an ambitious timescale.
- We understand OFMDFM has conceded the principle of extending the time available to the Inquiry chair to report. It would seem appropriate to allow for a request from the Chair for extension of the time period for the Inquiry itself.

3.6 Reparation and redress

3.6.1 Given the Terms of Reference it would appear that no decision on reparation, including compensation, would be taken by the NI Executive until 2016, with a further period of time anticipated for implementation. In our experience the issue of 'compensation' has a profound psychological relevance for victim survivors beyond any monetary value. We would advocate that very careful reconsideration of these timescales be undertaken.

3.7 Civil and criminal liability

3.7.1 It is not sufficiently clear in the Bill that it is possible for criminal investigation and prosecution to ensue from evidence uncovered in the Inquiry process. This clarity is essential for both victim survivors and historical residential care providers.

4. Barnardo's – background and organisational preparedness

4.1 Barnardo's NI today

4.1.1 Dr Thomas Barnardo began his work in Northern Ireland in 1899 with the establishment of the first 'Open Door' in Great Victoria Street, Belfast. Today Barnardo's NI is one part

1 Commission to Inquire into Child Abuse, established in 2000 <http://www.childabusecommission.ie/>

of a contemporary children's charity, Barnardo's UK, whose purpose is to promote positive outcomes for those children who are most disadvantaged across England, Scotland, Cymru and Northern Ireland.

- 4.1.2 In Northern Ireland Barnardo's delivers sixty three services, including family support, safeguarding, trauma, suicide and bereavement services. We also provide services to young people with disabilities, young carers, young people not in education, employment or training, children impacted by alcohol and substance misuse, interventions for young people on the margins of the criminal justice system, and family placement.
- 4.1.3 In addition, Barnardo's NI delivers education support, parenting and counselling programmes in over 150 schools in Northern Ireland.
- 4.1.4 Our current residential provision comprises;
- Children's House - a small nurture unit for six children, all under twelve years old who transition to our Family Placement services;
 - PACT - a small residential support and assessment unit for mothers and babies where there are statutory concerns about welfare and safety and;
 - Willowgrove - a four bedded residential respite facility for children with learning and physical disabilities.
- 4.1.5 Alongside service provision Barnardo's in Northern Ireland delivers a substantial programme of public policy influence, research and practice dissemination to promote positive policy development and strategic investment in the welfare and achievement of Northern Ireland's children.

4.2 Barnardo's historical context

- 4.2.1 From Barnardo's establishment in 1899 in Belfast the operation was on an all-Ireland basis until 1989 when Barnardos Republic of Ireland was constituted as a separate charity.
- 4.2.2 Until the early 1920's most of our service was based on the Ever Open Door model. During this period our understanding is that over five hundred children from Northern and Southern Ireland were received through Ever Open Door reception and then admitted to London children's homes. In the 1890's provision on the Holywood Road, Belfast, in addition to an Ever Open Door Service, began to make available accommodation for up to one year; after this period children from Northern and Southern Ireland moved to residential homes in Great Britain. This arrangement remained in place for the next twenty five years, with children moving to Britain and also being migrated to Australia and Canada.
- 4.2.3 From the onset of the Second World War the policy of moving children to Britain reduced with longer term provision being established in Ireland. However, for many more years young people left Barnardo's residential care in Ireland to attend residential training facilities in England and Scotland e.g. seamanship training and training for the printing trade.
- 4.2.4 Within the proposed scope and timescales of the Inquiry into Historical Institutional Abuse Bill, Barnardo's had responsibility for the provision of some 15 residential children's homes, all of these establishments being located in Northern Ireland. Until the late 1960's the majority of intakes to care were voluntary admissions and no financial support from local authorities was received.
- 4.2.5 For an organisation such as Barnardo's there are a number of issues of clarification of a jurisdictional nature which are not immediately apparent in the Bill or Terms of Reference. Greater clarity is needed over which ex-residents would be included in the terms of reference for the Inquiry. Barnardo's operated on an all-Ireland basis until 1989, and so children in these children's homes would have come from across Northern and Southern Ireland. There will be an even greater imperative to achieve clarity if the period under consideration by the

Inquiry is prior to 1945, when more of our children would have been cared for outside the current Northern Ireland jurisdiction.

- 4.2.6 Even within the scope of the current proposals some ex-residents will have been cared for in Britain, attended residential training facilities in Britain or been migrated. In terms of being prepared and responsive to meet the Inquiry requirements, this is not only an issue for Barnardo's, but also for ex-residents. It will need to be considered how to involve such individuals in the Inquiry.

4.3 Heritage

- 4.3.1 While Barnardo's current focus is providing services in response to the needs of children today, we also continue to make provision to exercise our responsibilities to those historically in our care. 'Making Connections' provides a national and international service to adults providing access to care and adoption records and support and counselling. We retain a vast archive of records about children previously in our care, the oldest records available dating from the 1870's and including photographic records. The Making Connections team is staffed by experienced social workers and researchers.
- 4.3.2 At UK and at Northern Ireland level there is a body of practice experience of responding to the needs of adult victim survivors. Barnardo's NI supports and has contact with the Barnardo's Old Boys and Girls network who meet at least once a year to share contacts and information.

4.4 Macedon

- 4.4.1 Macedon Children's Home operated in Northern Ireland from 1951 to 1981. In 1994 an ex-resident reported a specific incident of abuse to Barnardo's resulting in immediate reporting to the Royal Ulster Constabulary (RUC) and Statutory Authority, initially investigated as an individual case.
- 4.4.2 Over a period of some 36 months further disclosures occurred and reporting procedures were again followed. While at this stage Barnardo's offered a hypothesis of potential broader abuse at Macedon, it was advised by the RUC to proceed only as more substantial evidence emerged. From February 1999 Barnardo's was able to secure a formal named enquiry and criminal investigation into historical abuse at Macedon, with dedicated RUC/Police Service of Northern Ireland (PSNI) resource and reporting and oversight at senior statutory level.
- 4.4.3
- A prosecution case was brought to Belfast Crown Court commencing Monday 26 April 2004 and ending on Wednesday 23 June 2004 - the offences were against eight victims.
 - Two ex members of staff were sentenced to a total of 29 years for offences against children.
- 4.4.4 Throughout the entire period from December 1994 until the court proceedings in 2004, and indeed well beyond, support services were in place for victim survivors. Support mechanisms had to be tailored depending on the stage of the process (e.g. court support being very different to disclosure support) and on individual circumstances and history. Victim survivors' needs had to be considered on an individual basis but also as part of a previous residential group with continued shared histories.
- 4.4.5 It would be helpful to have further clarity on the issue of 'redress' if compensation has already been made through civil proceedings, or where current litigation is in process.
- 4.4.6 Has the Inquiry given consideration to the issue of historical institutional abuse and the inclusion of victim survivors who are currently in prison both inside and outside Northern Ireland for abuse crimes against children? These are issues of high sensitivity and learning should be sought from other Inquiries.

4.5 Organisational preparedness

- 4.5.1 The Terms of Reference and the Bill itself have predominantly and appropriately focussed on the capability of the legislation and inquiry architecture to meet what are in the main victim specific objectives i.e. hearing the story, impact of systemic failure, memorial and redress.
- 4.5.2 Organisations such as Barnardo's will wish to engage effectively with the Inquiry and need to place ourselves in a position of readiness and responsiveness. Further clarification is required on the Inquiry's expectations of the nature and extent of that preparedness.

5. Conclusion

- 5.1 We commend Ministers and officials for their work on the Bill to date. The scope, complexity and sensitivity of the Inquiry process that this Bill will underpin cannot be underestimated and the Bill must be constructed with the full knowledge of those challenges. Barnardo's are committed to learning from the past and participating fully in any process which improves the provision of protection and care to children.

Children's Law Centre



Written Evidence to the Committee for the Office of the First Minister and Deputy First Minister into Historical Institutional Abuse Bill

1. The Children's Law Centre

- 1.1 The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.
- 1.2 We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run an advice/ information/ representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds, including Traveller children. We also produce a series of leaflets, written in conjunction with children and young people in youth@clc, for children and young people detailing children's rights and the law in a number of areas, one of which is with regard to looked after children.
- 1.3 Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:
- Children shall not be discriminated against and shall have equal access to protection.
 - All decisions taken which affect children's lives should be taken in the child's best interests.
 - Children have the right to have their voices heard in all matters concerning them.
- 1.4 We believe that the human rights standards contained in the UNCRC should be reflected in all laws and policies emanating from the Northern Ireland Assembly as one of the devolved regions of the UK Government. The UK Government as a signatory to the UNCRC is obliged to deliver all of the rights contained within the Convention for children and young people. From its perspective as an organisation, which works with and on behalf of some of our most vulnerable and socially excluded children and young people, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to submit comment/evidence on the Historical Institutional Abuse Bill. We make this submission in support of the submission made to the Committee by Amnesty International. We do not intend to comment on each clause of the Bill, restricting our comments to areas of particular concern and those of most relevance to the work of CLC.

2. International Standards

- 2.1 The CLC believes that in establishing and carrying out a public inquiry into historical institutional child abuse, this process must be directed by the United Nations Convention on the Rights of the Child (UNCRC) and take account of that Committee's Concluding Observations and General Comments, in particular General Comment 13 The Right of the

Child to Freedom from all forms of Violence and General Comment 12 The Right of the Child to be Heard. Further, government should also take cognisance of commentary from associated bodies such as the UN Study on Violence Against Children.

Through the ratification of the UNCRC the Government has committed to giving effect to a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives. Government has also committed to the implementation of the terms of the Convention by ensuring that United Kingdom (and that of the devolved administrations) law, policy and practice relating to children is in conformity with UNCRC standards. The UK Parliamentary Joint Committee on Human Rights in its report¹ on the UNCRC described the obligations the UNCRC places on Government as follows;

"It should function as a set of child-centred considerations to be used by all departments of government when evaluating legislation and policy making."

- 2.2 At its core the Historical Institutional Abuse Bill must ensure that primary consideration is given to the best interests of the child (article 3), in a manner which is non-discriminatory (article 2) and which respects the views of the child (article 12), protecting the child's inherent right to life, survival and development to the maximum extent possible (article 6).

In addition to the guiding principles of the UNCRC to this public inquiry into historical institutional child abuse we would highlight Article 19, 34, 36 and 39 as being of particular relevance and against which this Bill should be benchmarked. The text of these articles is outlined below.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

1

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

2.3 In considering progress on UK and Northern Ireland implementation of the Convention on the Rights of the Child in 2002, the UN Committee on the Rights of the Child expressed serious concern at the number of children across the UK experiencing violence, abuse or neglect in spite of the protections afforded them within the Convention:

“The Committee is deeply concerned that one or two children die every week as a result of violence and neglect in the home. It is also concerned at the prevalence of violence, including sexual violence, throughout the State Party against children with families, in families, in schools, in institutions, in the care system and in detention. It also notes with deep concern the growing levels of child neglect”²

Six years later in 2008 the UN Committee on the Rights of the Child Committee following its next examination of the UK Government’s compliance with its obligations under the UNCRC, while welcoming the efforts undertaken to tackle the problem of violence, abuse and neglect against children, reiterated its alarm,

“...at the still high prevalence of violence, abuse and neglect against children, including in the home, and at the lack of a comprehensive nationwide strategy ... the Committee regrets that there is still no comprehensive system of recording and analysing abuses committed against children and young people, and that the mechanisms of physical and psychological recovery and social reintegration for victims are not sufficiently available across the state party.

The Committee recommend that Government:

- a. *Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care;*
- b. *Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligations to report and take appropriate action in suspected cases of domestic violence affecting children;*
- c. *Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimised once again during legal proceedings;*
- d. *Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country³.*

2 Committee on the Rights of the Child (2002) Consideration of Reports submitted by State Parties under Article 44 of the Convention Concluding Observations United Kingdom of GB and NI CRC/C/GBR/CO para 39

3 Committee on the Rights of the Child (2008) Consideration of Reports submitted by State Parties under Article 44 of the Convention Concluding Observations United Kingdom of GB and NI CRC/C/GBR/CO4 para 50-51

Government must pay particular attention to these recommendations when taking forward the Historical Institutional Abuse Bill 2012.

3. Historical Institutional Abuse Bill 2012

- 3.1 There have been a number of child sexual and institutional abuse scandals in recent years in Northern Ireland. These have not been confined to any one type of institution with many of these abuses occurring in the community and many were systemically ignored or covered up. The CLC believes that there is a need for robust and fully independent inquiries, equipped with all the necessary resources and powers to address the abuse which has taken place. These Inquiries must acknowledge the experiences of those children and young people who have been abused. The CLC believes that it is inherent in the State's obligations under the UNCRC to appropriately deal with the legacy of child sexual and institutional abuse in order not only to address historical child abuse but to protect children and young people both today and tomorrow. In that context it is vital that lessons are learned from this Inquiry and any other Inquiries which take place, leading to the greater protection of vulnerable children both in the community and institutions now and in the future. This obligation must be fully reflected in the legislation i.e. the legislation must facilitate the identification of legislative and policy steps to be taken to better protect all children from abuse and violence.
- 3.2 The CLC has a number of concerns regarding the Inquiry into Historical Institutional Abuse Bill and the Terms of Reference for the Inquiry.
- 3.3 The CLC believes that the Terms of Reference for the Inquiry are fundamental in ensuring that the Inquiry is successful in achieving what it has been set up to do. It is vital that the Terms of Reference to the Inquiry are fit for purpose and will allow the Inquiry to fully respond to the needs of victim / survivors and adequately acknowledge the experiences of all children and young people who have suffered abuse. It is therefore concerning to the CLC that the Terms of Reference to the Bill are not contained within the Bill itself, but rather are incorporated into a written Ministerial Statement to the Assembly⁴. As a result of this, the Terms of Reference themselves are not open to direct scrutiny by the Assembly. In addition, the Terms of Reference for the Inquiry have not been publicly consulted on, despite the critical role they play in ensuring the success of the Inquiry. The CLC is of the opinion that the failure to publicly consult on or allow direct scrutiny of the Terms of Reference by the Northern Ireland Assembly significantly undermines both the Government's commitment to increased participation in policy making and the importance of ensuring the Inquiry operates under as robust a framework as possible which is capable of meeting the needs of victims who have suffered abuse.
- 3.4 The CLC believes that there would be considerable merit for amending the Bill to encompass the Terms of Reference within its scope to allow for scrutiny of the Terms of Reference by the Committee and amendment of the Terms of Reference if necessary.
- 3.5 The CLC is concerned that the Terms of Reference for the Inquiry do not currently provide for fundamental lessons to be learned from the abuses which have occurred which will lead to the greater protection of children and young people from abuse in the future. The Terms of Reference do not currently permit the Inquiry to make recommendations, for example for legislative or policy amendments which may be necessary to ensure that such abuse is prevented in the future. The CLC believes that the ability of the Inquiry to make such recommendations is fundamental to the fulfillment of the State's obligation to appropriately deal with the legacy of child sexual and institutional abuse and to the appropriate acknowledgement of the abuses which have occurred and the greater protection of vulnerable children both in the community and institutions now and in the future.

4 Written ministerial statement: Office of the First Minister and deputy First Minister - Historical Institutional Abuse Inquiry: Terms of Reference, Chair and Acknowledgement Forum Panel Members, May 31 2012

- 3.6 The Terms of Reference are also very narrow in scope, with a limited number of outcomes being permitted at the conclusion of the Inquiry. The CLC is concerned that the current Terms of Reference could prove restrictive and limit the effectiveness of the Inquiry. We would be supportive of a greater degree of flexibility being afforded to the Inquiry so that the outcome of the Inquiry can be determined by its findings, rather than being limited to a pre-determined set of options which may not be appropriate responses in light of the issues raised.
- 3.7 The CLC is concerned that no definition of 'abuse' has been provided, either within the Terms of Reference of the Inquiry or the Bill itself. We wish to see this being addressed and a definition of abuse being included within the Bill which, is compliant with government's obligations under the UNCRC and takes cognisance of and fully reflects Articles 19 and 34 of the Convention on the Rights of the Child as detailed above.
- 3.8 The CLC has a number of concerns about the scope of the Inquiry, both with regard to its historical and institutional confines. We would be supportive of the extension of the scope of the Inquiry to abuse which occurred not only in residential institutional settings but also in communities and within the home. The failure to include such settings within the scope of the Inquiry will result in victims of the same or similar types of abuse falling outside of the scope of the Inquiry. This is inherently unjust and it is the opinion of the CLC that all victims of child abuse should be included within the scope of the Inquiry, regardless of where the abuse has taken place.
- 3.9 We are also concerned that victims of abuse prior to 1945 and after 1995 will be excluded from the scope of the Inquiry. We are aware that the rationale for this is due to the introduction of the Welfare State in 1945 and the introduction of the Children (Northern Ireland) Order in 1995⁵. While we appreciate that it is the intention to limit the Inquiry to historical abuse cases which occurred outside the current child protection regime we do not believe that it is justifiable to exclude victims of abuse from the scope of the Inquiry on the basis that their abuse was perpetrated after the introduction of the Children (Northern Ireland) Order 1995 particularly in the context that child protection regimes have been again recently reviewed and indeed the new Safeguarding Board for Northern Ireland is being launched in September 2012.
- 3.10 The Children (Northern Ireland) Order 1995 is an extremely important piece of legislation which provides a robust legislative framework to protect children and young people from abuse but it is the CLC's experience that this framework has not always been effective in protecting children and young people. We do not believe that it is justifiable to exclude from the scope of the Inquiry children and young people who have suffered abuse after the introduction of the Children (Northern Ireland) Order 1995 due to the fact that the introduction of this legislation heralded what was then a new statutory regime in terms of child protection. The CLC believes that it is vital that all victims of child abuse are included within the scope of the Inquiry and this is particularly the case with regard to children who have suffered abuse under the post 1995 child protection regime particularly given the need for lessons to be learned and changes to be made to the current system in response to the findings of the Inquiry to ensure the best possible protection for children and young people from abuse.
- Further we note that the Children (Northern Ireland) Order 1995 is now 17 years old and in addition to child abuse having occurred under the current legislative framework much has been learnt in the intervening period in respect of child abuse, child protection and children's rights.
- 3.11 The level and extent of abuse being suffered by children and young people in Northern Ireland at present and since the introduction of the Children (Northern Ireland) Order 1995 can be illustrated as follows. In 2010 over 2,000 children in Northern Ireland were on a child

5 Phone conversation between CLC staff and Ms Maggie Smith, OFMDFM Official

protection register⁶. On 31st March 2008, there were 2,071 children on the child protection register in Northern Ireland – 1,079 (52%) were male and 992 (48%) were female.⁷ Of these 2,071 children, 167 (8%) were aged under 1, 525 (25%) were aged 1-4, 751 (36%) were aged 5-11, 484 (23%) were aged 12-15, and 144 (7%) were aged 16+.⁸ The categories of abuse concerning these children were: 42 (2%) neglect, physical abuse and sexual abuse; 223 (11%) neglect and physical abuse; 80 (4%) neglect and sexual abuse; 63 (3%) physical and sexual abuse; 665 (32%) neglect only; 488 (24%) physical abuse only; 244 (12%) sexual abuse only; 266 (13%) emotional abuse only.⁹

Research conducted by the National Society of the Prevention of Cruelty to Children (NSPCC) has found that nearly one in five secondary school children in the UK have been severely abused or neglected during childhood which amounts to almost one million secondary school children throughout the UK¹⁰. One in 20 teenagers interviewed had been sexually assaulted by an adult, another child or young person. The study also found that one in four of the adults surveyed had experienced severe maltreatment during childhood¹¹.

An average of three sex offences against children was recorded every day between 2008 and 2009 by the PSNI. The statistics, show under 18s were victims of sex crimes, including rape, indecent assault and indecent exposure, on 1,084 occasions during 2008-09. This accounts for almost 56 per cent of the total number of sexual offences recorded by the police during that period. Almost 10 per cent (89) of the children were aged four and younger – therefore not old enough to go to school. Almost two thirds of offences were committed against those aged 11-17 (658). The figures also show that girls were five times more likely to be the victims of a reported sex crime than boys. In Northern Ireland, the highest levels of child protection registrations continue to be for reasons of neglect¹².

- 3.12 We are aware that the timeframe for the Inquiry and Investigation is fixed at 2 year and 6 months after the legislation is commenced. While this may be a sufficient time scale for this work to be completed we do not believe that it is possible to be entirely prescriptive about the time that will be necessary to carry out the Inquiry and investigation until the scale of what is involved becomes clearer during the Inquiry itself. We would like to see provision being made for the possible extension of the timeframe if necessary, within reasonable limits, so that the effectiveness of the Inquiry is not compromised by limited time.
- 3.13 We are aware that it is not part of the role of the inquiry panel to determine the civil or criminal liability of any individuals¹³. We would be supportive of the inclusion of an explicit provision within the Bill that participation in the Inquiry cannot, under any circumstances, afford immunity from prosecution and an explicit recognition that criminal proceedings may be instigated if appropriate as a result of the inquiry process. We also wish to see the Bill being amended to take account of the findings of the recent English Court of Appeal case of *JGE v The Portsmouth Roman Catholic Diocesan Trust*¹⁴.

6 NSPCC

7 DHSSPS (2008) Children Order Statistical Tables 2007/08, p5 Table 1.1 www.dhsspsni.gov.uk/tab-a_children_order_tables_2007-08_final.pdf

8 Ibid

9 Ibid, p6, Table 1.2

10 NSPCC Survey Findings 15 February 2011 http://www.nspcc.org.uk/news-and-views/media-centre/press-releases/2011/11-02-15-NSPCC-study-finds-one-in-five-11-17-year-olds-abused-and-neglected-in-childhood/11-02-15-NSPCC-study_wdn80820.html

11 A total of 2,275 teenagers aged between 11 and 17 and 1,761 young adults aged between 18 and 24 were surveyed in 2009 in this UK wide survey

12 NSPCC and Barnardos Northern Ireland A Manifesto on Children's Issues in Northern Ireland 2010

13 Section 1 (5)

14 [2012] EWCA Civ 938

Ciaran McAteer & Co

Submission to the Committee for the office of the First Minister and deputy First Minister

Inquiry into Historical Institutional Abuse Bill

This firm has acted on behalf of a number of victims of abuse, both historical, institutional abuse, abuse by individuals, from institutions and people in foster care. This firm welcomes the progress towards holding an Inquiry into Historical Institutional Abuse and we recognise that this has been brought about by the hard work and lobbying of S.A.V.I.A (Survivors and Victims of the Institutional Abuse) organisation of which this firm has assisted in obtaining charitable status.

There are a number of points which we wish to make, these are as follows:

➤ **Terms of Reference.**

The first matter which we wish to speak about is the term to reference, which would appear to have been attached to the Ministerial Statement of the 31st May 2012. We would suggest that the terms of reference be included in the Bill and that provision be made for them to be altered either on the request of the Chair of the Inquiry or by the First and Deputy First Minister, provided the Chair is in agreement. Perhaps the Bill could be amended to allow the Chair, if he considers it necessary to apply to the Office of the First Minister and deputy First Minister for the terms of reference to be amended.

It may be that once the Inquiry gets under way, it will seem that the terms of reference may restrict its progress or the areas into which it can look. We also think that the term ‘abuse’ should be fully defined as both physical, emotional, sexual and neglect which areas were covered by the Confidential Committee in the Ryan Inquiry which took place in the Republic of Ireland. Often the emotional and neglect are overlooked when dealing with the abuse the people have suffered, when in fact these can have caused the greater and more lasting damage to the victims and survivors.

➤ **Powers of the OFM, Dfm**

The other area of potential problems we see in relation to the Inquiry is the power of the First and deputy First Ministers to intervene and control with the running of the Inquiry.

The Act gives extensive powers to the First Minister and the deputy First Minister to make alterations to the Inquiry and indeed they have the power to amend the terms of reference and taking into account what was said in the submission above that the Chair should have the right to apply to have them amended. It may be useful that this right of the OFM and dFM be altered so that they can only amend the terms of reference with the consent of the Chair. The

other areas in which they can intervene are somewhat similar to the Inquiries Act 2005, in which one of the major concerns would be the power to determine whether and when the Inquiry Report should be republished, whether it should be published in full or whether to withhold sections. We believe that this should reside with the Chair. We note there is a restriction on the period to be covered. It would appear in the Inquiry, the period is 1945 to 1995, but in the Acknowledgement Forum, this can be extended. We believe this power to extend the period of Inquiry should be common to both the Inquiry and the Acknowledgement Forum.

➤ **The period of the Inquiry and the financing of the Inquiry.**

It is useful bearing in mind the present economic situation that a time scale should be set out but this should not be inflexible and there should be provision for the period to be extended. At this point in time, the precise numbers of people who may wish to either appear before the Acknowledgement Forum or the Inquiry is unknown. Many of the victims have now moved overseas and an extensive advertising campaign will need to be undertaken, both in the United Kingdom, the Republic of Ireland, North America, Australia and New Zealand and perhaps also South Africa, being the areas where people are more than likely to have emigrated to. It is appreciated that there must be some restraint on the expenses incurred by the Tribunal and it would appear to be within the gift of OFM and dFM, as to whether witnesses appearing will be entitled to legal representation. We would consider bearing in mind Article 6 of the European Convention of Human Rights, as incorporated to UK law by the Human Rights Act 1998, that people appearing before the Inquiry should be entitled to legal representation but that the Chair should have the right to stipulate the rates.

➤ **Redress.**

The question of redress is left to be included in the final report by the Chair of the Inquiry. The problem is that many of the people who have suffered in the various Institutions are elderly, and to leave this to a later date may cause extra distress and discomfort to the survivors and victims. It may be useful if the Chair could perhaps address this at an earlier point.

It is hoped that these suggestions will be taken in the spirit of which they are meant that is to be co-operative to help ensure that the inquiry when it sits can deal adequately and competently with the Survivors and victims and who will feel that they are at long last having their voice heard.

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Committee for Education

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To: Alyn Hicks
Clerk to the Committee for OFMDFM

From: Peter McCallion
Clerk to the Committee for Education

Date: 13 September 2012

Subject: Inquiry into Historical Institutional Abuse Bill

At its meeting of 12 September 2012, the Committee for Education noted your correspondence of 17 July 2012 regarding the Inquiry into Historical Institutional Abuse Bill.

The Committee agreed to write to the Committee for OFMDFM indicating its concern at the exclusion of schools from the Historical Institutional Abuse Inquiry. The Committee for Education agreed to suggest that the terms of reference for the Historical Institutional Abuse Inquiry should allow for recommendations to be made relating to additional, future inquiries which would include schools and those individuals and institutions with access to schools.

The Committee asked to be kept updated in respect of this issue.

Regards

Peter McCallion
Committee Clerk

Committee for Health Social Services and Public Safety

Committee for Health Social Services and Public Safety
Room 410
Parliament Buildings

From: Kathryn Bell
To: Alyn Hicks, Clerk of the Committee for OFMDFM
Date: 25 September 2012
Subject: Historical Abuse Inquiry

At its meeting on 12 September the Committee considered your correspondence in relation to its views on the Inquiry into Historical Institutional Abuse Bill.

At its meeting on 19 September 2012 the Committee discussed the issue again and agreed to write to the Committee of the Office of the First Minister and Deputy First Minister to suggest that it ascertains whether OFMDFM have considered the Safeguarding Board Act 2011 during the process of drafting the Bill.

Kathryn Bell
Clerk

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Committee for Justice

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From: Christine Darrah
Clerk to the Committee for Justice

Date: 5 October 2012

To: Alyn Hicks
Clerk to the Committee for the Office of the First Minister and Deputy First Minister

Inquiry into Historical Institutional Abuse Bill

At its meeting on 4 October 2012, the Committee for Justice considered correspondence from the Department of Justice in response to its request for information on the clauses and issues highlighted by the Committee for the Office of the First Minister and Deputy First Minister in relation to the Inquiry into Historical Institutional Abuse Bill.

The Committee for Justice agreed to forward the response to the Committee for the Office of the First Minister and Deputy First Minister and a copy is attached for your information.

Christine Darrah
Committee Clerk
Enc

Barbara McAtamney
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

14 September 2012

Dear Barbara

Inquiry into Historical Institutional Abuse Bill

At its meeting on 13 September 2012 the Committee for Justice considered correspondence from the Clerk to the Committee for the Office of the First Minister and Deputy First Minister seeking views on the Inquiry into Historical Institutional Abuse Bill and the Terms of Reference.

The Committee agreed to request information from the Department of Justice on the clauses and issues highlighted by the OFMDFM Committee and any likely implications for the Department or Justice organisations/agencies.

I enclose the correspondence from the OFMDFM Committee would appreciate a response by 28 September 2012.

Yours sincerely

Christine Darrah

Clerk, Committee for Justice
Enc.

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref SUB/1560/2012

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Stormont
Belfast BT4 3XX

02 October 2012

Dear Christine

INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE BILL

Thank you for your letter of 14 September which enclosed correspondence from the Clerk to the Committee of the First Minister and deputy First Minister relating to certain aspects of the proposed arrangements to inquire into historical institutional abuse. The Committee asked for information on the clauses and issues highlighted by the OFMDFM Committee.

As you know, the draft legislation and overall approach to this complex issue is the product of prolonged and extensive consideration by a cross-Departmental Task Force and agreement within the Executive. The draft legislation, including the clauses highlighted by the Committee of the First Minister and deputy First Minister, and associated terms of reference, when taken together, provide the right framework within which a thorough, objective and independent inquiry can get to the truth of what happened. The process rightly balances a proportionate degree of compulsion and necessary protections with an overarching aim that it should be inquisitorial rather than adversarial in nature. Any evidence of criminality or

FROM THE OFFICE OF THE JUSTICE MINISTER

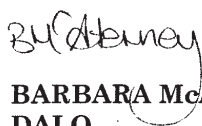


wrongdoing that emerges, however, can be referred to the appropriate agencies for investigation.

The Department is content that the terms of reference, which have been agreed within the Executive, should not appear on the face of the legislation. They may need to be amended in light of experience but we are satisfied that the Bill provides the necessary safeguards to ensure that this cannot happen arbitrarily or irrationally. The standing of the presiding member, who would have to be consulted on any change, and the impressive authority of the other members, gives us particular confidence in this regard.

It is not possible to say at this stage how this process will impact on the Department or its agencies. In many respects, that will depend on what emerges. We stand ready however to provide the fullest support to the Inquiry and to make available whatever information we are asked for.

I hope the Justice Committee finds this response helpful in coming to a view on the matters raised by the Committee of the First Minister and deputy First Minister.


BARBARA McATAMNEY
DALO

Contact Victim Support Nexus

Contact



23rd May 2012

To:

Mr Peter Robinson, First Minister, Mr Martin McGuinness, Deputy First Minister and Ms Maggie Smith, Director of Quality & Social Policy

Critical Concerns Briefing to OFM/DFM on Historical Institutional Abuse Enquiry

From:

CEO, NEXUS Institute, CEO, Victim Support NI and Clinical Director, Contact/Lifeline

Over recent months we have noted concerns raised by survivors of historical childhood institutional abuse who avail of our combined trauma support services. On reflection, we offer our consensus clinical briefing from the three lead regional trauma survivor support charities, encouraged by the NI Assembly commitment to press ahead with the acknowledgement forum and support services to survivors of historical institutional abuse.

Removal of the 1945 Restriction

We are aware the NI Assembly historical enquiry will operate to time-bound eligibility criteria. We are concerned the 1945 historical limitation is too narrowly defined, constricting the acknowledgement process, risking poor survivor engagement. The enquiry and acknowledgement process provides the opportunity to declare an inclusive statement of solidarity for all those who have endured the life-limiting, lifelong consequences of childhood suffering due to institutional neglect, abandonment, betrayal and abuse.

In addition to the diligent progress made to date we propose removal of the 1945 historical boundary. We see the acknowledgement process as a one-off opportunity for inclusion limited in scope by the 1945 restriction, in effect arbitrarily denying the opportunity for those who suffered terrible institutional abuse during the 1920's and 30's to have their experience of devastation validated and their desire for restorative, reparative justice acknowledged. To limit the historical trawl to 1945 risks re-traumatising surviving elderly and while very few in number, their childhood trauma experience remains worthy of inclusion.

Our most elderly service user over the past four years, reporting current distress from childhood trauma, was 93 years old and we regularly field calls from people in their eighties.

To include pre 1945 survivors would represent a compassionate statement of inclusion. To do otherwise risks evoking negative assumptions of rulebound bureaucracy, raising the unintended theme of victim hierarchy, splitting the fledgling institutional abuse survivor movement.

The case for Inclusion of Boarding Schools, Fostering and Adoption

We propose the opportunity exists through the acknowledgement forum to enable hearings of all forms of institutional abuse, including boarding schools, fostering and adoption contexts, providing a more systematic appreciation of the prevalence and typology of institutional neglect, abuse and betrayal of children. We are concerned that the inadvertent consequences

of setting arbitrary limits on where and when abuse took place may harm the credibility of the entire enquiry and acknowledgement initiative, begging questions of the robust sincerity of government interest to scope the extent and impact of institutional abuse in Northern Ireland, adding a grim injustice to the enquiry terms of reference.

Conferring narrow scoping limits when setting the terms of reference for acknowledgement, enquiry and redress systems, may inadvertently tilt towards victim neglect and exclusion, creating a hierarchy of survivor legitimacy, providing tacit cover for some manifestations of institutional abuse. This would be a travesty.

We propose a pause for reflection on these matters. Should the historical abuse enquiry, acknowledgement and reparations process proceed without due consideration of restrictive inclusion criteria we are concerned they may bring considerable reputational mistrust to the process, undermining credibility from the outset.

We offer our critical concerns briefing without prejudice and remain available to discuss.

Yours sincerely

Pam Hunter, CEO NEXUS Institute
Susan Reid, CEO Victim Support
Fergus Cumiskey, Clinical Director, Contact/Lifeline

Thanks Stephen but we are fine with the content of this letter for response to the bill

Regards

Pam

Pam Hunter

CEO

Nexus

02890 326803

*Helping survivors of
sexual violence and abuse*

NEXUS

NEXUS is a charity which receives limited statutory funding and so relies on contributions and donations to maintain its services. Thousands of people across the province receive help from Nexus annually, we welcome all financial support.

Registered Charity No XN46002 Co Reg No NI 2120

www.nexusinstitute.org

From: Magee, Stephen [mailto:Stephen.Magee@niassembly.gov.uk]
Sent: 05 July 2012 11:50
To: Lynda Lindsay; Pam Hunter
Subject: COFMDFM - HIA Bill

Hi Lynda

At its meeting of 4 July 2012, the OFMDFM Committee noted your joint submission to the Historical Institutional Abuse Inquiry Bill.

The Committee agreed to inquire if you wished to update your response as they were aware that it had been made prior to the publication of the Bill

Regards

Stephen Magee

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

Room 435 Tel; 02890521903

email; stephen.magee@niassembly.gov.uk

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De La Salle Order



NAPIER & SONS

SOLICITORS

07 September 2012

Our Ref: JN/RG
Your Ref:

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OFMDFM
Mr Nesbitt
Chairperson
Historical Institutional Abuse Inquiry Committee
Stormont Castle
Stormont Estate
BELFAST
BT4 3TT

Telephone: 028 9024 4602
Facsimile: 028 9033 0330
Web: www.napiers.com

Dear Mr Nesbitt

We act on behalf of the De La Salle Order.

We enclose herewith a submission on their behalf in response to the publication of the Terms of Reference and the Draft Legislation.

Our clients are in a unique position to provide valuable assistance to this Inquiry.

They would welcome the opportunity to meet with the Committee to discuss not only their concerns regarding the structure of the Inquiry but how they can assist the Inquiry generally.

Yours faithfully

NAPIER & SONS

Enc



John G Gordon LL.B, Brigid Napier LL.B Notary Public.
Denis McKay LL.B, Joseph Napier LL.B

Preliminary Submission – Committee Stage

Historical Abuse Inquiry Bill

De La Salle Order

The De La Salle Order welcomes this Inquiry. It trusts that a fair, unhindered and comprehensive Inquiry into all aspects surrounding the operation of residential ‘institutions’ will provide a source of comfort and closure for all former residents, staff and their families.

During the relevant period the De La Salle Order provided teaching and care staff to two ‘institutions’, namely the De La Salle Boys Home at Kircubbin (‘Rubane House’) and St Patrick’s Training School on the Glen Road, Belfast (‘St Patrick’s’). Both properties were owned by the Diocese of Down and Connor and it was the Diocese who appointed the respective Boards of Management. Rubane House operated from 1951 – 1985 and St Patrick’s, under the auspices of Milltown School from 1917 to 1957 and thereafter as St Patrick’s Training School.

The Order’s records indicate that 982 boys were cared for in Rubane. The records relating to St Patrick’s are currently in the custody of the Youth Justice Agency and we are unable to give, even approximate, figures.

The Order is determined to provide every assistance to the Inquiry. It recognises the importance of their role in the care of deprived children during the relevant period and the knowledge and evidence they can give to the Inquiry. The De La Salle Order co-operated fully with the Kincora Inquiry of 1984, with extensive RUC investigations in 1980 and 1995 and continues to the present day to provide assistance to the PSNI with their ongoing criminal investigation.

We consider it important that at the outset we acknowledge now, with the benefit of hindsight and the testimony of former residents who have confided in us, that ‘abuse’ (and we do not seek to define the term in this submission) did occur within homes staffed by the De La Salle Order. The Order deeply regrets that such abuse occurred.

Having considered, The Terms of Reference and the draft Bill the Order makes the following points/observations which they trust will be taken in good faith;

(1) The Terms of Reference

(i) State Involvement

The Order considers that further clarity is required to ensure that all stakeholders know the remit of the Inquiry. The Inquiry *‘is to examine if there were systemic failings by institutions or the state in their duties towards those children in their care’*. Within the context of residential homes it could be interpreted that the Inquiry will focus on the running of religious/Catholic and State homes independently. The wording suggests that there were children in institutions who were not in the care of the state. By virtue of the Children and Young Person Act 1950 the state had responsibility towards all children within it. We consider it vital that the role of the state be an integral part of this Inquiry whether the

'institution' was state run or not. No religious 'institution' was entirely independent of the state and the state could not delegate responsibility for those children to a religious order or anyone else. This is an extremely important point. The De La Salle 'institutions' were all run in conjunction or partnership with the state. Over the relevant period the majority of residents were placed into these 'institutions' by Welfare Authorities, Ministry of Pensions, Probation Boards or the criminal justice system. The 'institutions' were subject to inspection by various departments of the state and these 'institutions' were largely dependent, and reliant, on state funding.

As an example - Our experience post 1995 indicates that 'abuse' (though it remains to be defined) is likely to be documented via the Acknowledgement Forum in 4 forms;

- By Religious Staff
- By Lay Staff
- By civilians/adjoining land owners
- By fellow residents

Abuse by fellow residents has implications for all the agencies. It is apparent to us now that this particular type of abuse was more widespread than had been recognised at the time. It is difficult to be dogmatic regarding the cause or reason but again, with hindsight, it is evident that a large number of the former residents had very difficult and disturbed backgrounds before they arrived in Rubane. State agencies via their social workers knew a lot more about these children than our Order. In the normal family scenario boys would have received some sex instruction advice at home. Few of the residents had a normal or stable home to visit. There was no guidance given to the Order about how to deal with adolescent boys. Concerns raised with the Ministry of Home Affairs went unheeded. Did the state encounter similar difficulties in their 'own' homes? Can the state delegate responsibility for the conduct of boys who they knew or ought to have known were a risk to others, and who were by statute 'in their care' (albeit in a religious institution), to a religious order?

Another example – Many orphan children were 'stateless'. Despite being born in Northern Ireland they were not formally recognised by the state until there were some 13-14 years old and even then, only after the De La Salle Order advocated on their behalf. The state had statutory responsibility for these children. They had responsibility to provide funding and access to social workers but did neither. These children were maintained by the religious orders solely at the cost of those Orders. The state's failure to provide for these children had wide ranging impacts on funding, staffing and overcrowding.

These are just 2 examples highlighting the state 'partnership' aspect of religious institutions and in our view it would be fundamentally flawed to focus on state and religious institutions separately. The investigation into state failings in regard to religious institutions is as equally valid as it is in respect of state institutions.

(ii) Voluntary School – Kircubbin

Although commonly referred to as the De La Salle Boys Home or Rubane House there was also a school at the site. The 'Home' and 'School' are often referred to as one indivisible entity but in reality there was both a residential home and a voluntary school. They were subject to inspection by different government departments and operated under different rules and regulations. The school was not a training school or a borstal. The interpretation of 'institution' contained within the terms of reference would exclude any activities in the 'Rubane School' from this Inquiry. Is that what is intended?

2. The Acknowledgment Forum

(i) Lack of Corroboration/No right of Reply

The Order recognises the hurt and pain that some former residents have suffered and continue to suffer. It recognises that for many, telling the story will be difficult and traumatic. However, the Order has grave concerns that the Acknowledgment Forum will present a report essentially 'outlining the experiences of victims and survivors' without, it seems, any attempt being made to corroborate or validate those 'experiences'.

The Order appreciates the difficulties that an adversarial process brings to all concerned but they also have very real and recent experience of the devastating effect that 'false' allegations have. If 'experiences' are to be entered into the public record or used by the Inquiry to determine the level or extent of abuse the Order feels very strongly that for the report to have any credibility the 'experiences' require some level of investigation. Anonymised accounts will give neither the Order nor the accused any opportunity to respond to the allegations.

It is difficult for any Religious Institution or indeed Priest/Brother, against a background of widespread abuse in the Church, to question 'allegations' but it is recognised that for whatever reason people do and will bring false allegations of sexual abuse.

There has been significant publicity surrounding Rubane for 20 years. Many individuals have been named by newspapers, websites and internet chat forums. We strongly suspect that former residents have met and discussed names, accounts and stories. During the course of the 1995 RUC investigation it appears that names were 'suggested' to former residents. Evidentially the process has been heavily contaminated.

We would refer the Committee to the decision of the Lord Chief Justice Declan Morgan in the case of *Stephen Larkin v De La Salle Provincialate [2011] NIQB*. Not only did the Lord Chief Justice dismiss Mr Larkin's claims but he also rejected the evidence of Mr Francis Corr. Mr Corr alleged he had been abused by Br Florence Scally (who was the focus of the 1980 and 1995 RUC investigations) but the Judge commented that he was 'satisfied to a high standard' that Br Florence was not in Rubane during Mr Corr's period of occupancy. Mr Corr had evidentially 'picked' up the name from newspapers or victims meetings. As currently constituted this evidence (if these individuals attended), tested through 7 days of adversarial proceedings and rejected by the Lord Chief Justice, would be accepted by the acknowledgement Forum and would form part of their report. If that is the intention the Forum is fundamentally flawed from its inception.

Further examples can be provided including a recent story alleging that children simply 'disappeared' from Rubane. In that story a family of a deceased former resident alleged that their father had been abused by Br Florence Scally in 1961. Br Florence did not arrive in Rubane until 1977.

We acknowledge that the victims and survivors will have little faith in the Order providing commentary or a response to accounts but without some threshold test the genuine victims may be left with a report post acknowledgement forum which lacks even the most basic credibility.

Surviving staff, contrary to their human rights, may be left with an account, on public record, of allegations to which they have been denied the opportunity to respond.

(ii) Previous Accounts

Nearly 400 boys were approached by the RUC in 1995/96. Some of these had been previously interviewed in 1980. Others had given evidence to the Hughes Inquiry. More still have given accounts to the police since 1995. It is accepted that statements/accounts can change but it is clear that there is a significant resource of information available to the PSNI/Crown Solicitors Office and there is no ability for the Acknowledgement Forum panel to reconcile or compare accounts/statements made by various individuals.

It may well be that these statements/documents will be considered within the second stage of the Inquiry but if the accounts are contrary to their current allegations is this not an issue which should be addressed before the Acknowledgement Forum panel compile their report. Clearly the 'report' is intended to give the Inquiry guidance on the level and nature of the abuse communicated via the Forum but as currently constituted will ignore the evidence already gathered by state agencies over the course of 20 years.

(iii) POCVA Legislation/Defamation

The acceptance of uncorroborated accounts gives further cause for concern given that the legislation acknowledges that the findings could have implications under POCVA legislation. There is a very genuine fair hearing and Article 6 human rights point. We are concerned that individuals could be implicated without as much as even the formal right of reply. We consider that at best that is unjust and could serve to undermine the findings of the Inquiry. At worst it could become akin to state facilitated defamation.

3. Identification of witnesses/Perception of Inclusion

The Terms of Reference and draft bill focus heavily on 'victims and survivors'. It is widely perceived that the Inquiry is for those who have been 'abused' to come forward and tell their stories. This may arise from the distinction between Acknowledgement Forum and Inquiry, the nuances of which are not distinguished by the media or the populace at large. We maintain that for balance, steps should be taken to encourage all former residents to come forward and contribute to the Inquiry. It is not clear whether they would be able to avail of the Acknowledgement Forum or indeed whether that would be the appropriate place for them to give their evidence. If the focus is narrow the response will be narrow. We know that there are former residents who have positive stories to tell. For one reason or another they may not be prepared to come forward but we strongly believe that

something should be done to redress the current imbalance and for the OFMDFM to appeal to all former residents to contribute.

Similarly we believe that former lay and civilian staff have a valuable role to play. As with the Brothers many will now be deceased but again the inquiry should be pro-actively trying to reach out to these people.

As referred to above many statutory agencies had extensive dealings with Rubane. Many will be long since retired but there will inevitably be many former civilian servants who could assist the Inquiry investigate the state involvement in the management of religious homes and the care of their residents. They too should have a voice but it again remains unclear as to whether they will be encouraged to come forward and contribute.

4. Discovery/Disclosure

The Order retains various records relating to Rubane House. All these records will be made available to the Inquiry and we are currently working on an indexation and cataloguing program. However, the Order considers that various statutory agencies, the PSNI (RUC), Department of Education, DHSSB (Welfare Authorities) and NIO (Ministry of Home Affairs) will have significant records which the Inquiry must access.

There does not appear to be any provision for a religious congregation or indeed any home operator to gain sight of such disclosure relevant to their institution or the care of children in general. We consider that it is essential that such records be provided to the interested parties so that they can comment and make submissions based thereon.

5. Witness Attendance

(i) Elderly/Vulnerable Witnesses

Many of the surviving members of the Order who served in Rubane and St Patrick's are elderly. Advancing years and failing health will make it more difficult for them to attend and give evidence. The Terms of Reference sets out that assistance will be provided to 'support Victims and Survivors'. It is silent as to whether support will be available for witnesses in general. Will other witnesses coming forward to the Inquiry be given equal support?

False allegations have a devastating effect. We have experienced this first hand. Is support to be provided generally – and as indicated above we anticipate allegations against a broad spectrum of individuals. These witnesses may well require legal and medical support. We have concerns that they will not be provided with equality of support or safeguards.

Without doubt some individuals will have to defend themselves against allegations. It is unclear as to how they will be given advance notice of the allegations made against them. We foresee difficulties with the provision of evidence in respect of the right against self incrimination and despite the proviso in respect of civil and criminal liability the conduct of the proceedings under full media glare and all the ramifications that that can bring.

(ii) Isolated Witnesses

Has there been any provision for either taking evidence of Acknowledgment Forum submissions from those people who, for genuine reasons, are unable to travel to NI? We are aware of examples relevant to both former staff and former residents.

6. Judicial Review

We acknowledge the need for progress. In light of the advancing years and failing memories of surviving members of staff we welcome the commitment to progress the Inquiry as quickly as possible. However, we consider the reduction of the judicial review period to 14 days to be both impracticable and potentially unfair to both individuals and organisations involved in this process.

7. Data Protection

The Order holds personally sensitive information on a large number of former residents and staff. Neither the draft legislation or guidance notes give any guidance or safeguards in respect of the release of such information.

8. Cost/Evidence Analysis

A full and comprehensive Inquiry may well be the only opportunity both former residents and staff have to ensure the full story of institutional homes is told with balance and context. It is disappointing that the extent to which evidence will be sought or tested will be determined by the cost. We are not convinced that an Inquiry curtailed by questions of cost can effectively deal with all the complex and multi-agency issues which arise.

Conclusion

The De La Salle Order remains committed to the Inquiry believing that properly constituted it is the most appropriate method for establishing the truth about institutional homes during the relevant period.

However, as indicated above we remain concerned that the focus, particularly on state involvement and responsibility may be too narrow.

We consider that the Acknowledgement Forum is flawed. Without a basic corroborative test it risks accepting false accounts and further undermining genuine victims.

The perception among the populace at large is that the Inquiry is for those who consider themselves victims and survivors to come forward. If there is a genuine desire to establish the truth OFMDFM should be widely and publicly appealing to all former institution residents and staff and former state agency staff to provide accounts and evidence and be making arrangements for those unable to attend in person to contribute.

We would like the opportunity to discuss our concerns with the OFMDFM Committee before the Draft Bill moves to the next stage.

[On behalf of the De La Salle Order 6th September 2012]

Kevin Winters & Co.

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Our Ref: JR/45887/PBP

The Committee for the Office of the First Minister and deputy First Minister
Room 412
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

04 September 2012

Dear Committee members,

Re The Proposed Structure of the Inquiry into Historical Institutional Abuse and our concerns arising thereunder:

We would like to take this opportunity to raise a number of concerns that we have in relation to the proposed structure of the Inquiry into Historical Institutional Abuse.

We represent two surviving victims of institutional abuse in Northern Ireland who have expressed significant misgivings in relation to the terms of reference/proposed structure of the Inquiry into Historical Institutional Abuse, as presently configured, and have instructed us to act accordingly.

We act for Mrs (name redacted) and Mr (name redacted) who were both abused during the periods that they spent in two separate institutions in Northern Ireland.

Mrs (name redacted), who is now in her eighties, was placed in Nazareth House on the Ravenhill Road, Belfast in 1935 when she was 4 years old and did not leave until 1944. While at Nazareth House she was subjected to what can only be described as a protracted, horrifying ordeal of emotional and physical abuse by members of the Catholic clergy.

It is obvious that the timeframe provided for by the Inquiry (1945-1995) would mean that she is not entitled, as of right, to participate in the Acknowledgement Forum stage of the Inquiry. Even assuming that the Chairman was to exercise his discretion in favour of her participation at the Acknowledgement Forum stage, her participation would end at that stage. The Research and Investigative Team would not be permitted to consider her case. Nor could she participate or feature in the all-important Inquiry and Investigation Panel stage of the process. We believe that to limit Mrs (name redacted) participation in this or any way is unjust and unfair and contrary to natural law. Very clearly, the effect of this would only be to compound the injury and hurt that Mrs (name redacted) has endured.

Kevin R. Winters Joseph D. McVeigh Gerard McNamara
Niall Murphy Peter Corrigan Michael Crawford Paul Pierce
Gareth Dillon Shane Moorehead Stephen McNamara
Lyndsay Crawley Marie Hans Aidan Carlin

Also at 11 English Street, Downpatrick, BT30 6AB, Telephone 028 44839111 Fax 028 44617904

Mr (name redacted) suffered sexual, physical and emotional abuse and neglect while at St Patrick's Training School in West Belfast between 1994 and 1996. We have no doubt that the treatment suffered by Mr (name redacted) equates to the minimum level of severity threshold pursuant to Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

Both Mrs (name redacted) and Mr (name redacted) continue to suffer the trauma of their damaging experiences within these institutions to this day.

Under the structure of the Inquiry, as presently configured, those responsible for the harm they have inflicted will not be compelled to account for their actions and have their testimony challenged.

Furthermore, it appears to be the case that victims will not be provided with any financial compensation as part of any reparation programme. Again, we would submit that this is a conspicuous design fault in the Inquiry architecture that will result in transparent injustice.

In addition, it appears to be unclear whether the Inquiry will be prepared to cover the legal costs of those victims of institutional abuse who wish to instruct independent representation. We believe that it is within the interests of justice that the Inquiry should facilitate those victims who wish to have access to independent legal representation in order that their interests are represented in the manner that they wish.

An inquiry which does not allow for legal representation for victims, survivors, witnesses cannot effectively discharge its function in accordance with the relevant parts of its Terms of Reference. In order that an inquiry can examine matters in an inquisitorial, if not an adversarial manner, survivors should be accorded the right to make an application to the Chairman to allow funding for legal representation. It would then be a matter for the Chairman to decide whether such funding was merited, the extent of funding required and for which parts of the inquiry representation should be allowed.

We are aware that Amnesty International has entered a response/submission in this matter to the Committee for the Office of the First Minister and deputy First Minister. We would like to take this opportunity to fully endorse that response/submission.

We are, in addition, of the view that the Inquiry into Historical Institutional Abuse Bill contains multiple opportunities for political interference and intervention. This effectively undermines the independence of the Inquiry before it has even commenced its work.

We hope that you will consider the above as an overview of our principle concerns in relation to the proposed structure of the Inquiry.

We would be grateful if you could provide us with a response to the issues outlined above at your earliest convenience.

In the meantime, if you require any further clarification please do not hesitate to contact us.

Yours faithfully

Kevin R. Winters & Co.

Northern Ireland Commissioner for Children and Young People



patricia lewsley-mooney
commissioner

Mike Nesbitt MLA
Committee for the Office of the First Minister and deputy First Minister
Room 435 Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

11 July 2012

Our Ref: 12/PD/PLM/065

Dear Chair

Thank you for your request to submit information to the Committee's Inquiry into the Historical Institutional Abuse Bill.

The establishment of the Historical Institutional Abuse Inquiry is not only of great importance to those who have experienced institutional abuse and their families but to Northern Ireland as a whole and I welcome the Committee's careful consideration of the legislation.

This response is not intended to be comprehensive but instead highlights my primary concern that, as expressed in my meetings and correspondence with the Department, the Inquiry process ensures that lessons about failures and weaknesses in the protection of children are identified and examined in the context of current safeguarding arrangements. It is important to recognise that the findings of inquiries conducted in other jurisdictions, such as the Commission to Inquire into Child Abuse in the Republic of Ireland and the Historical Abuse Systemic Review in Scotland, have had significant implications for contemporary safeguarding arrangements for children and young people. This has included reviewing the effectiveness of legal and other arrangements and informing policy and practice developments.

The Inquiry process in Northern Ireland must give due regard to learning from the past in order to both properly address historic wrongs and ensure that findings strengthen our arrangements to protect children. It is disappointing that this has not been articulated in the Terms of Reference or the Bill and the Committee may wish to consider this further during its scrutiny of the legislation.

Please do not hesitate to contact me if you require any further information.



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Yours sincerely

A handwritten signature in cursive script that reads "Patricia".

Patricia Lewsley-Mooney
Commissioner for Children and Young People
Encs

NICCY

northern ireland commissioner
for children and young people

patricia lewsley
commissioner

gerard campbell
chief executive

Peter Robinson MP MLA
& Martin McGuinness MP MLA
Office of the First Minister & deputy First Minister
GD36 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

9 January 2011

Our ref: 11/PD/PL/014

Dear Ministers

Re: Historical Institutional Abuse Inquiry

I am pleased that the Northern Ireland Executive has made a commitment to holding an inquiry into historical institutional abuse and that this work is being taken forward through the establishment of the interdepartmental taskforce.

The inquiry is not only of great importance to those who have experienced institutional abuse and their families, but to society across Northern Ireland as a whole. This difficult and distressing issue has been brought to my attention on a number of occasions and I have also had the privilege of hearing directly from victims and survivors.

The inquiry holds particular interest for my Office due to my statutory remit to keep under review the adequacy and effectiveness of law, practice and services relating to children and young people. I may also provide advice concerning the rights and best interests of children on such occasions as I think appropriate. I am acutely aware that inquiries of this nature conducted in other jurisdictions, such as the Commission to Inquire into Child Abuse in the Republic of Ireland, have had hugely significant implications for current safeguarding arrangements for children and young people.

As you may be aware, my legislation also allows the powers of the Commissioner to apply, where I am of the view that this is appropriate, to an adult in relation to events and actions that took place when they were a child under article 3(7) (a) (b).



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I am therefore keen to ensure that I remain fully informed of developments and request that I as Commissioner meet with your senior officials to explore what role if any, my office or I could play in supporting this inquiry.

Yours sincerely

A handwritten signature in cursive script that reads "Patricia".

Patricia Lewsley
Commissioner

NICCY
northern ireland commissioner
for children and young people

Tim Losty
Office of the First Minister & Deputy First Minister
E4.15 Castle Buildings
Stormont Estate
Belfast
BT4 3SR

patricia lewsley
commissioner

gerard campbell
chief executive

19 May 2011

Dear Tim

Historical Institutional Abuse Inquiry

I am pleased that the Northern Ireland Executive has made a commitment to holding an inquiry into historical institutional abuse and that the interdepartmental taskforce has been established to take this forward. It was helpful to meet with you and Linsey Farrell on 18 March 2011 to discuss the work of the taskforce in detail and I hope you found the information we provided following the meeting useful.

The inquiry is not only of great importance to those who have experienced institutional abuse and their families, but to society across Northern Ireland as a whole. This difficult and distressing issue has been brought to my attention on a number of occasions and I have also had the privilege of hearing directly from victims and survivors.

The inquiry holds particular interest for my Office due to my statutory remit to keep under review the adequacy and effectiveness of law, practice and services relating to children and young people. As you are aware, my legislation also allows the powers of the Commissioner to apply, where I am of the view that this is appropriate, to an adult in relation to events and actions that took place when they were a child under article 3(7) (a) (b).

My primary concern in relation to historical institutional abuse is that lessons about the failures and weaknesses in the protection of children are learned and rigorously considered in the context of contemporary safeguarding arrangements. I am acutely aware that inquiries of this nature conducted in other jurisdictions, such as the Commission to Inquire into Child Abuse in the Republic of Ireland and the Historical Abuse Systemic Review in Scotland have had significant implications for current safeguarding arrangements for children and young people. As discussed during our



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meeting, I am of the view that the inquiry must ensure that due regard is given to this learning in order to both effectively address the wrongs of the past and ensure that we protect the children of today and tomorrow.

I would request that I am kept fully informed of developments as the taskforce completes this important work and an inquiry process is established.

Yours sincerely

A handwritten signature in cursive script that reads "Patricia".

Patricia Lewsley
Commissioner

Northern Ireland Human Rights Commission

Mr. Mike Nesbitt MLA
Committee of the Office of the First Minister
and deputy First Minister
Room 412
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

27 July 2012

Dear Chairperson,

The Northern Ireland Human Rights Commission, pursuant to Section 69 (4) of the *Northern Ireland Act 1998*, advises the Assembly whether a Bill is compatible with human rights.¹

In accordance with this function the following statutory advice is submitted to the Committee for the Office of the First Minister and deputy First Minister on the Inquiry into Historical Institutional Abuse Bill 2012.

A copy of our submission has also been forwarded to the Committee electronically.

Yours sincerely,



Professor Michael O'Flaherty

Chief Commissioner
Enc (1)

1 Northern Ireland Act 1998, s.69 (4)



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response on the Inquiry into Historical Institutional Abuse Bill 2012

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights.¹ In accordance with this function the following statutory advice is submitted to the Committee for the Office of the First Minister and deputy First Minister on the Inquiry into Historical Institutional Abuse Bill 2012.

2. The Commission bases its position on the full range of internationally accepted human rights standards, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include;
 - *The European Convention on Human Rights, 1950* ('ECHR') [UK ratification 1951];
 - *The International Covenant on Civil and Political Rights, 1966* ('ICCPR')[UK ratification 1976];
 - *The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* ('UNCAT')[UK ratification 1988];
 - *The United Nations Convention on the Rights of the Child, 1989* ('UNCRC')[UK ratification 1991].

3. The Northern Ireland Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore,

¹ *Northern Ireland Act 1998*, s.69 (4)

advises that the Committee scrutinises the proposed Bill for full compliance with International human rights standards.

4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context include;
 - *The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985;*²
 - *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006.*³

International Human Rights Law and Standards

5. The human rights protections which would be engaged by the Inquiry relate to the prohibition of torture, cruel, inhuman or degrading treatment or punishment in international law. This is a norm of customary law which is non-derogable and is safeguarded by a number of the United Nations treaties. This section will consider each treaty in turn with reference to the following issues;
 - The nature of the prohibition;
 - Engaging State responsibility;
 - The obligation to conduct an investigation;
 - The rights of victims to redress;
 - The position of historic cases.
6. The *International Covenant on Civil and Political Rights* provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".⁴ The United Nations Human Rights Committee ('HRC') has stated that maltreatment under Article 7 must be read in conjunction with the obligations of the State under Article 2 which requires that they give effect to the rights under the *ICCPR* by granting

² United Nations General Assembly (1985) A/RES/40/34

³ United Nations General Assembly (2006) A/RES/60/147

⁴ *International Convention on Civil and Political Rights* (1966), Article 7

effective remedies where rights have been violated.⁵ The HRC reaffirms the positive obligation of the State under the Covenant to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies”⁶ in respect of allegations of torture, cruel, inhuman or degrading treatment or punishment under Article 7 of the *ICCPR*.

7. The HRC has stated that the prohibition in Article 7 relates “not only to acts that cause physical pain but also to acts that cause mental suffering to the victim” and that its protection expressly covers children, pupils and patients in teaching and medical institutions.⁷
8. The *ICCPR* has been supplemented by a specific *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which reaffirms the prohibition and provides as Article 12 that;

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.⁸

9. The United Nations Committee Against Torture (‘CAT’) has confirmed that responsibility rests with the State for the acts of its officials and those acting in an official capacity for failures to;

prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or

⁵ United Nations Human Rights Committee, General Comment no. 20 (1992) Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment) A/47/40, para 14

⁶ United Nations Human Rights Committee, General Comment no.31 (2004) The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, para 15

⁷ FN 3; para 5

⁸ *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) Article 16 provides that other forms of cruel, inhuman or degrading treatment or punishment can be substituted for references to torture in Article 12.

disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.⁹

10. The CAT also clarifies that victims of ill-treatment have the right to redress and compensation under Article 14 and this is not solely engaged in respect of acts classified as torture.¹⁰

11. In a recent Concluding Observation, the CAT highlighted the issue of the failure to investigate allegations of historic abuse against children in State institutions and recommended that the State;

take appropriate measures to ensure that allegations of cruel, inhuman or degrading treatment in the "historic cases" are investigated promptly and impartially, perpetrators duly prosecuted, and the victims accorded redress, including adequate compensation and rehabilitation.¹¹

12. The CAT did not make any distinction between historic cases and current examples of ill-treatment under UNCAT suggesting that the full range of remedies applies equally.¹²

13. *The United Nations Convention on the Rights of the Child sets out the international standards for the protection of children's human rights, which are specific to children by virtue of their age and vulnerability. The existence of this specific treaty does not affect their rights under other international treaties which equally apply to all individuals irrespective of age.*

14. *The UNCRC states that the best interests of the child shall be a primary consideration in all decisions which affect the child.*¹³ States are under a positive duty to protect children and to ensure that the institutions entrusted with their care

⁹ United Nations Committee Against Torture, General Comment no. 2 (2008) Implementation of Article 2 by State Parties CAT/C/GC/2, para 15

¹⁰ *Ibid*, para 3

¹¹ United Nations Committee Against Torture, *Concluding Observations, New Zealand* (2009) CAT/C/NZL/CO/5, para 11

¹² *Ibid*

¹³ *United Nations Convention on the Rights of the Child 1989*, Article 3(1)

conform to the standards set by competent authorities.¹⁴ The *UNCRC* prohibits torture or other cruel, inhuman or degrading treatment or punishment under Article 37(a) and also provides explicitly for the protection of the child from;

[A]ll forms of physical or mental violence, injury or abuse, neglect and negligent treatment, maltreatment or exploitation while in the care of parents(s), legal guardian(s) or any other person who has the care of the child.¹⁵

15. The State is under a further and specific duty to protect the child from all forms of sexual abuse and exploitation.¹⁶

16. The State must also ensure that the appropriate legal, administrative, social and educational measures are taken in order to protect the child from the forms of ill-treatment prohibited under the Convention. This includes ensuring that effective procedures exist for;

Other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹⁷

17. The United Nations Committee on the Rights of the Child ('CRC') has stated that "there is no ambiguity; 'all forms of physical or mental violence' does not leave room for any level of legalised violence against children".¹⁸

18. In its General Comment no.13, the CRC outlines that;

[E]ffective remedies should be available, including compensation to victims and access to redress

¹⁴ *Ibid*, Article 3(3)

¹⁵ *Ibid*, Article 19

¹⁶ *Ibid*, Article 34; see also Article 36 which protects the child from exploitation which is prejudicial to his welfare.

¹⁷ *Ibid*, Article 19(2)

¹⁸ United Nations Committee on the Rights of the Child, General Comment no.13 (2011) The right of the child to freedom from all forms of violence, *CRC/C/GC/13*, para 17

mechanisms and appeal or independent complaint mechanisms.¹⁹

19. The *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* further reaffirms that States are under an obligation to respect and ensure respect for international human rights law. This includes a duty to investigate violations effectively, promptly, thoroughly and impartially and to provide effective remedies to victims.²⁰

20. The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* also expresses the entitlement for victims to access the mechanisms of justice and to “obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible”.²¹ The Declaration further requires that;

[T]he views and concerns of victims should be presented and considered at appropriate stages of the proceedings where their personal interests are affected.²²

European Convention on Human Rights

21. The *European Convention on Human Rights* has been incorporated into domestic law by virtue of the *Human Rights Act 1998*. Under the *HRA* public authorities are under a statutory duty to act in a manner which is compatible with the Convention rights.²³

¹⁹ United Nations Committee on the Rights of the Child, General Comment no.13 (2011) The right of the child to freedom from all forms of violence CRC/C/GC/13, para 56

²⁰ *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2006) A/RES/60/147, para 3(a) and 3(d)

²¹ *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), A/Res/40/34, para 5

²² *Ibid*, para 6(b)

²³ *Human Rights Act 1998*, s.6(1)

22. Article 3 of the *ECHR* is an absolute right which prohibits torture, inhuman or degrading treatment or punishment. This is to be read in conjunction with the general duty imposed on a State to secure the rights and freedoms defined in the Convention under Article 1. The European Court of Human Rights ('ECt.HR') has developed a substantial jurisprudence with respect to the interpretation of Article 3 which assists in defining State obligations.
23. Not all forms of harsh treatment fall within the scope of Article 3. In order to be considered a breach the conduct in question must involve a minimum level of severity. Whether or not the threshold for torture, inhuman or degrading treatment or punishment has been reached will depend on the individual facts of the case. The assessment of the minimum threshold is relative and depends on all the circumstances of the case to include factors such as the duration of treatment, the physical or mental effects and the sex, age and state of health of the victim.²⁴ In *Soering v. the United Kingdom*,²⁵ the ECt.HR added that the severity "depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution".²⁶
24. There are distinctions between the various forms of ill-treatment; however, all must meet the minimum level of severity. For treatment to amount to torture it must be particularly severe, be inflicted intentionally and for a specific purpose. This includes "the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault".²⁷ In *Akkoc v. Turkey*²⁸ the psychological pressure inflicted upon the applicant was of such intensity that it constituted torture. The ECt.HR has also held that rape amounts to torture, stating that it is an especially grave form of ill-treatment given the vulnerability of the victim and the long lasting psychological scaring.²⁹
25. Treatment falling short of torture due to not having the sufficient intensity or purpose may be considered inhuman or degrading. Treatment has been held to fall within this category because it was premeditated, applied for hours at a time and caused either actual bodily injury or intense physical

²⁴ *Ireland v. the United Kingdom* [1978] 2 EHRR 25, para 162

²⁵ *Soering v. the United Kingdom* [1989] ECHR 14

²⁶ *Ibid*, para 100

²⁷ The Greek Case (1969) 12 YB 1, 461

²⁸ *Akkoc v. Turkey* [2000] ECHR 458, para 116

²⁹ *Aydin v. Turkey* (1998) 25 EHRR 251, para 83

and mental suffering. The ECt.HR has held that the long term neglect and abuse of children reached the threshold for inhuman and degrading treatment in *Z and Others v. the United Kingdom*³⁰ and that sexual abuse fell within the scope of Article 3 in *E and Others v. the United Kingdom*³¹.

26. Degrading treatment or punishment arouses a feeling of fear, anguish and inferiority and humiliates and debases the victim.³² The Court will take account of whether the object was to humiliate the individual and whether his or her personality was adversely affected as a result.³³ However, the absence of publicity is not considered sufficient to prevent private humiliation from falling within the category of degrading treatment.³⁴ The ECt.HR has held that judicially imposed corporal punishment of children³⁵ and that sanctioned in schools³⁶ constitutes degrading treatment.
27. Taking into account the jurisprudence of the ECt.HR, the Commission believes that the abuse of a child falls squarely within the scope of Article 3. The rights of the children, now adults, which will be covered by the proposed Inquiry require that an Article 3 compliant investigation now take place in relation to the allegations of institutional abuse and ill-treatment.
28. Article 3 being engaged, there is a procedural obligation upon the State to conduct an "effective official investigation".³⁷ The principles for an effective investigation derive from the case law on Article 2 ECHR but have been held to apply equally where Article 3 is engaged.³⁸ More recently, Lord Justice Sedley commented in *AM & others v Secretary of State for the Home Department*³⁹ that no distinction should be drawn between Articles 2 and 3 in relation to the scope of the investigative duty and that in both cases the duty "may – depending on what facts are at issue- go well beyond the ascertainment of individual fault and reach questions of system, management and institutional culture."⁴⁰

³⁰ *Z and Others v. the United Kingdom* [2001] ECHR 333, para 74

³¹ *E and Others v. the United Kingdom* (2002) 36 EHRR 519, para 89

³² FN 20, para 167

³³ *Raninen v. Finland* [1997] ECHR 102, para 55

³⁴ *Tyrer v. the United Kingdom* [1978] ECHR 2, para 32

³⁵ *Costello-Roberts v. the United Kingdom* (1993) 19 EHRR 112, para 30

³⁶ *Tyrer v. the United Kingdom* [1978] ECHR 2, para 35

³⁷ *McCann and Others v. the United Kingdom* [1995] ECHR 31, para 161

³⁸ *Assenov v. Bulgaria* (1998) ECHR 98, para 102

³⁹ *AM & Ors v. Secretary of State for the Home Department* (2009) UKHRR 973

⁴⁰ *Ibid*, at para 60

29. In a case which originated from Northern Ireland, *Jordan v. the United Kingdom*⁴¹, the ECt.HR have identified the essential elements of such an investigation as follows:

- i. The persons responsible for and carrying out the investigation must be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.
- ii. The investigation must be capable of leading to the identification and punishment of those responsible. The authorities must have taken all reasonable steps available to them to secure the evidence concerning the incident.
- iii. The investigation must be prompt.
- iv. There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability.
- v. The next of kin of the victim must be involved in the proceedings to the extent necessary to safeguard his or her legitimate interests.⁴²

30. In the case of *McKerr v. the United Kingdom*⁴³, the ECt.HR concluded that an Inquiry should have a broader objective of "reassuring the public and members of the family". This would enable a fuller examination of the issues which may not be adequately dealt with by way of a criminal trial.

31. It is important to note that the ECt.HR has held States in violation of Article 3 in respect of historic cases.⁴⁴ With reference to the United Kingdom, the ECt.HR comments that the applicants would "at least on arguable grounds, have a claim to a duty of care under domestic law, reinforced by the ability under the Human Rights Act to rely directly on the provisions of the Convention."⁴⁵

⁴¹ *Jordan v. the United Kingdom* (2003) 37 EHRR 53

⁴² *Ibid*, at paras 106-109; see also *Edwards v. the United Kingdom* (2002) 35 EHRR 19, paras 69-73

⁴³ *McKerr v. the United Kingdom* (2002) 34 EHRR 20, para 137

⁴⁴ *E & Others v. the United Kingdom* [2002] ECHR 769

⁴⁵ *Ibid*, para 115

The Inquiry into Historical Institutional Abuse Bill 2012

32. The Commission notes from the Memorandum of the Bill (the 'Memorandum') that three possibilities were considered by the Office of the First Minister and deputy First Minister as to what form the proposed legislation would take. The Commission welcomes that the provision for an Inquiry into Historical Institutional Abuse has been dealt with in a separate and specific piece of legislation rather than under an amendment of the *Inquiries Act 2005*.
33. In January 2011, the Commission submitted an advice paper to the Office of the First Minister and deputy First Minister outlining what would be required for an Inquiry into historical institutional abuse to be *ECHR* compliant.⁴⁶ This was prior to the drafting of the proposed legislation and concerns were then expressed in relation to how the powers under the *Inquiries Act 2005* may be used to investigate historic institutional abuse. These included concerns over the independence of the Inquiry in relation to the powers afforded to the Minister and the participation of the victims in the process pursuant to the principles in *Jordan*.
34. The Commission maintains its concerns in relation to elements of the current Bill which are similar to provisions of the *Inquiries Act 2005*. These include;
- The Ministers power to amend the terms of reference;
 - Lack of provision for further consultation in respect of such an amendment of the terms of reference;
 - The Ministers power to terminate appointments to the Inquiry panel;
 - The Ministers power to terminate the Inquiry;
 - The power to refuse payment of expenses;
 - The reduced time limits for Judicial Review of decisions.

Each of these points will be discussed in further detail below.

⁴⁶ Northern Ireland Human Rights Commission, *Historic Institutional Child Abuse in Northern Ireland: Advice on the Human Rights Aspects of a Public Inquiry* (January 2011) [available at <http://www.nihrc.org/documents/advice-to-government/2011/institutional-child-abuse-public-inquiry-january-201.pdf>]

Terms of Reference

35. The Commission welcomes that a Witness Support Service is to be established in order to support victims in the course of their interaction with the Inquiry. The Commission also welcomes the establishment of a Victims Support Service which will support and advise victims before, during and after the Inquiry process.
36. The Commission acknowledges that widespread consultation with the relevant stakeholders has taken place in terms of preparing the Terms of Reference.
37. Clause 1(3) of the Bill authorises the First Minister and deputy First Minister to amend the terms of reference of the Inquiry at any time. The Commission retains its position that the Ministers should not be empowered to narrow or restrict the terms of reference as this may impact upon the Inquiry's compliance with international human rights standards. They should, however, be enabled to broaden the terms of reference following representations from the panel and interested parties.
38. Although this power requires consultation with the presiding member, there is no requirement for further consultation with interested parties. The *Jordan* principles require the involvement of victims in proceedings in order that the Inquiry can safeguard their interests. In addition, the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (the 'UN Declaration') states that victim's views should be presented and considered at appropriate stages to protect their interests. In order to satisfy these elements the victims must be fully involved in this process to enable the Inquiry to protect their legitimate interests.

Termination of appointments

39. Under clause 3(3) the Ministers have the power to terminate the appointment of a member of the Inquiry panel. While exceptional circumstances may arise which necessitate the removal of a panel member, clause 3 confers a wide discretion upon the First Minister and deputy First Minister.

The grounds for termination which are listed are significantly broader than those which generally apply to members of the judiciary and there is no express provision for fair procedures or independent scrutiny. Such a power amounts to a degree of control over the Inquiry which undermines its independence. Practical independence is a key factor in determining the Inquiry's compliance with international human rights standards. The Committees monitoring the *ICCPR* and *UNCAT* require that investigations are carried out by independent and impartial bodies for compliance under their respective Conventions. Furthermore the obligations under Article 2 *ECHR*, as laid out by the ECt.HR in *Jordan*, require that those responsible for and carrying out the Inquiry are independent from those implicated.

Termination of the Inquiry

40. Clause 5(1)(b) enables the First Minister and deputy First Minister to terminate the Inquiry at any time. Although the presiding member must be consulted and the reasons for the termination must be laid before the Northern Ireland Assembly, the ability of the Ministers to make such a decision again undermines the Inquiry's independence. The independence of the Inquiry is fundamental to its compliance with international human rights standards. The monitoring bodies for the *ICCPR*, *UNCAT* and *ECHR* all reference independence as a key element for a compliant investigation into allegations of ill-treatment.

Restriction Orders

41. The presiding member may make restriction orders pursuant to clause 8 which shall restrict the attendance at the Inquiry or the disclosure or publication of evidence or documents. The Commission welcomes that the making of such orders lies with the presiding member alone, and not the Ministers as is permitted under the *Inquiries Act 2005*.
42. However, the grounds upon which an order can be made are wide in scope. The Bill does not provide for representations to be made by interested parties prior to an order being granted which may impact upon the Inquiry's ability to sufficiently protect the legitimate interests of the victims. Such

involvement is required under both the Jordan principles and *UN Declaration*. Any restrictions may also impact upon the Inquiry's obligations with regards to public scrutiny. Independence and accountability are key factors in ensuring that an Inquiry is compliant with the *ECHR*.

Expenses

43. Clause 12(4) allows the Office of the First Minister and deputy First Minister ('OFMdfM') to refuse to pay any expenses which are deemed outside the Inquiry's terms of reference. Such a power undermines the Inquiry's independence by allowing a financial sanction to be imposed if the Inquiry's own interpretation of the terms of reference is at odds with that considered appropriate. Such a clause is unnecessary as OFMdfM would have recourse to judicial review should the Inquiry act beyond its remit.

44. The Commission accepts that public funding must be subject to conditions and qualifications but those should be formulated by the Inquiry itself or another independent body, not OFMdfM. Such a determination by the Ministers impacts not only upon the independence of the Inquiry itself but also the ability of the victims to access the Inquiry to the extent necessary to protect their interests. Access to the mechanisms of justice is required not only for compliance with the *ECHR* but also the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

Time limits for Judicial Review

45. Under clause 16(1) a 14 day time limit is imposed in respect of an application to judicially review a decision of the Inquiry or OFMdfM in relation to the Inquiry. The requirements under Order 53 of the *Rules of the Supreme Court (Northern Ireland) 1980* permits an application within 3 months and so this is a significant reduction from usual practice. Curtailing the time within which a challenge can be brought may seriously impact upon the process rendering by access to the Courts ineffective. The Inquiry is under an obligation, by virtue of the *ECHR* and the *UN Declaration*, to ensure effective access to the process in order to protect the legitimate interests of the victims.

Conclusion

46. The Commission's concerns focus mostly upon the need for an Inquiry to be independent and for the victims to be effectively involved in the process. These are requirements under international law and are essential in order that an Inquiry be compliant with obligations under the *ICCPR*, the *UNCAT*, the *UNCRC* and the *ECHR*.
47. The Commission further notes the requirement of a prompt investigation into allegations of ill-treatment under the *ICCPR*, the *UNCAT* and the *ECHR*. However, it is essential that the Inquiry is fully compliant from its commencement in order that it meets its obligations under international law.
48. The Commission is of the view that, as currently drafted, the statement of compatibility is incorrect as the proposed legislation does not meet the required level of protection under the *ECHR*. It is, therefore, a necessity that the Bill be amended in line with the relevant human rights standards.

July 2012
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Poor Sisters of Nazareth

A Summary of Submissions re: Historical Abuse Inquiry Bill

On behalf of Poor Sisters of Nazareth

Background

During the relevant period the Poor Sisters of Nazareth (the sisters) ran five homes in Northern Ireland and staffed a further one. They had two houses in Belfast (Nazareth House and Nazareth Lodge), one home in Portadown (for a short period) and two houses in Derry (Bishop Street and Termonbaca). Records would indicate that in excess of 11,000 children were resident in these homes throughout the period each was open.

In addition, the sisters provided care for babies in St Joseph's Babies Home on the Ormeau Road in Belfast although this was owned and operated by the Diocese of Down and Connor.

The sisters have followed the developments in more recent years in Northern Ireland and in the Republic of Ireland regarding the investigations into historical abuse allegations. They co-operated with the Ryan Commission and the civil authorities in the Republic and have co-operated fully with the civil authorities in Northern Ireland in their enquiries. The sisters are committed to co-operating with this Inquiry to the extent they are required and allowed.

The sisters have a number of concerns with the proposed draft legislation and the guidance documentation disclosed with it:

- a) **Time for representations to committee** – the length of time allocated for a submission to be made has been unreasonable. The deadline was announced at the end of the parliamentary calendar and included the traditional 12th fortnight holidays. This has meant substantial time lost as advisors were on leave and is an unreasonably short period in comparison to other consultations.
- b) **Fair Trial/Fair Procedure** – Article 6 Human Right - previous judicial reviews of procedures in public inquiry issues have skirted the issue of Article 6 rights: there is a tension between the fact that an inquiry does not make a finding of criminal or civil responsibility. The findings of such a process will inevitably be called upon in subsequent proceedings. The sisters require clarification regarding whether all disclosures (oral or documentary) will be exempt from subsequent criminal investigation and if such disclosures will be admissible/discoverable in subsequent civil proceedings. They also require an explanation of how the Inquiry will manage the conflict between its inquisitorial role and the implicit right against self-incrimination. (*Funke v France*, *Saunders v UK*) The sisters need further information in relation to whether any adverse inference will be drawn by a failure to disclose evidence (oral or documentary) (*JB v Switzerland*)—as this is not made clear in the bill—and if the *Khanna* summons will be employed. Critically, the Draft Bill fails to denote the level of access to the allegations that will be afforded to individuals/institutions to enable them to reply. We would submit that if the individuals/institutions only see anonymised summaries of the evidence they are handicapped in their response, generating an obvious prejudice to them. Disclosure and admissions could lead to civil claims, prosecutions and the registration of a person under the POCVA legislation. Such an action is clearly anticipated by the inclusion of the draft amendment in this legislation.
- c) **Definitions** – currently, there is no definition section in the Draft Bill, which is required to clarify what we must accept are working definitions for far-reaching terms included in the legislation. In this instance it is pivotal that the sisters fully understand the parameters of 'abuse', the legal definition of 'institution', the ambit of 'the Report', and a specific definition

of what qualifies 'a resident'. Terms such of these must be explicitly defined from the outset of the Bill to avoid undue confusion.

- d) **List of Institutions** – the Draft Bill fails to include a full list of the institutions that will be subject to investigation, the sisters recommend the inclusion of such a list to guarantee that the inquiry will be a transparent process.
- e) **Judicial Review** – the guidance is incorrect as a judicial review must be brought “as soon as reasonably practical” with a longstop of 3 months.
- f) **The Best evidence/Best case issues** – discussions implicitly suggest that an intention to minimise costs and to reduce the involvement of lawyers in the process. Point 6(3) of the Bill states that the “*presiding member must act with fairness and with regard also to the need to avoid any necessary cost.*” The retention of control in this regard may amount to an ultra vires action and will inevitably lead to allegations that this is not an independent judicial inquiry, but a politically managed and compliant inquiry. The retention of the power to alter, amend, stop or otherwise control proceedings within OFMDFM merely exaggerates this perception. The power to amend “if the public interest requires it” within the Public Inquiries Act is not included in this Bill however it appears that this Act will be driven by the minister thereby crossing over the legislation.
- g) **Vulnerable witnesses** – no clear provision has been made in regard to how vulnerable witnesses will be accommodated. Sisters of Nazareth request confirmation that there will be “special measures” in place to adequately provide for very elderly witnesses who may be called. Additionally, clarification is required in relation to who is charged with determining the admissibility or competence of a witness.
- h) **Discovery/disclosure** – as previously indicated there are significant issues regarding discovery, preparation of documents and disclosure. The difference between adversarial and inquisitorial proceedings in civil cases is not clearly addressed. (*Three Rivers District Council v Bank of England No 4*) Documents which come into existence for these proceedings will not be privileged in future cases. It is not explicit what provision is to be made to deter third-party discovery actions against the Inquiry in future cases. It is also unclear what provision will be in place to disclose documents to the various interested parties. Has there been consideration of the variation between legal advice privilege and litigation privilege? These are all points which require clarification.
- i) **Freedom of expression, Reputation, Defamation and Privilege** – There are a number of competing interests surrounding the recording into a public record of certain allegations. Ultimately, this may cause a dispute over how the aforementioned right are to be balanced. The nature of this Inquiry is such that many allegations will be made which cannot be fully defended as the alleged perpetrators are dead. The presiding judge will have a very difficult time in the event of such a situation and there is no guidance in any document as to the format or parameters to be applied.
- j) **Freedom of Information/Data protection issues** - Many complicated legal issues arise here and are not dealt with in the legislation or in the guidance notes.

Conclusion

In light of the issues outlined above it is clear that the presiding member's power to act fairly has been compromised in what appears to be a bid to save costs. Due to the time constraints that the Sisters of Nazareth have encountered, we are eager to follow this short summation with a full and detailed submission that will significantly expand upon the points that we have made in this document. Further to this, we would request that we be given the opportunity to verbally substantiate our concerns in the presence of the OFMDFM Committee before the Draft Bill moves to the next stage.

Sisters of Mercy



17th July, 2012

Mr. Alyn Hicks
Clerk of the Committee of the Office of the First Minister and Deputy First Minister
Room 412
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Sir,

Re: Inquiry into Historical Institutional Abuse Bill

I am a Trustee of the Congregation of the Sisters of Mercy (Northern Province).

The Congregation intends to make submissions to the Committee for the Office of the First Minister and Deputy First Minister in relation to the Inquiry into Historical Institutional Abuse Bill. The Congregation is aware from the Public Notice that the deadline for submissions is 27th July 2012.

I am writing to you on behalf of the Congregation to request an extension of time. The Congregation only recently received notice of the deadline for submissions. Given the July holiday period it has been difficult for us to co-ordinate meetings with the appropriate representatives within our Congregation to allow us to finalise our submissions.

I am requesting a short extension of time until the 24th August 2012. I am aware that the next meeting of the Committee for the OFMDFM is not scheduled to take place until 5th September 2012. This request for an extension of time will not interfere with the overall time table for the progression of the Bill.

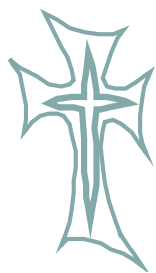
I would be grateful if you could consider this request for an extension of time or refer the matter to the Chairperson of the Committee, Mr Mike Nesbitt.

I look forward to hearing from you and thank you in anticipation of your assistance. I would be grateful to receive a response to this request as soon as possible and in advance of the deadline of 27th July 2012.

Yours sincerely

Sister Anne Lyng
Congregation of the Sisters of Mercy (Northern Province)

The Sisters of Mercy, Northern Province, Provincial House, 74 Main Street, Clogher, Co Tyrone, BT76 0AA
 Telephone: 028 (048 from EIRE) 8554 8127 Fax: 028 (048 from EIRE) 8554 9459 e-mail: mercy@mercynth.org



Sisters of Mercy

15th August, 2012

Mr Mike Nesbitt
Chairperson of the Committee of the Office of the First Minister
and Deputy First Minister
Room 412
Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

Dear Mr Nesbitt,

Re: Inquiry into Institutional Historical Abuse Bill

I am the Provincial Leader of the Congregation of the Sisters of Mercy (Northern Province) and on behalf of the Congregation I wish to make submissions in relation to the Inquiry into Institutional Abuse Bill.

I would like to thank the Clerk of the Committee for extending time to the Congregation to send our submissions. The Congregation welcomes the opportunity to make these submissions on this important process.

BACKGROUND

Between 1945 and 1995 the Northern Province of the Congregation provided residential accommodation and cared for children in the following *institutions*: -

1. Sisters of Mercy Home, Kilmorey Street, Newry opened in November 1899. In 1977 the Mercy Home in Kilmorey Street closed as a residential facility to children and a new purpose built facility was opened known as Orana house. Between 1977 and 1988 Orana House provided residential care for up to 30 children from birth to 18. From 1990 until its closure in 1997, Orana House provided short term residential facilities for up to 10 children and a child and family assessment unit;
2. St Catherine's Orphanage, Strabane which closed in 1948.

SUBMISSIONS

The Congregation of the Sisters of Mercy (Northern Province) wish to make the following submissions to the Committee at this important stage of the debate of the draft legislation:-

The Sisters of Mercy, Northern Province, Provincial House, 74 Main Street, Clogher, Co. Tyrone BT76 0AA
Telephone: 028 (048 from EIRE) 8554 8127 Fax: 028 (048 from EIRE) 8554 9459 Email: mercy@mercynt.org

Terms of Reference

1. The Congregation note that the Terms of Reference (the Terms) for the Inquiry have been defined in a Ministerial document released by the FM and DFM on 31st May 2012. Given the importance of the Terms setting out and defining the purpose of the Inquiry it is our view that they should be included in the Bill and, therefore, subject to the same detailed Assembly scrutiny and debate as the Bill. Sir Anthony Harte QC in his address to the Committee on 4th July 2012 confirmed that he would have no objection to the Terms being incorporated into the Bill.

Amendments to the Terms of Reference

2. Clause 3 (1) of the Bill permits the FM and DFM acting jointly to change or amend the Terms of Reference. We consider any significant change to the Terms should also be subject to proper Assembly scrutiny. The Bill confers widespread power on the Inquiry Panel to require production of evidence. This includes power to compel the discovery of documents and power to produce evidence to the Inquiry Panel in the form of witness statements and attend to give oral evidence. The Terms also give the Inquiry Panel power to make substantial recommendations and findings at the conclusion of their Inquiry and investigation. Given the extent of the powers inferred on the Inquiry Panel already it is our view that any future proposed change to the Terms should be returned to the Assembly for debate.

The ability to narrow, restrict or broaden the Inquiry should not be empowered to the FM and DFM as it is potential breach of Article 2, 3 and 6 of the European Convention of Human Rights. Such extensive ministerial power threatens the independence and impartiality of the Inquiry.

A change in Ministers or predominant parties in the 2015 election could also impact on the Terms. If there is a change to the identity of FM and DFM both individually and at party level then the new FM/DFM could jointly agree significant changes to the Terms well beyond the scope defined at present. The independence and impartiality of the Inquiry could be significantly undermined.

The Congregation appreciate that returning the Terms to the Assembly for amendment may delay the Inquiry. However, any delay or prejudice as a result of a delay would not be outweighed by the impact that a change to the Terms of Reference could have on both the work of the Inquiry and the impact on interested parties and victims. A significant change to the Terms would impact on the time table for the Inquiry, the resources required from relevant institutions to co-operate with the Inquiry and the number of witness who may be required to give evidence.

Scope of the Inquiry

3. The purpose of the Inquiry is to examine if there were *systemic failings by institutions or the state in their duties towards those children in their care*. The Bill and the Terms fail to define two essential terms namely *abuse* and *systemic failings*. In the absence of a statutory definition it is assumed that the definition of these two key terms will be left to the Inquiry Panel. This could widen or narrow the scope of the Inquiry.

The purpose of the Inquiry is to establish the facts, make findings and recommendations. If the remit of Inquiry is not clearly defined from the outset then it is difficult to envisage how this Inquiry can establish all the facts and make

comprehensive findings. The Terms should be incorporated into the Bill and should clearly define what action or inaction constitutes *abuse* or *systemic failings*.

The Congregation and other institutions will have to prepare for requests that they will receive from the Inquiry panel for discovery of documents and access to witnesses. Both at an individual and governance level the institutions cannot consider what documents and witness evidence will be relevant if these two terms are not defined.

Involvement of Institutions

4. The Inquiry team has not yet identified the number of institutions which will be called on to produce evidence. There is no information on whether the Inquiry will wait until a victim/survivor makes an allegation of abuse against an institution or whether every institution who falls within the definition will be contacted to produce documents. The Terms should provide detail on when and how an institution will be involved in the process.

Historical context

5. The Congregation acknowledges the importance of the research and investigation team providing an analysis of the historical context. This we feel should also be expanded to ensure that it includes social and economic analysis and not just information in relation to the troubles. We believe that the respective Institutions should have an input into this aspect of the Inquiry.

Judicial Review Proceedings

6. We consider that the proposed time limit of 14 days to issue Judicial Review proceedings is unreasonably short and should provide at the very least a reasonable period for a prospective applicant to prepare their application for review

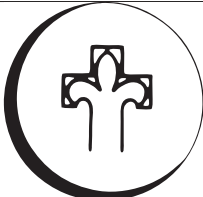
We would be happy to clarify any of the above issues in writing if required.

Yours sincerely

Sr. Nellie McLaughlin

Sr. Nellie McLaughlin
Provincial Leader
Congregation of the Sisters of Mercy (Northern Province)

Sisters of St. Louis

Tel: (042) 933 4752 / 933 4753 Fax: (042) 933 4751 Email: regionalate@stlouisirl.ie		St. Louis Regional House, 60 Árd Easmuinn, Dundalk, Co. Louth.
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Mr Alyn Hicks
 Clerk of the Committee of the Office of the First Minister and Deputy First Minister
 Room 412
 Parliament Buildings
 Ballymiscaw
 Stormont
 BELFAST
 BT4 3XX

By e-mail & first class post – committee.ofmdfm@niassembly.gov.uk

Dear Sir,

Re: Inquiry into Historical Institutional Abuse Bill

I am the Regional Leader of the Sisters of St Louis in Ireland. I am writing to you on behalf of the Sisters to make a request for an extension of time to make submissions to the Committee for the Office of the First Minister and Deputy First Minister in relation to the Inquiry into Historical Institutional Abuse Bill.

I am aware that the deadline for submissions is 27th July 2012. The first opportunity the Sisters of St Louis will be able to meet as a group to finalise our submissions will be 2nd August 2012. Accordingly I am requesting a short extension of time until the 17th August 2012. Our submissions will still be received a number of weeks before the next meeting of the Committee for the OFMDFM, which I understand is not scheduled to take place until 5th September 2012.

I would be grateful if you could consider this request for an extension of time or refer the matter to the Chairperson of the Committee, Mr Mike Nesbitt.

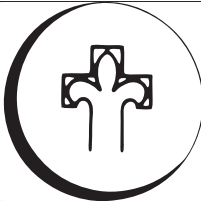
I look forward to hearing from you.

Yours sincerely



Sister Anne Kavanagh SSL

Regional Leader, Sisters of St Louis, Ireland

Tel: (042) 933 4752 / 933 4753 Fax: (042) 933 4751 Email: regionalate@stlouisirl.ie		St. Louis Regional House, 60 Árd Easmuinn, Dundalk, Co. Louth.
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Mr Mike Nesbitt
Chairperson of the Committee for the Office of the First Minister and Deputy First Minister
Room 412
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

August 8, 2012

By e-mail & first class post – committee.ofmdfm@niassembly.gov.uk

Dear Sir,

Re: Inquiry into Historical Institutional Abuse Bill

I am the Regional Leader of the Sisters of St Louis in Ireland. I am writing to you on behalf of the Sisters of St Louis to make submissions to the Committee in relation to the Bill.

I would like to thank the Clerk of the Committee for extending time to the Congregation to send our submissions. The Congregation welcomes the opportunity to make these submissions on such an important aspect of this Inquiry.

Background

From 1945 until 1995, the Sisters of St Louis had one residential facility which will fall under the remit of the proposed Inquiry. St Joseph's Middletown, opened in 1878 and was an Industrial School/Orphanage until 1952. In 1952 it changed at the request of the Ministry for Home Affairs to a statutory Training School for Catholic girls aged between 11 and 17. In 1995 it was renamed St Joseph's Adolescent Centre. Between January 1945 and December 1995 there were approximately 551 girls registered at St Josephs.

Terms of Reference

1. The Sisters of St Louis note that the Terms of Reference (the Terms) for the Inquiry have been defined in a Ministerial document released by the FM and DFM on 31st May 2012. Given the importance of the Terms setting out and defining the purpose of the Inquiry, it is our view that they should be included in the Bill and, therefore, subject to the same detailed Assembly scrutiny and debate as the Bill. We note in this regard Sir Anthony Hart QC, in his address to the Committee on 4th July 2012, confirmed that he would have no objection to the Terms being incorporated into the Bill.

Amendments to the Terms of Reference

2. Clause 3 (1) of the Bill permits the FM and DFM acting jointly to change or amend the Terms of Reference. We consider any significant change to the Terms should also be subject to proper Assembly scrutiny. By way of example we note that the Bill confers widespread power on the Inquiry Panel to require the production of evidence. This includes power to compel

the discovery of documents and power to produce evidence to the Inquiry Panel in the form of witness statements and attendance to give oral evidence. The Terms also give the Inquiry Panel power to make substantial recommendations and findings at the conclusion of their inquiry and investigation. Given the extent of the powers conferred on the Inquiry Panel already it is our view that any future proposed changes to the Terms should be returned to the Assembly for proper debate.

The ability to narrow, restrict or broaden the Inquiry should not be empowered to the FM and DFM as it is potential breach of Article 2, 3 and 6 of the European Convention of Human Rights. Such extensive ministerial power threatens the independence and impartiality of the Inquiry.

A change in Ministers or predominant parties in the 2015 election could also impact on the Terms. If there is a change to the identity of FM and DFM both individually and at party level then the new FM/DFM could jointly agree significant changes to the Terms well beyond the scope defined at present. The independence and impartiality of the Inquiry could be significantly undermined.

The Sisters of St Louis appreciate that returning the Terms to the Assembly for amendment may delay the Inquiry. However, any potential prejudice as a result of a delay would be outweighed by the impact that a change to the Terms of Reference could have on both the work of the Inquiry and the impact on interested parties and victims. A significant change to the Terms would impact on the time table for the Inquiry, the resources required from relevant institutions to co-operate with the Inquiry and the number of witnesses who may be required to give evidence.

Scope of the Inquiry

3. The purpose of the Inquiry is to examine if there were *systemic failings by institutions or the state in their duties towards those children in their care*. The Bill and the Terms fail to define two essential terms namely *abuse* and *systemic failings*. In the absence of a statutory definition it is assumed that the definition of these two key terms will be left to the Inquiry Panel. This could widen or narrow the scope of the Inquiry considerably.

The purpose of the Inquiry is to establish the facts, make findings and recommendations. If the remit of Inquiry is not clearly defined from the outset then it is difficult to envisage how this Inquiry can establish all the facts and make comprehensive findings. The Terms should be incorporated into the Bill and should clearly define what action or inaction constitutes *abuse or systemic failings*.

The Sisters of St Louis and other institutions will have to prepare, both at an individual and governance level, for requests that they may receive from the Inquiry panel for discovery of documents and access to witnesses. We cannot properly consider what documents and witness evidence will be relevant if these two terms are not clearly defined.

Involvement of Institutions

4. The Inquiry team has not yet identified the number of institutions which will be called on to produce evidence. There is no information on whether the Inquiry will wait until a victim/survivor makes an allegation of abuse against an institution or whether every institution who falls within the definition will be contacted to produce documents. The Terms should provide detail on when and how an institution will be involved in the process.

Historical context

5. The Sisters of St Louis acknowledge the importance of the historical context that pertained at the time the abuse occurred. This should also be defined to ensure that it includes social and economic analysis and not just information in relation to the troubles. The Terms should recognise that institutions should have input in relation to this very important issue.

Judicial Review Proceedings

6. We consider that the time limit of 14 days to issue Judicial Review proceedings is arbitrary and unreasonable and should be at least 3 months to reflect the common law right which currently extends to the right to seek a review of public law decisions.

Yours sincerely

A handwritten signature in black ink that reads "Sr. Anne Kavanagh". The signature is written in a cursive, flowing style.

Sister Anne Kavanagh SSL

Regional Leader
Sisters of St Louis
Ireland

Social Democratic and Labour Party



SDLP Response to Committee Consultation on Inquiry into Historical Abuse Bill

July 2012

Contact

Name: Anna McAlister
Address: SDLP Constituency Office
393a Lisburn Road
Belfast
BT9 7EW

Email: c.mcdevitt@sdlp.ie
Phone: 028 90 683535

Preface

The SDLP welcome the opportunity to respond to this consultation after extensive lobbying of the Executive to introduce an inquiry into historical abuse. We also wish to take this opportunity to commend the victims and survivors of abuse for their inspiring determination in campaigning for an inquiry, and to acknowledge their bravery in speaking out about their horrific experiences at the hands of some institutions.

The SDLP have worked closely with victims and survivors since Carmel Hanna brought a motion to the Northern Ireland Assembly in 2009, calling for an inquiry into institutional abuse. We have also worked alongside other groups and individuals, including Amnesty International, in order to determine what we believe are necessary requirements for an inquiry to ensure that the needs and expectations of victims and survivors are met in its conclusion.

We hope that our concerns will be noted by the Committee to ensure that the Inquiry into Historical Institutional Abuse Bill is fit for purpose and will seek to address the concerns which we have outlined in the body of this response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Conall McDevitt', written in a cursive style.

Conall McDevitt MLA

SDLP

1. Terms of Reference

The terms of reference for an inquiry into Institutional Abuse are not contained within the Bill, and thus the SDLP believes that this sets a very worrying precedent whereby the role of the Assembly as the body which holds the Executive to account is lessened due to the fact that the terms of reference cannot be scrutinised by the Assembly, which is the proper forum for scrutiny in the progression of a Bill through the House.

Furthermore, the terms of reference do not provide for the inquiry to make recommendations, including changes in law, political administrative procedures or practice to ensure that such abuse is effectively prevented in the future. Such recommendations could be of fundamental importance in securing, for individuals, their right to adequate and effective reparation, which should include a guarantee of non-repetition. Therefore, the terms of reference should be more flexible to enable the inquiry itself to determine, in more detail, the matters that come within its scope, including whatever matters it considers relevant to the issues it is investigating.

2. Independence of Inquiry from OFMDFM

The SDLP are concerned at the extensive powers and authority that are granted to the Office of the First and deputy First Minister over the inquiry process by the Bill. The Bill gives OFMDFM wide-ranging powers to intervene, or potentially, interfere, in the running of the inquiry, which is of grave concern to the SDLP. Each such power must be closely scrutinised to ensure that it is justified in the context of ensuring an independent and effective inquiry, which can guarantee the confidence of victims and the wider community. It would appear at present that OFMDFM would have the following powers; the power to amend the terms of reference at any time; the power to terminate the inquiry; the power to withdraw funding from the inquiry; the power to terminate the appointment of an inquiry panel member; the power to set terms by which a witness may or may not be eligible for expenses, including legal representation; the power to determine whether, and when, the inquiry report should be published, rather than power sitting with the inquiry chair; and the power to decide if the inquiry report shall be published in full or whether to withhold sections from publication.

Therefore the SDLP is concerned that these powers amount to a degree of control over the inquiry that could potentially undermine its independence. We are also concerned about the precedent which may be set for other inquiries established in the future by the Assembly into other historic cases.

3. Historical Scope of Inquiry

The Bill as it is currently published excludes victims of institutional abuse in the years before 1945 and after 1995. This is of particular concern for those victims who suffered abuse before 1945, and who are now at an advanced age, who will, if the Bill continues as it is designed, face exclusion from the inquiry. This could result in indirect discrimination based on age, and so the SDLP would ask that the scope is widened to ensure that all victims can access the inquiry.

Whilst it is proposed that the panel for acknowledgement forum strand of the inquiry is to be granted some discretion in hearing stories from outside the time frame, this appears to be a “second-class” form of inclusion in the acknowledgement forum. The Bill grants no such discretion to the research and investigation team, or the investigation and inquiry panel, to take evidence and consider individual cases or systemic abuse outside the 1945-1995 period. Again, this allocates a different status to those who suffered abuse, for example, in 1944, rather than 1946.

4. Timescale for Inquiry

The current time limit of 2 years and 6 months for the inquiry on implementation of the legislation may be too short a period to ensure its completion, and thus the SDLP would ask that powers be afforded to the Chair to extend the inquiry if deemed necessary.

5. Redress

The Bill as currently drafted postpones a decision on redress, including compensation, for consideration by the Executive until after the inquiry reports. This is likely to mean that no decision on redress, including compensation, will be taken by the Executive until 2016 at the earliest, with a further process of possible consultation and implementation to follow, before victims are able to receive redress. We know that this is an issue of concern to many victims, some of whom are now of an advanced age, who fear that they will not live long enough to enjoy redress or receive any compensation to pass on to their families, who have also suffered as a result of the abuse that they experienced.

The SDLP call on OFMDFM to consider making an interim report on the inquiry, which would be focused on the question of reparation which would mean that recommendations on redress are based on evidence presented to the inquiry and are not delayed unduly by the other requirements of the inquiry.

6. Judicial Review

The SDLP are concerned at the prospect of a time limit for the application of judicial review. The reduction to two weeks of the time limit for applying for a judicial review of a decision made by OFMDFM in relation to the inquiry, or by a member of the inquiry panel, is a significant reduction from the normal three-month period. This could restrict access to justice for those who feel unjustly treated by such a decision. We accept that there is a need to treat the inquiry as an urgent matter, and that we do not want to create a situation in which you could have judicial reviews continually being applied for, but, on the other hand, there is a need to reflect on whether a reduced time frame is a fair and just time frame.

7. Access to Legal Representation

Victims, witnesses and other interested parties, including those who may be implicated, are entitled to legal representation. The provision of legal representation to meet that entitlement must be made clearer. It must be made clearer that it is possible for criminal investigation and prosecution to flow from evidence uncovered during the inquiry process. Prosecutions must not be precluded should sufficient evidence be available. If the inquiry obtains information indicating that identified individuals may have been responsible for human rights abuses, that information should be passed to the relevant law enforcement bodies for investigation.

8. Clerical abuse in non-institutional settings

The Bill does not cover victims of clerical child abuse outside the setting of residential institutions. The SDLP understand that OFMDFM had to take a decision to focus in the first instance on victims and survivors of institutional abuse within this jurisdiction. However, there are potentially thousands of people who have suffered at the hands of abusers within the community, who are just as entitled to an inquiry and the truth as those who suffered in institutions. The only way that we can meet their needs is on an all-island basis. This is a matter which needs urgently addressed by the NSMC in order to explore how the diocesan-level inquiries that are taking place in the Republic are rolled out across the island, given that nearly all our Catholic dioceses' cross the border. We must ensure that there are no loopholes and no escape hatches, but a fully robust and harmonised inquiry system.

9. Conclusion

The SDLP welcome the opportunity to raise our concerns in relation to this Bill, and hope that Committee Members will now bring forward appropriate amendments to ensure that the Bill is fit for purpose and meets the needs of the victim and survivor community.

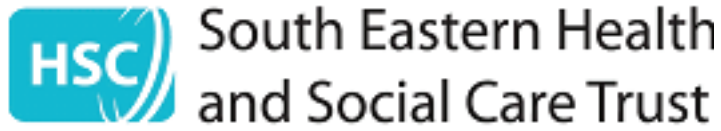
South Eastern Health and Social Care Trust

Please find attached correspondence on behalf of the South Eastern Health and Social Care Trust re the above consultation.

Thank you
Tania

Tania Gibson
Admin Support
Strategic and Capital Development
Kelly House
Ulster Hospital

Tel: 02890 550434 ext 3762



5 September 2012

To Whom It May Concern

Dear Sir/Madam

Historical Institutional Abuse Bill

The Trust welcomes the opportunity to respond to the above consultation.

The Trust has considered the consultation document and has no further comments.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Elaine Campbell'.

Elaine Campbell
Corporate Planning & Consultation Manager

Survivors and Victims of Institutional Abuse



Submission to the Committee of the Office of First and Deputy First Minister on the Inquiry into Historical Institutional Abuse.

Sir/Madam

We wish firstly to commend the Office of the First and Deputy First Minister and their staff for the work they have done in bringing this legislation before the Assembly. It has been an arduous task for them and we wish at the outset to recognise the work that they have engaged in to get this far. We owe a special debt of gratitude to Junior Ministers Martina Anderson and Jonathan Bell for their support, commitment, dedication and for the assistance of their staff. We recognise that through this process some of you may have heard and read some unimaginable painful memories recalled by victims and survivors. As you can imagine for us it has been a long and at times, painful process also. While this process has taken almost 3 years to get this far, for us it has been a lifetime. The motion was first brought to the Assembly by Carmel Hanna in November 2009 and taken up by her party colleague, Conal McDevitt, both of whom we express our gratitude and now, in 2012, finally we have succeeded in bringing the issue of Historical Institutional Abuse to the heart of Government.

We are ordinary people without any legal training and I ask that you bear this in mind in considering this submission. But we are passionately driven by the wrongs that were inflicted on us and the memory of those who did not live to see this day. This Bill offers us vindication, an opportunity to have our past and our pain acknowledged and to give us back our dignity. We are determined that all of those who were victims and survivors of Historic Institutional Abuse, who wish to, will have the opportunity to be heard through the process of the Inquiry.

We appreciate that this issue has had cross party support from it was first raised and that no party has decided that it is their issue and that we have personally been supported by every member of the Assembly that we have approached. None more so than Junior Ministers Martina Anderson and Jonathan Bell for whose support throughout this process we are truly thankful. We were encouraged to see that Executive has chosen to use its own legislative powers to hold the Inquiry. At the outset it appeared the only avenue open would have been the Inquiries Act 2005. While the Task Force was in the early stages of its work and in discussions with us, Legislative Powers were devolved to the Assembly. We believe that this has accelerated the process of creating this legislation and made the responsibility for its management, both local and more accountable.

In our submission to the taskforce, we called for an inquiry process which was independent, impartial and capable of delivering justice. We advocated that opportunities to participate in the inquiry process should be proactively extended to all survivors whether affiliated with any organised groups or not. We wanted Executive and the Assembly to take steps to enable participation and ensure that it would be accessible. It was important to us that victims/survivors should be offered support throughout the duration of the inquiry. In short, SAVIA advocated an inquiry which is:

- Independent
- Public
- Judge-led
- Supported by an independent panel of people with acknowledged expertise
- Not be solely based in Belfast.

We are pleased to see that these points have been satisfactorily addressed in the legislation. While we insisted that we did not want another “Ryan” we were aware that there were lessons to be learned from it. We did not want it to be over-lawyered as had happened there so we suggested a “panel of lawyer/legal advisors”, rather than create a lawyers charter as a way of limiting costs. With the Ryan Inquiry, the background of membership of the Commission was scrutinised by survivors, we have trusted your judgement and are satisfied with the appointments made.

There are however some points in the legislation requiring Clarification or Explanation.

Terms of Reference.

We had stated that the Inquiry should investigate incidents of:

Physical, Emotional, Sexual Abuse and Neglect in Residential Institutions and ask that those terms be defined and be included in both the Terms of Reference and in the Legislation. We believe this is necessary as it will give the Inquiry sufficient framework for its investigations and underpin the seriousness of the allegations.

In the *Ryan* Inquiry the Confidential Committee was required to hear the evidence of witnesses who wished to report four types of abuse as defined by the Acts.

Physical Abuse

The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child

Emotional abuse:

Any other act or omission towards the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

Sexual Abuse:

The use of the child by a person for sexual arousal or sexual gratification of that person or another person

Neglect:

Failure to care for the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

The purpose of the Inquiry is also to...*examine if there were systemic failings by institutions or the state in their duties towards those children in their care. **It must ensure that the inquiry is also able to identify the systemic failures underlying the abuse and the circumstances which allowed it to take place and go on happening. It should differentiate and identify both systemic failings and systematic abuse. Systemic Failings and Systematic Abuse should be measured against the relevant Human Rights Standards. Including the Rights of the Child, The Right to Family Life (the separation, in some cases the deportation, of siblings) International conventions on Torture and Inhuman and Degrading Treatment.***

Period of Investigation.

The Bill confers powers on the First Minister and deputy First Ministers to initiate an inquiry into Historical Institutional Abuse between the years 1945 and 1995.

The purpose of the Inquiry is to examine if there were systemic failings by institutions or the state in their duties toward those children in their care between the years 1945 and 1995.

The Ryan Commission used the period 1922 – 2000 as the timeframe considered by the Inquiry.

When the Scottish Inquiry Report 'Time to be Heard' was published its main recommendations included: That there should be an independent National Confidential Forum established and should be open to all who were cared for as children in any kind of residential setting in Scotland.

Two of the Acknowledgement Forum Panel Members selected have been involved in previous Inquiries. One (Ryan) which considered events from 1922 and the other (Time to be Heard) had no timeframe except the qualification of being "open to all who were cared for as children in any kind of residential setting"

We are interested to know why the year 1945 was chosen as the date in the legislation from which the Inquiry would start. One of our members is over 80 years old and was in an Institution in the 1930's. We have no reason to believe that that is an isolated case. The Inquiry Terms of Reference seem to be at odds with the Rules for the Acknowledgement Forum where the Forum states "If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1945 – 1995". It is our position that the Inquiry Terms of Reference are extended as a matter of principle and fairness to include all "who were cared for as children in any kind of residential setting", as happened in the Scottish Inquiry. We feel it would be unfair of the Inquiry or the Acknowledgement Forum to include others who were in Institutions prior to 1945 as discretionary cases and ask that they be treated equally as a right. Failing this inclusion there may be scope to challenge this at a later stage through Equality and Discrimination Legislation.

Acknowledgement and redress had been important at different levels for different Victims and Survivors. *There is confusion around the eventual outcome and the interpretation of the recommendations.*

At the conclusion of the Inquiry the Chairperson will present a report and make recommendations and findings on the following matters:

An apology - by whom and the nature of the apology;

Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic; *or constituted a breach of the human rights of children.*

Recommendations as to an appropriate memorial or tribute to those who suffered abuse; *we suggest that there are continued consultations on the type of tribute or memorial.*

The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims..... *Why desirability???????????*

There is no such ambiguity in international law where it states that: "victims of human rights abuses have a right to an effective remedy and reparation, which included restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition".

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

There should be a clear distinction as to what is being recommended. Without pre-empting the outcome or recommendations this reads like an either/or and leaves victims and survivors concerned that an outcome/resolution has already been decided.

I hope you will give these matters consideration and look forward to hearing a response from you soon.

Yours Respectfully

A handwritten signature in black ink that reads "Jon McCourt". The signature is written in a cursive style with a large, sweeping initial 'J'.

Jon McCourt

A handwritten signature in black ink that reads "Margaret McGuckin". The signature is written in a cursive style with a large, sweeping initial 'M'.

Margaret McGuckin

Voice of Young People In Care



Response to the
OFMDFM consultation on the Inquiry into Historical Institutional Abuse Bill

July 2012

Voice of Young People In Care
9-11 Botanic Ave
Belfast
BT71 JG

TEL: 02890244888
www.voypic.org

Introduction

VOYPIC welcomes the opportunity to respond to the Committee for the OFMDFM consultation on the Inquiry into Historical Institutional Abuse Bill.

We commend the committee for its role in bringing forward this legislation with the intention of addressing the effects of historical institutional abuse against children, young people and vulnerable adults.

VOYPIC

VOYPIC (Voice of Young People in Care) is an independent Northern Ireland charity that seeks to empower and enable children and young people with an experience of care to participate fully in decisions affecting their lives. We aim to improve the life chances of children and young people cared for away from home. We listen and learn from their experience to facilitate positive change in legislation, policy and practice. We work in partnership with children, young people, staff, managers, agencies and government.

Our core services are:

- **Advocacy** - helps children and young people to find out about their rights and participate in decision-making processes.

POLICY

you shaping legislation, policy and practice

- **Mentoring** - matches volunteer mentors with young people aged 12 to 18 who are or are at risk of suspension or exclusion from school.
- **Participation** - runs programmes and activities where children and young people learn new skills, meet new friends and have fun.
- **Policy** - provides opportunities for care experienced children and young people to inform and shape policy and practice which impacts on their lives.

In our policy work, we engage directly with children and young people. We use group work, individual support and online resources to gather views and perceptions of life in care and the transition to independence and adulthood. Children and young people are also supported to represent themselves and their peers in key forums and events.

We use all the information gathered from children and young people and share this with key decision makers who plan and deliver services for looked after children at a local and regional level.

What is Care?

The majority of children and young people grow up in the safety of their family receiving the care and protection required. However, there are some children and young people for whom this is not the case. These children may suffer from neglect, physical, emotional or sexual abuse. The state has a duty to intervene on behalf of these children.

The level and intensity of support and intervention offered to families to ensure that children are safeguarded from harm may vary. Where these efforts fail to protect children the state may have no alternative but to take these children into care. Such decisions are not taken lightly. Other children may enter care for a variety of reasons including:

- Death or parental illness
- Family breakdown
- Behavioural issues

A child may be placed on a short, medium or long term basis in:

- Kinship care (with extended family)
- Foster care (with non-relative carers)
- Residential care

Although government policy advocates that young children should be placed in foster care, due to a shortage of placements, a number of residential units do cater specifically for these younger children.

Outcomes for Children in Care

It is generally recognised that, across a range of measures, long term outcomes for a sizable proportion of children and young people in care are not good.

According to a range of research and surveys (UK Joint Working Party on Foster Care 1999; DHSSPS 2006) children and young people who have been in care are:

- 12 times more likely to leave school with no qualifications
- 4 times more likely to be unemployed
- 60 times more likely to become homeless
- 50 times more likely to experience prison
- Their own children are 66 times more likely to require State care than children of those who have not had an experience of care

It is important to highlight that figures such as these typically compare children with a care experience to the general population average, rather than to children from the same background but who have not experienced care. These poor outcomes are usually associated with being in care – rather than taking account of the reasons a child had to be taken into care in the first place.

Inquiry into Historical Institutional Abuse

VOYPIC welcomes the inquiry as an opportunity to redress any harm done to vulnerable people, particularly children. We welcome the intention that the inquiry will be inquisitorial in nature rather than adversarial.

We acknowledge how much has changed since the period of time that the inquiry will address and the significance of the ratification of the UN Convention on the Rights of the Child and the implementation of the Children (NI) Order in 1995. Children's rights and safeguarding children and vulnerable adults is now of much greater priority to society. VOYPIC works in partnership and cooperation with many others for the continued improvement of services and outcomes.

Terms of Reference

We note that the inquiry applies to children in the care of institutions between the year of 1945 and 1995 and that a child is defined as any person under 18 years of age. Until 1969 the age of majority was 21. This means that victims and survivors may still have been under the age of majority when they were living in institutions and others may not have left institutions until after they were 18 as a result of their experience and their ability to move from the care of the institution.

Recommendation: *Extend the terms of reference to children and young people in the care of institutions between 1945 and 1995 up to the age of 21 years.*

We welcome the intention to review and address the immediate needs of victims and survivors and to ensure adequate provision to address needs.

We commend and welcome the intention to provide support including counselling and onwards referral to services to victims and survivors. Similarly we welcome the commitment made by the First and deputy first Ministers that support should be made available to assist victims and survivors to communicate with other survivors and with government. We note, however, that this is reflected in the Terms of Reference, and not in the Bill itself.

Recommendation: *Secure the provision of support services for victims and survivors.*

Recommendation: *Consider VOYPIC's experience and expertise of supporting care experienced children and young people as part of the development and provision of support services for victims and survivors.*

Timescales

Does the timescale envisaged for the inquiry allow for contact to be made with victims and survivors now living abroad who may wish to participate?

We welcome consideration of an apology and how this can be most appropriate and meaningful. Good practice suggests that the process and person to make the apology be informed completely by what victims and survivors want.

We welcome intention to make the process of the inquiry as accessible as possible for witnesses and the public mindful of the need to protect confidentiality.

Recommendation: *Ensure adequate time is allowed to make the inquiry as accessible as possible to all those wishing to participate.*

To find out more about our work, go to our website at www.voypic.org or email us at info@voypic.org.

<p>Belfast</p> <p>Voice of Young People In Care 9-11 Botanic Avenue Belfast BT7 1JG</p> <p>Tel: 028 9024 4888 Fax: 028 9024 0679</p>	<p>Ballymena</p> <p>Voice of Young People In Care 25 Castle Street Ballymena BT43 7BT</p> <p>Tel: 028 2563 2641 Fax: 028 2565 5934</p>
<p>Londonderry</p> <p>Voice of Young People In Care Tracey House 29 Clarendon Street Londonderry BT48 7ER</p> <p>Tel: 028 7137 8980 Fax: 028 7137 7938</p>	<p>Lurgan</p> <p>Voice of Young People In Care Flat 12, Mount Zion House Edward Street Lurgan BT66 6DB</p> <p>Tel: 028 3831 3380 Fax: 028 3832 4689</p>



Northern Ireland
Assembly

Appendix 4

List of Witnesses

List of Witnesses

Amnesty International UK	Mr. Patrick Corrigan
Barnardo's	Mrs. Lynda Wilson Mrs. Sara Clarke Mr. Tom Burford
Contact NI/Nexus/Victims Support	Mr. Fergus Comiskey Ms Pam Hunter Ms Susan Reid
De La Salle Order	Brother Francis Manning Mr. Joe Napier (Napier & Sons)
Historical Institutional Abuse Inquiry Team	Sir Anthony Hart Ms. Norah Gibbons Mr. Andrew Browne Mr. Patrick Butler
McAteer & Co Solicitors	Mr. Ciaran McAteer
Northern Ireland Human Rights Commission	Professor Michael O'Flaherty Ms Rhyannon Blythe
Office of the First Minister and deputy First Minister	Ms. Maggie Smith Mr. Jim Breen Mrs. Cathy McMullan Mr Michael Harkin Ms Patricia Carey
Poor Sisters of Nazareth	Sister Cataldus Mr Fintan Canavan (Jones & Co)
SAVIA Survivors and Victims of Institutional Abuse	Mr. Jon McCourt Ms. Margaret McGuckin



Northern Ireland
Assembly

Appendix 5

Correspondence Submitted to Committee

List of Correspondence with OFMDFM

- 31.05.12 – Ministerial Statement with Terms of Reference
- 01.06.12 – OFMDFM letter regarding launch of Bill
- 07.06.12 – Committee letter to OFMDFM requesting response to issues of 6.06.12 meeting
- 21.06.12 – Letter of response from OFMDFM
- 21.06.12 – OFMDFM background note on consultation process
- 21.06.12 – OFMDFM List of Consultees
- 09.07.12 – OFMDFM response regarding improvements in residential child care since 1995
- 07.09.12 – Committee letter to OFMDFM requesting response to issues of 5.09.12 meeting
- 13.09.12 – Committee letter to OFMDFM requesting response to issues of 12.09.12 meeting
- 21.09.12 – Committee letter to OFMDFM requesting response to issues of 19.09.12 meeting
- 26.09.12 – OFMDFM response regarding issues raised during consultation
- 26.09.12 – Junior Ministers letter regarding Launch of Acknowledgement Forum and Panel Members
- 27.09.12 – Committee letter to OFMDFM regarding late papers and invite to give evidence 3.10.12
- 02.10.12 – OFMDFM updated table of responses and late papers issue
- 04.10.12 – Committee letter to OFMDFM regarding request for dedicated victims space
- 04.10.12 – Committee letter to OFMDFM regarding issues raised during draft clause by clause
- 09.10.12 – OFMDFM response regarding dedicated victims space
- 09.10.12 – OFMDFM response regarding issues raised during draft clause by clause
- 10.10.12 – OFMDFM response regarding additional issues raised during draft clause by clause
- 11.10.12 – Committee letter to OFMDFM regarding additional amendment
- 16.10.12 – OFMDFM response regarding additional amendment
- 17.10.12 – OFMDFM response regarding Privacy and Restriction Orders amendments
- 17.10.12 – OFMDFM response regarding Payment of Expenses amendments
- 17.10.12 – OFMDFM response regarding Protection of Evidence amendments
- 17.10.12 – FMDFM letter to Committee regarding Written Statement to Assembly on amended ToR
- 17.10.12 – FMDFM Written Statement to Assembly on amended ToR

Ministers Statement with Terms of Reference

Office of the First Minister and Deputy First Minister

Written Ministerial Statement by Rt Hon Peter D Robinson MLA First Minister and Martin McGuinness MP MLA deputy First Minister

Announcement of the Historical Institutional Abuse Inquiry Terms of Reference, Chair and Acknowledgement Forum Panel Members

Published at 5.00pm on Thursday 31 May 2012

On 29 September 2011 the Executive announced there would be an Investigation and Inquiry into historical institutional abuse. We attach the agreed Terms of Reference for the Inquiry and wish to advise the Assembly of the Chair of the Inquiry and the panel members for the Acknowledgement Forum.

Chair of the Inquiry

Sir Anthony Hart has agreed to chair and direct the Inquiry. Sir Anthony has enjoyed a distinguished career as a barrister and a judge.

Acknowledgement Forum Inquiry Panel Members

The Inquiry will include a confidential “Acknowledgement Forum” in which victims and survivors can recount their childhood experiences of living in institutions to members of the Inquiry Panel. The Acknowledgement Forum Panel Members are:

- Beverley Clarke – Beverley has wide experience of social work and child care, working in England and Canada. She is an independent expert witness and has worked for the Ministry of Justice and the Home Office.
- Norah Gibbons – Norah is Director of Advocacy in Barnardo’s Ireland. She was also a Commissioner of the Ryan Inquiry into historical institutional abuse in Ireland.
- Dave Marshall QPM – Dave is a consultant in the field of child safeguarding, investigation and management. For 9 years he was Detective Chief Inspector and Head of the Metropolitan Police’ Child Abuse Investigation Command’s Major Investigation Team.
- Tom Shaw CBE – Tom was invited by Scottish Ministers to review the regulatory framework in Scotland designed to ensure the welfare needs and rights of Children in residential institutions from 1945-95. Subsequently he chaired “Time to be Heard” – a pilot acknowledgement forum for those who had experienced abuse in residential children’s institutions in Scotland.

Terms of Reference

The NI Executive’s Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

For the purposes of this Inquiry “child” means any person under 18 years of age;

“institution” means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; “relevant period” means the period between 1945 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- an Acknowledgement Forum,
- a Research and Investigative team and
- an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.

The functions of each are as follows:

An Acknowledgment Forum

An Acknowledgment Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1945 – 1995. The Acknowledgment Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair.

A Research and Investigative team

A Research and Investigative team will report to and work under the direction of the Chair of the Inquiry and Investigation. The team will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;
- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

An Investigation and Inquiry Panel

An Inquiry and Investigation Panel will produce a final report taking into consideration the report from the Acknowledgement Forum, the report of the Research and Investigative

team and any other evidence it considers necessary. The Panel will be led by a Chairperson supported by two other members, who will be appointed by the First Minister and deputy First Minister. The Chairperson of the Inquiry and Investigation will also be responsible for the work of the Acknowledgement Forum and for the Research and Investigative Team.

On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. This report will make recommendations and findings on the following matters:

- An apology - by whom and the nature of the apology;
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

The Northern Ireland Executive will bring forward legislation at the beginning of this process to give a statutory power to the Inquiry and Investigation to compel the release of documents and require witnesses to give evidence to the Inquiry and Investigation. It is hoped that the legislative power will not be needed, however; the power will be available if required. As far as possible the Inquiry should be inquisitorial in nature rather than adversarial.

A Witness Support Service will be established by to support Victims and Survivors throughout their contact with the Inquiry process. The Office of the First Minister and deputy First Minister will establish a wider Victims Support Service to provide support and advice to victims before, during and after the inquiry.

OFMDFM letter Regarding Launch of Bill

Alyn Hicks
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

1 June 2012

Dear Alyn

Inquiry into Historical Institutional Abuse Bill

At its meeting of 31 May 2012 the Executive approved the proposal to introduce a draft Bill to the Assembly that will provide the statutory footing upon which to take forward an Inquiry into Historical Institutional Abuse here.

In order that the Inquiry can begin its formal work without delay, the First Minister and deputy First Minister would like to introduce the Bill to the Assembly on 11 June 2012, subject to the Speaker's agreement.

Ministers have asked OFMDFM officials to attend the Committee meeting of 6 June to brief members and answer questions on the context and substance of the Bill prior to the Bill's introduction in the Assembly.

For information I attach a copy of the Inquiry into Historical Abuse Bill and associated Explanatory & Financial Memorandum.

Yours sincerely

Signed Gail McKibbin

Gail McKibbin
Departmental Assembly Liaison Officer

Committee letter to OFMDFM requesting response to issues

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

Ms Gail McKibbin
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 7 June 2012

Dear Gail

Historical Institutional Abuse Inquiry Bill

At its meeting on 6 June 2012 the Committee for the Office of the First Minister and deputy First Minister received a briefing following the Ministerial Statement last Thursday announcing the Historical Institutional Abuse Inquiry and the draft Bill. The Committee agreed to request clarification on the following points;

- The period covered by the inquiry runs from 1945 to 1995. In relation to it ending in 1995, officials informed the members that this was because the Children's Order took effect from 1995. Officials agreed to provide the Committee with an explanation of the effects of the Children's Order and relate these to the choice of 1995 as the end date.
- The Explanatory Memorandum states that a formal consultation exercise was carried out in March 2011; the Committee agreed to request a list of the consultees involved.

The Committee noted and welcomed officials' offers to inform and assist the Committee in its consideration of the Bill. It would be useful in facilitating and expediting the Committee's scrutiny of the Bill if officials were able to brief the Committee at its meeting on 20 June 2012 on the consultation which has been carried out to date, to include:

- the proposals consulted on;
- the consultees;
- a summary and analysis of the responses received; and
- any changes made as a result of the consultation.

On issues other than those to be covered by the requested briefing on 20 June 2012, a response by Thursday 21 June 2012 would be appreciated. Where a response within 10 working days is not possible, the Committee wishes to be advised of the reason why a longer period is required and the expected date of response.

Yours sincerely



Alyn Hicks
Clerk to the Committee

OFMDFM response regarding Bill Issues

Alyn Hicks
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

21 June 2012

Dear Alyn

Historical Institutional Abuse

Thank you for your correspondence of 7 June 2012 in which you sought to request clarification on;

- i. The period covered by the inquiry runs from 1945 to 1995. In relation to it ending in 1995, officials informed the members that this was because the Children's Order took effect from 1995. Officials agreed to provide the Committee with an explanation of the effects of the Children's Order and relate these to the choice of 1995 as the end date.
- ii. The Explanatory Memorandum states that a formal consultation exercise was carried out in March 2011; the Committee agreed to request a list of the consultees involved.

Officials have requested from DHSSPS the information the Committee has requested about the Children Order and I will send this to you as soon as it is received.

In December 2010, the Executive established an interdepartmental taskforce to consider the nature of an inquiry into institutional abuse and to advise on how it could be taken forward. Consultation with victims and survivors and with others was a major feature of that work. I attach a background note and list of consultees.

The taskforce website includes its terms of reference and minutes of meetings <http://www.northernireland.gov.uk/index/work-of-the-executive/historical-institutional-abuse-taskforce.htm>

Maggie Smith, Cathy McMullan and Jim Breen will attend the Committee on June 26 to discuss the consultation in relation to historical institutional abuse to include the following topics:

- the proposals consulted on;
- the consultees;
- a summary and analysis of the responses received; and
- any changes made as a result of the consultation.

Yours sincerely

Signed Gail McKibbin

Gail McKibbin
Departmental Assembly Liaison Officer

OFMDFM Background note on consultation process

Background to Consultation

On 16 December 2010, the Executive agreed to establish an interdepartmental taskforce to consider the nature of an inquiry into historical institutional abuse in Northern Ireland and, by the summer recess to bring back to the Executive recommendations on how this could be taken forward.

The taskforce was made up of those Departments with a policy or statutory responsibility for the issues, i.e:

- The Office of the First Minister and deputy First Minister
- Department of Health, Social Services and Public Safety
- Department of Education
- Department of Justice
- Department for Social Development
- Department of Finance and Personnel
- Department of Environment
- Department for Employment and Learning
- Department of Culture, Arts and Leisure.

A major part of the work of the taskforce was stakeholder engagement.

The taskforce met with officials in the Republic of Ireland and Scotland who were involved in the Ryan Inquiry and the Scottish Government's Pilot Forum respectively. They also met with Amnesty International, the Northern Ireland Human Rights Commission, Children's Law Centre and PSNI.

The taskforce also held three consultation meetings with victims and survivors in Armagh, Belfast and Derry/Londonderry on 7, 10 and 22 March 2011 respectively. These were advertised in local papers; website; fliers disseminated by victims and survivors groups; fliers sent to UK/worldwide victims and survivors groups, health centres, hospitals, Consulates and Embassies, counselling services and a press release.

A consultation questionnaire was produced and completed by 30 survivors who were unable to attend a consultation event. There were also written submissions from the victims' group SAVIA, legal representatives and Amnesty International.

The issues consulted on were:

- The definition of an institution
- Definition of abuse
- Nature of an apology
- Timeframe
- Acknowledgment
- Justice
- Compensation

Summary and analysis of the consultation

The taskforce found that:

'Managing the competing demands of the key players in the Northern Ireland context will continue to be one of the main challenges. . . . Striking the balance between the interests of the various parties involved has also been an obstacle to overcome within other jurisdictions. Their experiences have shown that clarity of purpose and clear communication of that purpose from the outset is critical to the overall effectiveness of the process. . . . The process of engagement undertaken by the Taskforce has highlighted that there are many disparate views on the nature of an inquiry into historical institutional abuse and that it will be virtually impossible to design a framework that meets the demands of every stakeholder group.'

Characteristics of an inquiry which emerged from the taskforce's consultations were:

- independence;
- statutory basis that allows for evidence/witnesses to be compelled;
- ability to achieve justice;
- acknowledgement;
- redress;
- opportunity for victims to recount their experiences;
- ability to establish responsibility for abuse;
- accountability;
- balance struck between carrying out an effective, robust inquiry and allowing process to go on indefinitely.

Consultation with victims and survivors provided consensus that an apology and acknowledgement were important elements of the outcome of any inquiry. An opportunity for individuals who have suffered abuse to recount their experience and have it recorded and believed was also important, as was achieving justice. Views on compensation arrangements differed, but were much influenced by the precedent set in the Republic of Ireland; others argued for other forms of compensation such as an education and training fund.

The taskforce concluded that the priority outcomes of an inquiry from the point of individual victims and survivors were:

- Acknowledgement;
- Apology and an opportunity to recount experiences;
- Justice; and
- An official record associated with compensation and redress.

Following the submission of the taskforce recommendations to the Executive in July 2011, Junior Minister Bell and Junior Minister Anderson met victims and survivors groups throughout the summer to consider the nature of the inquiry.

Following the Executive's announcement in September 2011 that it would establish an inquiry, Junior Ministers and OFMDFM officials have kept in regular contact with the representatives of victims and survivors groups. Indeed, Junior Ministers discussed the Inquiry's Terms of Reference with a group of victims on 22 May and briefed victims representatives on the morning of May 31, the day on which the First Minister and deputy First Minister announced the Terms of Reference, the inquiry chair and 4 inquiry panel members via a Statement in the Assembly.

The Inquiry's Terms of Reference were also agreed with Sir Anthony Hart, prior to his announcement as inquiry Chairman.

Sir Anthony was also consulted about the legislation.

Consultees

SAVIA (Survivors and Victims of Institutional Abuse)

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Colm O’Gorman

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OFMDFM response regarding improvements to residential care

Alyn Hicks
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

09 July 2012

Dear Alyn,

Historical Institutional Abuse

Further to your correspondence of 7 June 2012 about the Inquiry into Historical Abuse Bill, please now find attached at **Annex 1** further information for the Committee sourced from DHSSPS about improvements in residential child care since 1995 and the Children (Northern Ireland) Order 1995.

Yours sincerely

Signed Gail McKibbin

Gail McKibbin
Departmental Assembly Liaison Officer

Annex 1

Background

The enactment of the Children (NI) Order 1995 made the welfare of the child the paramount consideration. Furthermore, legislation since 1995 has significantly enhanced the safeguards in place for making sure that not only are employees removed from the workplace if they harm children by placing them on barred lists, but also to prevent them from entering into employment with children in the first place.

Improvements in Residential Child Care since 1995 - Standards of Care and Child Protection

In 1995 the Children (Northern Ireland) Order was enacted and with it, a raft of legislation and guidance emanated from it ensuring that the welfare of the child is the paramount consideration. All children's homes operate within an established regulatory framework. Regulations specify controls and sanctions which may be placed upon young people and it should be remembered children's homes are for the most part intended to be open units, with young people free to leave the home. All Trusts children's homes seek to provide a caring therapeutic environment to support young people and to address their complex and often challenging needs. Trusts have a range of measures in place to manage and address difficult behaviours. These include individual risk assessments and harm reduction plans.

In May 1995 the Social Services Inspectorate developed standards for children living away from home in a residential setting. These were reviewed in 2004 and 2011 and are currently being revised for publication in 2012/13.

In 2000 "Children Matter" set out an agenda for residential child care services which was designed to ensure that the service delivered good outcomes for children and that the messages of the Report of Sir William Utting "People Like Us" regarding the need to safeguard children in public care were addressed.

Between 2000 and 2006 the Children Matter Taskforce initiative ensured investment in a continuum of differential residential provision and a mixed economy of provision from statutory small scale children's homes, assessment units and accommodation provided by the voluntary sector.

Care Matters in Northern Ireland – A Bridge to a Better Future was issued for consultation in March 2007 and set out government plans to meet the challenge of improving services for all Looked After Children including those in a residential setting. Care Matters in Northern Ireland was fully endorsed by the Northern Ireland Executive in September 2009. The Executive was asked to recognise the State's unique responsibilities to this vulnerable group of children and young people and acknowledge that it is incumbent on all Departments and agencies to co-operate and take action to improve the life experiences of these young people. At the same meeting the Executive agreed to the publication of the Care Matters Consultation Summary Report.

The Regulation and Quality Improvement Authority (RQIA), established in 2005, has the responsibility including regulation (registration and inspection) of both statutory and independent children's homes to a specific set of regulatory requirements and standards. Where deficiencies in care are identified either through regulatory activities or following the receipt of a complaint, RQIA will make recommendations based on minimum standards and or legislative requirements in its inspection reports. The service provider must respond to these with a quality improvement plan detailing how it will address requirements and recommendation. RQIA monitors progress against the quality improvement programme through its inspection activity.

The Reform Implementation Team was established to ensure that the recommendations of Our Children and Young People – Our Shared Responsibility Inspection of Child Protection Services in Northern Ireland Overview Report (December 2006) were implemented. Through a number of dedicated Workstreams, the Reform Implementation Team has produced further guidance and best practice documents. A number of the Workstream products have dealt with Looked After Children and specifically Residential Care.

The Reform Implementation team produced guidance in relation to safeguarding children involved in dual processes (i.e. those children and young people who are both Looked After Children and subject of Child Protection Procedures).

In April 2011 regional guidance was produced in relation to children going missing whether from residential care, or home or foster care. The guidance is designed to support an effective collaborative safeguarding response by Health and Social Care Trusts and the Police Service of Northern Ireland (PSNI). In April 2012 the HSCB published its Regional Residential Childcare Policies, which details for the Trusts and their staff, policy and procedures to be followed in relation to residential care. These procedures cover areas such as admission to residential childcare and secure care, child protection, child sexual exploitation, anti-bullying, misuse of substances and the use of physical restraint.

In Northern Ireland, the NSPCC provides an Independent Visiting Service. Volunteers with the Scheme offer the children and young people emotional support and encouragement; being there when needed; a familiar face when things seem uncertain. The Independent Visitor's role is also to support the child to exercise their rights and participate in making decisions about their life.

VOYPIC introduced the Computer Assisted Self Interview (CASI) survey in September 2010 to capture the views and experiences of looked after children and young people here aged 8 - 18. The survey, which is intended to take place annually, includes questions about the experience of care; participation in Looked After Children (LAC) reviews; education; life style; and key relationships. VOYPIC published the first CASI report in May 2012. One issue highlighted is that 80% of survey respondents feel safe where they live and 72% feel settled where they live.

Improvements in Staff Selection, Training Etc

Since the publication of the Hughes Report in 1986, the importance of assessing the suitability of candidates for employment in residential child care, and the training and qualification requirements of such staff have been to the forefront of policy decisions and developments.

Safeguards for preventing unsuitable individuals from working with vulnerable groups, including children have been significantly strengthened in recent years. The Pre-Employment Consultancy Service (PECS) Register, established in 1981, was placed on a statutory basis by the disqualification lists introduced by the Protection of Children and Vulnerable Adults Order (2003) (POCVA). Safeguarding measures introduced by POCVA and DE's Education (Prohibition from Teaching and Working with Children) Regulations (NI) 2007 were replaced by the Safeguarding Vulnerable Groups (NI) Order 2007 (SVG0) which put in place consistent arrangements across the UK and established an Independent Safeguarding Authority (ISA) to make barring decisions and maintain single barred lists across England, Wales and Northern Ireland.

The SVG0 strengthened and extended previous arrangements and legal requirements on employers and other organisations to refer and provide information on request; and built on the concept of auto-inclusion offences, where an individual who commits a specified offence is automatically placed on the relevant barred list. The provisions in the SVG0 have not been fully implemented – the coalition government ordered a review of the original proposals, leading to changes to the SVG0 by way of the Protection of Freedoms Act 2012, which will

start to come into effect from September this year. These changes to disclosure and barring services are being introduced to promote better sharing of responsibility for safeguarding between the state on one hand, and employers on the other, with the aim of achieving a culture where employers recognise the importance of well managed arrangements for safeguarding and where the risk of harm is identified, acted upon effectively and ultimately prevented.

Overall the residential social work/care context has been modernising along with the rest of the social services workforce, in regards to training and development. From 1993 to 2003, there was a professional training sponsorship programme for residential child care workers to support the development of a professional and fully qualified workforce. Since 1993 all team leaders in residential child care are required to hold a social work qualification. Under the transitional arrangements there are currently only two team leaders who do not hold such a qualification. Management within residential care also receive specific training on the supervision of staff.

There is also mandatory training for staff in residential child care set by employers and the service regulator such as safeguarding training, Health and Safety, and for some Fire and First aid training. Staff also receive training on Therapeutic Crisis Intervention (or equivalent model of managing challenging behaviour). These accredited models are a way of training staff to be able to de-escalate aggression at as early a stage as possible.

In relation to post-qualifying training and as part of the MSc in Child Care provided by Queen's University Belfast, Module 3 concentrates specifically on "enhancing the outcomes for children and young people in state care". Since 2007 staff from residential units have been encouraged to undertake this module and have done so. The module is delivered by BAAF (British Adoption and Fostering Agency) and is targeted at upskilling and improving the competence and knowledge of experienced social workers.

The Northern Ireland Social Care Council was established in 2003 with the aim of strengthening public protection and improving the standards of social care practice. This is to be achieved through the registration of social care workers and setting standards of conduct and practice. Residential child care workers were among the first priority groups to be registered with the NISCC from 2005. While the majority of social care workers and managers in residential child care are registered, it will become an offence not to be registered from 2013. It is a condition of registration with the NISCC that all registrants maintain and improve their skills and knowledge and this must be verified for every period of registration (currently every 3 years).

A Review of Residential Child Care was carried out in 2007/08. This Review considered the strategic direction of residential child care services. It took forward the recommendations of the Regional Child Protection Inspection Report "Our Children and Young People Our Shared Responsibility 2006" to ensure that reforms in the wider children's services were reflected in the residential child care sector. Particular reference was given to the provision of therapeutic supports for children and the reform of assessment procedures, placement planning and child protection procedures within residential child care. In 2007 all Trusts introduced therapeutic approaches in residential child care and additional funding was provided by the DHSSPS to ensure all staff engaging in such work were trained in the relevant trauma informed models of practice. A recent evaluation of this work highlights the

increased confidence and competence of staff and improved relationships between staff and the young people they care for.

The Review also considered staffing skill mix and qualification requirements for the residential child care sector and the Health and Social Care Board and Health and Social Care Trusts are currently bringing forward proposals for the skills and qualification mix in residential child care to reflect the changing demand and needs of the young people who require this service.

Fewer Children Now In Residential Care – Why?

One of the major principles on which the Children (NI) Order was based is that where possible, children should be placed in a family setting, either with a relative or friend or with a Trust foster carer. This has been the Department's established policy and good practice. To this end a number initiatives have been put in place to facilitate this process including publishing of Minimum Standards for Kinship Care, Fostering Achievement and Going the Extra Mile schemes. However it is recognised that a placement in a Trust's children's home is the best option for some children and to that end the quality of accommodation has been improved and a reduction in the home's capacity to 6/8 children/young people. At 31 March 2011 foster care accounted for 74% (1862) of looked after children whereby residential care for 10% (239).

Means By Which Children and Staff Can Report Inappropriate Behaviour and Abuse; Action Taken When Reports of Inappropriate Behaviour or Abuse Received

All reports of such abuse should be reported to HSCB under the near miss and untoward incident reporting system and to the Department if necessary under the early alert reporting system.

Children and young people can report concerns they may have as well as allegations of abuse directly and indirectly through a number of mechanisms including;

- directly to individual residential care staff and fieldwork staff;
- directly to their field Social Worker (who is independent of their residential keyworker);
- to a member of their family (who in turn can assist and advocate on their behalf)
- to managers of residential units;
- to chairs of LAC Reviews
- directly to the PSNI
- to independent inspectors i.e. RQIA; and
- to Independent Visitors to the unit;
- independent advocates to the unit such as the Voice of Young People in Care and Include Youth; and
- anonymously or otherwise through the use of a complaints card.

On admission to residential care all children and young people are provided with an admission pack which provides detail of how they can make a complaint and what to do if they are concerned about abuse. Children and young people are also given information about advice and support telephone help lines such as Childline.

As for actions taken pursuant to reports of abuse, all allegations will be investigated under the regional child protection policy and procedures and the protocol for joint investigation by social workers and police officers of alleged and suspected child abuse - NI. This includes investigative interviewing in compliance with "Achieving best Evidence Guidance". The immediate safety and welfare of the children and young people is considered at a strategy meeting (under the Joint Protocol) or a case planning meeting designed to ensure the needs of the child or young person are addressed. Such arrangements will also take consideration of the needs of other children and young people deemed to be at risk or in need of safeguarding.

In the event of an allegation being made against a member of staff this is drawn to the immediate attention of management within the Trust and decisions taken to prioritise the welfare of children and the investigative response required. This may lead to the temporary precautionary suspension of the staff member in respect of whom the allegations have been made, to enable a full objective and considered investigation to take place. This could

necessitate a referral to the PSNI to ensure that any criminal dimension is appropriately investigated by the relevant authority.

Practice has developed to ensure that children and young people making disclosures or allegations of abuse are offered appropriate therapeutic and supportive services. Such young people are also offered access to specialist services for example the Young Witness Service and therapeutic supportive services through CAMHS and other counselling services.

Safeguarding Board

The Safeguarding Board will be established in September 2012 and will bring together, on a statutory basis, the key operational agencies from the statutory and voluntary sectors, and from various disciplines and professional backgrounds to work together strategically to identify ways in which they can improve individual agency and cross agency working to protect and safeguard children, including looked after children.

Committee letter to OFMDFM requesting response to issues

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 7 September 2012

Dear Conor

Historical Institutional Abuse Inquiry Bill

At its meeting on 5 September 2012 the Committee for the Office of the First Minister and deputy First Minister received briefings from the Northern Ireland Human Rights Commission and Survivors and Victims of Institutional Abuse (SAVIA) on their submissions to the Committee on the Bill.

The Committee agreed to request a response from the Department on the following:

- The issues raised in the written submission and oral presentation from the Northern Ireland Human Rights Commission – this should include the issue of non-compliance with the Jordan Principles;
- The issues raised in the written submission and oral presentation from SAVIA;
- In the context of the issues raised by the NIHRC whether the Attorney General was content that the Bill as introduced, provided the required level of protection under the ECHR.

The Committee also agreed to forward to the Department the submissions received to date and, for ease of reference, an indexed set of submissions (as in Members' Bill Folders) is attached with the hard copy of this letter.

I understand that officials will be available to brief the Committee at its meeting on 26 September 2012 in response to the issues referred to the Department arising from the submissions and evidence sessions. As you will be aware papers for the Committee's meetings are distributed to Members on the preceding Friday and I should be grateful if the Department's response briefing paper for the session on 26 September could be with the Committee office by close of play on Thursday 20 September 2012.

I appreciate that issues coming out of the Committee meeting scheduled for 19 September may not be able to be addressed in that timescale but we would of course table any supplementary briefing paper the Department can provide.

Evidence sessions with Amnesty International, Contact NI/Nexus/Victim Support and McAteer & Co are currently scheduled for the meeting on 12 September. The scheduled evidence sessions on 19 September 2012 are currently Barnardo's and the Poor Sisters of Nazareth.

Yours sincerely



Alyn Hicks
Clerk to the Committee

Committee letter to OFMDFM requesting response to issues

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 13 September 2012

Dear Conor

Historical Institutional Abuse Inquiry Bill

At its meeting on 12 September 2012 the Committee for the Office of the First Minister and deputy First Minister received briefings from Amnesty International UK, Contact/Nexus/Victim Support and McAteer & Co. Solicitors on their submissions to the Committee on the Bill.

The Committee agreed to request a response from the Department to the issues raised in the written submissions and oral evidence from these organisations. The Hansard of their evidence will be forwarded as soon as it is available.

In particular, the Committee also agreed to request a response from the Department on the following issues

- Whether the Department/Executive proposes to address the issue of victims of abuse where the abuse in question is outside the scope of the envisaged Inquiry (for example, where abuse occurred outside an Institution as defined in the Terms of Reference) and what plans the Department/Executive has in this regard.
- Clarification whether fostering and adoption will come within the terms of the inquiry;
- In the context of concerns raised in written submissions and by witnesses during the meeting of 12 September on the timescale for victims to receive any redress - and bearing in mind the anticipated duration of the Inquiry, report writing and the need for Executive discussion and agreement on the nature or level of any potential redress - what view does the Department have on the possibility of the Inquiry Panel producing an interim report with recommendations on redress in order to allow that issue to be progressed more quickly;
- The Explanatory and Financial Memorandum states the estimated cost of the inquiry as around £7.5 – £9 million, does the Department consider that this continues to be an accurate estimate of the cost of the Inquiry;

The Committee agreed to forward to the Department the attached response received from Napier & Sons on behalf of the De La Salle Order.

The Committee also agreed to share the submissions received to date with the Chairperson of the Inquiry and to invite him to come to Committee on 26 September 2012.

Evidence sessions with Barnardo's and The Poor Sisters of Nazareth are currently scheduled for the meeting on 19 September. The De La Salle Order have also been invited to provide oral evidence and we await confirmation of their attendance.

I understand that officials will be available to brief the Committee at its meeting on 26 September 2012. As you will be aware papers for the Committee's meetings are distributed to Members on the preceding Friday and I should be grateful if the Department's response briefing paper for the session on 26 September could be with the Committee office by close of play on Thursday 20 September 2012.

I appreciate that issues coming out of the Committee meeting of 19 September may not be able to be addressed in that timescale but we would of course table any supplementary briefing paper the Department can provide.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alyn Hicks', with a horizontal line underneath.

Alyn Hicks
Clerk to the Committee

Committee letter to OFMDFM requesting response to issues

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 21 September 2012

Dear Conor

Historical Institutional Abuse Inquiry Bill

At its meeting on 19 September 2012 the Committee for the Office of the First Minister and deputy First Minister received briefings from Barnardo's, the Poor Sisters of Nazareth and De La Salle Order on their submissions to the Committee on the Bill.

The Committee agreed to request a response from the Department to the issues raised in the written submissions and oral evidence from these organisations. The Hansard of their evidence will be forwarded as soon as it is available.

The Committee also agreed to forward the attached response from the Committee for Education, which was tabled at this week's meeting, for information and response, please.

I appreciate that issues coming out of the Committee meeting of 19 September (apart from those that have already been raised in previous submissions) may not be able to be addressed in the Department's briefing paper in time for inclusion in the meeting packs to issue Friday 21 September but we would of course be happy to table any supplementary briefing paper the Department can provide.

Yours sincerely



Alyn Hicks
Clerk to the Committee

OFMDFM response regarding Bill issues

Alyn Hicks
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

26 September 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

Your correspondence of 7 September and 13 September 2012 requested responses from the Department to the issues raised in the written submissions and oral evidence provided to the Committee by the Northern Ireland Human Rights Commission (NIHRC), SAVIA, Amnesty International UK, Contact/Nexus/Victim Support, and McAteer & Co.

The Department's responses to all the written submissions, including those from organisations who have not yet provided oral evidence (or are not scheduled to provide it), are incorporated in the table below. Responses to NIHRC and SAVIA's oral evidence are also incorporated. As further transcripts become available officials will be happy to update the table.

Turning to your letter of 7 September, you asked: *"In the context of the issues raised by the NIHRC whether the Attorney General was content that the Bill as introduced, provided the required level of protection under the ECHR"*. You will be aware of the convention that neither the fact that the Attorney's advice has been sought, nor the content of that advice is normally disclosed. The question from the Committee is therefore asking for something that would be withheld under this convention.

Notwithstanding, it is a matter of protocol for Ministers to seek advice from the Attorney on the competence of legislation. We can also advise that we are confident that procedures were properly followed in this instance.

Turning to the specific points you raised in your letter of 13 September:

- (i) Regarding the matter of abuse which occurred in circumstances that are outside the scope of this inquiry; the issue of clerical abuse, for example, is no less important or emotive and Ministers are mindful of the destructive impact it has had on many individuals. As such, the Executive will give careful consideration as to how it should be dealt with following the Inquiry into Historical Institutional Abuse. However, Ministers are content that this inquiry and investigation remains within the definition of institutional abuse as outlined in the terms of reference.
- (ii) Fostering and adoption do not fall to the Inquiry for investigation as the Inquiry will be looking specifically at institutional abuse and its Terms of Reference define an institution as: *"any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children"*.
- (iii) You ask the Department's view on the possibility of the Inquiry Panel producing an interim report with recommendations on redress in order to allow that issue to be progressed more quickly. The Inquiry's Terms of Reference specifically task the

Chairman to bring real conclusions on the statutory failings of institutions to children in their care. The role of the inquiry is only to conclude on the requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims. **The nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry report. The Inquiry must be allowed the time to do the work, reach a measured consideration of its issues and reach its conclusions. It would be inappropriate to pre-empt the work of the Inquiry or of the Executive.** *(FM comment – can we please ensure that this point is emphasised.)*

- (iv) Work is ongoing to scope the estimated costs for the inquiry and investigation and secure the necessary financial approvals.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Annex 1

Point Raised	Raised By	OFMDFM Response
<p>Concern raised over the Ministers' power to amend the Terms of Reference and/or Terms of Reference are not part of the Bill.</p>	<p>NIHRC; Amnesty; Barnado's; CLC; McAteer & Co. Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis; SDLP</p>	<p>The Bill allows for the Terms of Reference to be amended. It should be noted that the Terms of Reference were subject to continual discussion with victims and survivors; they were agreed with the Inquiry Chair and the Executive Committee and they were communicated to the Assembly in a written statement. Any amendment would go through that process again, as it would not be possible to change a decision of the Executive without going back to the Executive. It would need to be agreed with the Chair and the Executive, and Members of the Assembly would have to be informed.</p>
<p>Lack of provision for further consultation in respect of an amendment to the Terms of Reference.</p>	<p>NIHRC</p>	<p>The principle that victims and survivors (and indeed the public) have effective access to the investigatory procedure has been adhered to. The normal principles governing consultation provide adequate guarantees. In order to allay any concerns that people might have we are content that any amendments to the Terms of Reference would require an affirmative vote in the Assembly.</p>
<p>Concern raised over the Ministers' power to terminate appointments to the Inquiry panel.</p>	<p>NIHRC; Amnesty; SDLP</p>	<p>The Bill is quite specific about the situations in which it is possible to remove members, in the unlikely circumstances that this might be necessary. These grounds are:</p> <ul style="list-style-type: none"> • By reason of physical or mental illness or for any other reason, the member is unable to carry out the duties of a member of the inquiry panel; • The member has failed to comply with any duty imposed on the member in relation to the inquiry; • The member has a direct interest in the matters to which the inquiry relates, or a close association with an interested party, such that the impartiality of the inquiry panel could reasonable be regarded as affected by that member; • The member has, since being appointed, been guilty of any misconduct that makes the member unsuited to membership of the inquiry panel. <p>These are reasonable circumstances under which panel members appointments may be terminated and they cannot be regarded as threatening the independence of panel members. They are similar to those used for public appointments and do not break rules around independence. Furthermore, the Bill also specifies that the First Minister and deputy First Minister, acting jointly, must consult the Chairman prior to taking this action.</p>

Point Raised	Raised By	OFMDFM Response
Concern raised over the Ministers power to terminate the Inquiry.	NIHRC; Amnesty; Poor Sisters of Nazareth; SDLP	It is fully expected that the inquiry will end when its report has been submitted and its terms of reference fulfilled. It is possible, however, that circumstances could arise (as yet unforeseen) in which it would be impossible for the inquiry to continue or for the Terms of Reference not to be completed. Therefore, purely as a safeguard, Clause 5 of the Bill provides for the First Minister and deputy First Minister, acting jointly and only after consulting the Chairman, to close the inquiry.
Lack of guidance around Data Protection/ Concerns about Restriction Orders –restricting attendance at the Inquiry or disclosure or publication of evidence or documents. Concerns that the Bill does not provide for representations to be made by interested parties prior to an order being granted.	NIHRC; Poor Sisters of Nazareth; Napier & Sons (De La Salle Order)	Clause 8 of the Bill allows the Chairman, during the course of the inquiry, to issue restriction orders, the purpose of which is to restrict attendance at the inquiry or to restrict disclosure of information in the context of the inquiry, or to restrict disclosure by those who have received the information only by virtue of it being given to the inquiry. Clause 18 allows for Rules to be made dealing with matters of evidence and procedure in relation to the Inquiry. The requirement for participation of the complainant or other victims and is a matter of looking at the procedures as a whole rather than saying that such persons must be given a particular role or a particular place in a particular procedure. However, it is axiomatic that any power of a public law nature granted to the Chairman must be exercised in accordance with normal principles of administrative law and these include procedural fairness. It follows, therefore, that anyone adversely affected by the making of a Restriction Order should be given an opportunity (under normal legal principles) to make a case against the making of the Order and if denied that they can seek to challenge it by way of Judicial Review.
Concerns that the power for OFMDFM to refuse payment of expenses undermines the Inquiry's independence.	NIHRC; Amnesty; SDLP	The inquiry is being set up by the Executive to fulfil its specific Terms of Reference. The withdrawal of funds would only happen in the highly unlikely event that the Inquiry persisted in activities which were outside its Terms of Reference, and after its departure from the Terms of Reference had been notified to it by the Department. OFMDFM is not obliged to fund activities that it has notified to the chairman as being outside those Terms of Reference, as this would be irregular spend. It is anticipated that withdrawal of funding would only occur in the unlikely circumstances that the inquiry did not resume operating within its Terms of Reference. Furthermore, OFMDFM would resume funding once satisfied that the inquiry is again working within them.

Point Raised	Raised By	OFMDFM Response
<p>Concern that the reduced time limits for Judicial Review of decisions may be potentially unfair to those involved.</p>	<p>NIHRC; Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis; SDLP; Napier & Sons (De La Salle Order)</p>	<p>Clause 16 reduces the time limit for Judicial Review to two weeks from when the applicant becomes aware of the decision on which they wish to apply for leave. Victims and survivors have waited long enough for an inquiry and, which the inquiry is fair and considerable time has been taken in consultation to come to this point, the two week time limit is to ensure that the process is not held up unnecessarily. In any event, the Court has a discretion to allow a longer period if it feels it is warranted.</p>
<p>Disagreement with the 1945 parameter: where a victim is living, their case should be embraced by the mandate of the Inquiry. A start date should not be set. People in institutions prior to 1945 should be treated equally rather than as discretionary cases.</p>	<p>NIHRC; SAVIA; Amnesty; Barnado's; CLC; Contact et al; McAteer & Co.; Kevin R Winters & Co; SDLP</p>	<p>The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves. 1945 is synonymous with the beginning of the Welfare State. Other recent representations have also made it clear that the removal of that date would be desirable and Ministers are giving consideration to this issue..</p>
<p>Disagreement with the 1995 parameter: it is not justifiable to exclude victims of abuse from the scope of the Inquiry on the basis that their abuse was perpetrated after 1995.</p>	<p>CLC</p>	<p>1995 saw the introduction of the Children's Order (NI) and consequently the additional safeguards deemed appropriate to protect children today, The enactment of the Children (NI) Order 1995 made the welfare of the child the paramount consideration. Furthermore, legislation since 1995 has significantly enhanced the safeguards in place for making sure that not only are employees removed from the workplace if they harm children by placing them on barred lists, but also to prevent them from entering into employment with children in the first place. The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves.</p>
<p>The definition of a Child should be extended to age 21 as, until 1969, the age of majority was 21.</p>	<p>VOYPIC</p>	<p>The Terms of Reference define a 'child' as "any person under 18 years of age". The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves.</p>

Point Raised	Raised By	OFMDFM Response
The Terms of Reference should define the term 'Abuse'.	SAVIA; Amnesty; Barnado's; CLC; McAteer & Co.; Sisters of Mercy; Sisters of St Louis	The terms of reference are clear that 'abuse' in the context of this inquiry and investigation relates to failings of institutions in their duties to children in their care.
Concerns that 'definitions' are not contained within the Bill.	Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis	Definitions, for example, 'institution' and 'child', are contained within the Terms of Reference, which is the appropriate place for them.
Concerns that a list of relevant institutions is not in the Bill.	Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis	The Inquiry will decide on the information available to it, which institutions it will investigate.
The desirability of an interim process/interim report on redress; and concerns about reparation.	SAVIA; Amnesty; Barnado's; McAteer & Co.; Kevin R Winters & Co.; SDLP	The role of the inquiry is only to conclude on the requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims. The nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry report. The Inquiry must be allowed the time to do the work, reach a measured consideration of its issues and reach its conclusions. It would be inappropriate to pre-empt the work of the Inquiry or of the Executive.
Concerns that the Terms of Reference do not provide for the Inquiry to make recommendations to ensure such abuse is prevented effectively in the future.	Amnesty; Barnado's; CLC; NICCY; SDLP	<p>The Terms of Reference specifically task the Chairman to make recommendations and findings on:</p> <ul style="list-style-type: none"> • An apology - by whom and the nature of the apology; • Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic; • Recommendations as to an appropriate memorial or tribute to those who suffered abuse; • The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims. <p>This provides broad scope for the Inquiries recommendations and does not exclude the Inquiry making recommendations about the future.</p>

Point Raised	Raised By	OFMDFM Response
<p>Concerns about Ministers' powers to set terms by which a witness may or may not be eligible for expenses, including legal representation.</p>	<p>Amnesty; McAteer & Co.; Kevin R Winters & Co; Poor Sisters of Nazareth; SDLP</p>	<p>The Bill enables OFMDFM to make rules subject to negative resolution in relation to the award of witness expenses. Draft rules will be subject to public consultation.</p>
<p>Concerns over Ministers' power to determine whether and when the Inquiry Report should be published; and the power to decide if it will be published in full.</p>	<p>Amnesty; Barnado's; McAteer & Co.; SDLP</p>	<p>To clarify, this is not stated in the Terms of Reference (as is stated in Amnesty International's submission). The Inquiry's report will be published once it has been concluded. Ministers have no intention of withholding it or any part of it, or delaying publication. The Acknowledgement Forum will also publish a report. The option of withholding or delaying publication of the Inquiry's report has therefore not been written into either the Bill or the Terms of Reference.</p>
<p>The desirability of the possibility for an extension of timescale for the work of the Inquiry, should it be necessary.</p>	<p>Amnesty; Barnado's; CLC; McAteer & Co.; SDLP; VOYPIC;</p>	<p>The Terms of Reference state: "If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable." This statement is intended to cover the lifespan of the Inquiry itself, as well as the period available to the Chairman to write his report.</p>
<p>Greater clarity would be desirable around Civil and criminal liability; ie that it is possible for criminal investigation and prosecution to flow from evidence uncovered during the Inquiry process.</p>	<p>Amnesty; Barnado's; CLC; Kevin R Winters & Co.; Poor Sisters of Nazareth; SDLP;</p>	<p>The statutory framework requires that, where allegations of child abuse come to light, these must be reported immediately to PSNI and Social Services for investigation. Anyone who has information should report it so that it can be investigated, so that steps can be taken to protect children as necessary and so that, where appropriate, the alleged perpetrators can be brought before the courts. The Inquiry is intended to investigate systemic failings regarding the provision of care in Institutions between 1945 and 1995. It is not intended to replace the PSNI or the courts in investigating criminal activity.</p>
<p>Desirability for clarity around disclosures: will any disclosures be exempt from subsequent criminal investigation? And might there be issues around self incrimination?</p>	<p>Poor Sisters of Nazareth; Napier & Sons (De La Salle Order)</p>	<p>Clause 10 of the Bill ensures that witnesses before the inquiry have the same privileges in relation to requests for information as witnesses in civil proceedings. A witness will be able to refuse to provide evidence if it is covered by legal professional privilege, or because it might incriminate them, or their spouse or civil partner. However, as with civil or criminal proceedings, inferences could be drawn from their failure or refusal to give evidence or answer questions.</p>

Point Raised	Raised By	OFMDFM Response
Concerns that abuse (including clerical abuse) in non-institutional settings will not be covered by this inquiry.	Amnesty; CLC; Contact et al; SDLP	<p>This Inquiry was initiated in the 2009 Assembly debate about historical institutional abuse of children. The definition of an institution for the purposes of an inquiry formed an important aspect of consultation with victims and other key stakeholders. Setting the parameters in this way does not in any way undermine the trauma that has undoubtedly been inflicted on many other individuals as a result of abuse in domestic and other settings. However, the categories to be covered by the inquiry and investigation were selected because of the very particular vulnerable nature of this type of residential care.</p> <p>The experiences in other jurisdictions have also indicated that the profile of victims of institutional abuse is different from those who have suffered clerical abuse in other contexts. Consequently, designing a process that aims to bring closure to both categories of victim would be extremely challenging and may result in a framework that falls short of meeting the needs of both groups.</p>
Learning regarding historical institutional abuse should be sought from other Inquiries.	Barnado's	<p>The Inquiry will be setting up its own research team to examine all pertinent aspects. The panel contains members with direct experience of other Inquiries, namely:</p> <ul style="list-style-type: none"> • Norah Gibbons who was a Commissioner of the Ryan Inquiry into historical institutional abuse in Ireland; and • Tom Shaw CBE who chaired "Time to be Heard" – a pilot acknowledgement forum for those who had experienced abuse in residential children's institutions in Scotland.
Concerns over issues of jurisdiction for the Inquiry.	Barnado's; Napier & Sons (De La Salle Order)	<p>The geographical jurisdiction of the Inquiry into Historical Institutional Abuse is Northern Ireland. The Assembly would not have the power to investigate an institution in another jurisdiction. The full scope of the Inquiry is clearly defined in the Terms of Reference.</p> <p>The Terms of Reference define an institution as: <i>"any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children"</i>.</p>
Concerns about the support that will be given to elderly/vulnerable witnesses in general.	Poor Sisters of Nazareth; Napier & Sons (De La Salle Order)	<p>The Inquiry procedures are a matter for the Chairman to decide. Victims and Survivors who wish to attend the Acknowledgement Forum will be assisted by Witness Support Officers before, during and afterwards. We are confident that support will be offered when needed throughout the inquiry and investigation.</p>

Point Raised	Raised By	OFMDFM Response
Concerns about the Acknowledgement Forum report and the potential consequences of accepting what is presented to them without corroboration.	Napier & Sons (De La Salle Order)	The findings of the Acknowledgement Forum will feed into the judicial aspect of the Inquiry. The Inquiry will test the robustness of the evidence it considers. These processes are a matter for the Chairman.
Has any provision been made for evidence to be taken from people unable to travel to NI?	Napier & Sons (De La Salle Order)	Provision will be made under these circumstances. The detail of the process is a matter for the Chairman.

Junior Ministers letter regarding launch of Acknowledgement Forum



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Mr Mike Nesbitt
Chairperson
Committee for OFMDFM
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BT4 3XX

Our Ref: SUB/884/12

26 September 2012

Dear Mike

LAUNCH OF ACKNOWLEDGEMENT FORUM AND THE APPOINTMENT OF TWO ADDITIONAL PANEL MEMBERS FOR THE INQUIRY

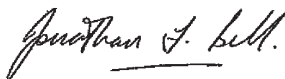
We are pleased to announce that the work of the Historical Institutional Abuse Inquiry Acknowledgement Forum will begin on 1 October 2012.

As a first step, the Inquiry will be inviting victims and survivors of Historical Institutional Abuse to engage with the Acknowledgement Forum by registering their interest in coming forward to speak to them.

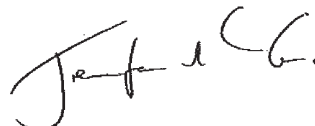
Registration forms will be available through the HIA website, the NI Direct Website and a Freephone Service from 1 October.

In consultation with the prospective Chair, we are announcing David Lane and Geraldine Doherty as panel members to assist Sir Anthony in conducting the judicial element of the Inquiry. Both have long and distinguished social work careers.

Yours sincerely



JONATHAN BELL MLA
Junior Minister



JENNIFER McCANN MLA
Junior Minister

Committee letter to OFMDFM regarding delivery of papers

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 27 September 2012

Dear Conor

Inquiry into Historical Institutional Abuse Bill

At its meeting on 26 September 2012, the Committee for the Office of the First Minister and deputy First Minister received a briefing from Departmental officials on the submissions to the Committee on the Bill.

The Committee noted that the briefing papers from the Department were only sent to the Committee office at 10.03 am on the morning of the meeting. The Committee agreed to write to the Department to request an explanation for the late delivery of the papers.

The Committee also agreed to request that the officials be available for the Committee session on the Bill at its meeting of 3 October 2012.

Yours sincerely



Alyn Hicks
Clerk to the Committee

OFMDFM response regarding Bill issues

Alyn Hicks
Clerk
Committee for OFMDFM
Room 416
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Ballymiscaw
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BELFAST
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02 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

Thank you for your letters of 21 September and 27 September. The Department's table of responses has now been updated to include the points raised in the additional oral evidence given to the Committee on 19 September. This table is attached at Annex 1. It also takes account of the response from the Education Committee.

You asked for an explanation for the late delivery of papers to the Committee on 26 September. I can only apologise for the fact that, due to the complexities and extent of the evidence under consideration, it took longer for the process to be completed than we had intended.

I can confirm that Maggie Smith and Cathy McMullan will be available for the Committee session on the Bill at its meeting of 3 October 2012.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Annex 1

Point Raised	Raised By	OFMDFM Response
<p>Concern raised over the Ministers' power to amend the Terms of Reference and/or Terms of Reference are not part of the Bill.</p>	<p>NIHRC; Amnesty; Barnado's; CLC; McAteer & Co. Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis; SDLP; Contact et al</p>	<p>The Bill allows for the Terms of Reference to be amended. It should be noted that the Terms of Reference were subject to continual discussion with victims and survivors; they were agreed with the Inquiry Chair and the Executive Committee and they were communicated to the Assembly in a written statement. Any amendment would go through that process again, as it would not be possible to change a decision of the Executive without going back to the Executive. It would need to be agreed with the Chair and the Executive, and Members of the Assembly would have to be informed.</p>
<p>Lack of provision for further consultation in respect of an amendment to the Terms of Reference.</p>	<p>NIHRC</p>	<p>The principle that victims and survivors (and indeed the public) have effective access to the investigatory procedure has been adhered to. The normal principles governing consultation provide adequate guarantees. In order to allay any concerns that people might have we are content that any amendments to the Terms of Reference would require an affirmative vote in the Assembly.</p>
<p>Concern raised over the Ministers' power to terminate appointments to the Inquiry panel.</p>	<p>NIHRC; Amnesty; SDLP</p>	<p>The Bill is quite specific about the situations in which it is possible to remove members, in the unlikely circumstances that this might be necessary. These grounds are:</p> <ul style="list-style-type: none"> • By reason of physical or mental illness or for any other reason, the member is unable to carry out the duties of a member of the inquiry panel; • The member has failed to comply with any duty imposed on the member in relation to the inquiry; • The member has a direct interest in the matters to which the inquiry relates, or a close association with an interested party, such that the impartiality of the inquiry panel could reasonable be regarded as affected by that member; • The member has, since being appointed, been guilty of any misconduct that makes the member unsuited to membership of the inquiry panel. <p>These are reasonable circumstances under which panel members appointments may be terminated and they cannot be regarded as threatening the independence of panel members. They are similar to those used for public appointments and do not break rules around independence. Furthermore, the Bill also specifies that the First Minister and deputy First Minister, acting jointly, must consult the Chairman prior to taking this action.</p>

Point Raised	Raised By	OFMDFM Response
Concern raised over the Ministers power to terminate the Inquiry.	NIHRC; Amnesty; Poor Sisters of Nazareth; SDLP	It is fully expected that the inquiry will end when its report has been submitted and its terms of reference fulfilled. It is possible, however, that circumstances could arise (as yet unforeseen) in which it would be impossible for the inquiry to continue or for the Terms of Reference not to be completed. Therefore, purely as a safeguard, Clause 5 of the Bill provides for the First Minister and deputy First Minister, acting jointly and only after consulting the Chairman, to close the inquiry.
Lack of guidance around Data Protection/ Concerns about Restriction Orders –restricting attendance at the Inquiry or disclosure or publication of evidence or documents. Concerns that the Bill does not provide for representations to be made by interested parties prior to an order being granted.	NIHRC; Poor Sisters of Nazareth; Napier & Sons (De La Salle Order); McAteer & Co	Clause 8 of the Bill allows the Chairman, during the course of the inquiry, to issue restriction orders, the purpose of which is to restrict attendance at the inquiry or to restrict disclosure of information in the context of the inquiry, or to restrict disclosure by those who have received the information only by virtue of it being given to the inquiry. Clause 18 allows for Rules to be made dealing with matters of evidence and procedure in relation to the Inquiry. There will be full input from and consultation with the Chairman. Draft rules will also be subject to public consultation. The requirement for participation of the complainant or other victims and is a matter of looking at the procedures as a whole rather than saying that such persons must be given a particular role or a particular place in a particular procedure. However, it is axiomatic that any power of a public law nature granted to the Chairman must be exercised in accordance with normal principles of administrative law and these include procedural fairness. It follows, therefore, that anyone adversely affected by the making of a Restriction Order should be given an opportunity (under normal legal principles) to make a case against the making of the Order and if denied that they can seek to challenge it by way of Judicial Review.
Concerns that the power for OFMDFM to refuse payment of expenses undermines the Inquiry's independence.	NIHRC; Amnesty; SDLP	The inquiry is being set up by the Executive to fulfill its specific Terms of Reference. The withdrawal of funds would only happen in the highly unlikely event that the Inquiry persisted in activities which were outside its Terms of Reference, and after its departure from the Terms of Reference had been notified to it by the Department. OFMDFM is not obliged to fund activities that it has notified to the chairman as being outside those Terms of Reference, as this would be irregular spend. It is anticipated that withdrawal of funding would only occur in the unlikely circumstances that the inquiry did not resume operating within its Terms of Reference. Furthermore, OFMDFM would resume funding once satisfied that the inquiry is again working within them.

Point Raised	Raised By	OFMDFM Response
<p>Concern that the reduced time limits for Judicial Review of decisions may be potentially unfair to those involved.</p>	<p>NIHRC; Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis; SDLP; Napier & Sons (De La Salle Order)</p>	<p>Clause 16 reduces the time limit for Judicial Review to two weeks from when the applicant becomes aware of the decision on which they wish to apply for leave. Victims and survivors have waited long enough for an inquiry and, which the inquiry is fair and considerable time has been taken in consultation to come to this point, the two week time limit is to ensure that the process is not held up unnecessarily. In any event, the Court has a discretion to allow a longer period if it feels it is warranted.</p>
<p>Disagreement with the 1945 parameter: where a victim is living, their case should be embraced by the mandate of the Inquiry. A start date should not be set. People in institutions prior to 1945 should be treated equally rather than as discretionary cases.</p>	<p>NIHRC; SAVIA; Amnesty; Barnado's; CLC; Contact et al; McAtteer & Co.; Kevin R Winters & Co; SDLP</p>	<p>The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves. 1945 is synonymous with the beginning of the Welfare State. Other recent representations have also made it clear that the removal of that date would be desirable and Ministers are giving consideration to this issue..</p>
<p>Disagreement with the 1995 parameter: it is not justifiable to exclude victims of abuse from the scope of the Inquiry on the basis that their abuse was perpetrated after 1995.</p>	<p>CLC; Amnesty</p>	<p>1995 saw the introduction of the Children's Order (NI) and consequently the additional safeguards deemed appropriate to protect children today, The enactment of the Children (NI) Order 1995 made the welfare of the child the paramount consideration. Furthermore, legislation since 1995 has significantly enhanced the safeguards in place for making sure that not only are employees removed from the workplace if they harm children by placing them on barred lists, but also to prevent them from entering into employment with children in the first place. The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves.</p>
<p>The definition of a Child should be extended to age 21 as, until 1969, the age of majority was 21.</p>	<p>VOYPIC</p>	<p>The Terms of Reference define a 'child' as "any person under 18 years of age". The Terms of Reference were agreed following extensive consultation with stakeholder groups, particularly victims and survivors themselves.</p>

Point Raised	Raised By	OFMDFM Response
The Terms of Reference should define the term 'Abuse'.	SAVIA; Amnesty; Barnado's; CLC; McAteer & Co.; Sisters of Mercy; Sisters of St Louis; Contact et al	The terms of reference are clear that 'abuse' in the context of this inquiry and investigation relates to failings of institutions in their duties to children in their care.
Concerns that 'definitions' are not contained within the Bill.	Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis	Definitions, for example, 'institution' and 'child', are contained within the Terms of Reference, which is the appropriate place for them.
Concerns that a list of relevant institutions is not in the Bill.	Poor Sisters of Nazareth; Sisters of Mercy; Sisters of St Louis	The Inquiry will decide on the information available to it, which institutions it will investigate.
The desirability of an interim process/interim report on redress; and concerns about reparation. Concern that the decision to make compensation will be postponed until the inquiry has concluded.	SAVIA; Amnesty; Barnado's; McAteer & Co.; Kevin R Winters & Co.; SDLP; Contact et al	The role of the inquiry is only to conclude on the requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims. The nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry report. The Inquiry must be allowed the time to do the work, reach a measured consideration of its issues and reach its conclusions. It would be inappropriate to pre-empt the work of the Inquiry or of the Executive.

Point Raised	Raised By	OFMDFM Response
<p>Concerns that the Terms of Reference do not provide for the Inquiry to make recommendations to ensure such abuse is prevented effectively in the future.</p>	<p>Amnesty; Barnado's; CLC; NICCY; SDLP; Contact et al</p>	<p>The Terms of Reference specifically task the Chairman to make recommendations and findings on:</p> <ul style="list-style-type: none"> • An apology - by whom and the nature of the apology; • Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic; • Recommendations as to an appropriate memorial or tribute to those who suffered abuse; • The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims. <p>This provides broad scope for the Inquiries recommendations and does not exclude the Inquiry making recommendations about the future.</p>
<p>Concerns about Ministers' powers to set terms by which a witness may or may not be eligible for expenses, including legal representation.</p>	<p>Amnesty; McAteer & Co.; Kevin R Winters & Co; Poor Sisters of Nazareth; SDLP</p>	<p>The Bill enables OFMDFM to make rules subject to negative resolution in relation to the award of witness expenses. There will be full input from and consultation with the Chairman. Draft rules will be subject to public consultation.</p>
<p>Concerns over Ministers' power to determine whether and when the Inquiry Report should be published; and the power to decide if it will be published in full.</p>	<p>Amnesty; Barnado's; McAteer & Co.; SDLP</p>	<p>To clarify, this is not stated in the Terms of Reference (as is stated in Amnesty International's submission). The Inquiry's report will be published once it has been concluded. Ministers have no intention of withholding it or any part of it, or delaying publication. The Acknowledgement Forum will also publish a report. The option of withholding or delaying publication of the Inquiry's report has therefore not been written into either the Bill or the Terms of Reference.</p>
<p>The desirability of the possibility for an extension of timescale for the work of the Inquiry, should it be necessary.</p>	<p>Amnesty; Barnado's; CLC; McAteer & Co.; SDLP; VOYPIC;</p>	<p>The Terms of Reference state: "if additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable." This statement is intended to cover the lifespan of the Inquiry itself, as well as the period available to the Chairman to write his report.</p>

Point Raised	Raised By	OFMDFM Response
<p>Greater clarity would be desirable around Civil and criminal liability; ie that it is possible for criminal investigation and prosecution to flow from evidence uncovered during the Inquiry process.</p> <p>Concern that the process of the Inquiry will not be an obstacle to a case being progressed.</p>	<p>Amnesty; Barnado's; CLC; Kevin R Winters & Co.; Poor Sisters of Nazareth; SDLP; Contact et al; Napier & Sons (De La Salle Order)</p>	<p>The statutory framework requires that, where allegations of child abuse come to light, these must be reported immediately to PSNI and Social Services for investigation. Anyone who has information should report it so that it can be investigated, so that steps can be taken to protect children as necessary and so that, where appropriate, the alleged perpetrators can be brought before the courts.</p> <p>The Inquiry is intended to investigate systemic failings regarding the provision of care in Institutions between 1945 and 1995. It is not intended to replace the PSNI or the courts in investigating criminal activity.</p>
<p>Desirability for clarity around disclosures: will any disclosures be exempt from subsequent criminal investigation? And might there be issues around self incrimination?</p>	<p>Poor Sisters of Nazareth; Napier & Sons (De La Salle Order)</p>	<p>Clause 10 of the Bill ensures that witnesses before the inquiry have the same privileges in relation to requests for information as witnesses in civil proceedings. A witness will be able to refuse to provide evidence if it is covered by legal professional privilege, or because it might incriminate them, or their spouse or civil partner. However, as with civil or criminal proceedings, inferences could be drawn from their failure or refusal to give evidence or answer questions.</p>
<p>Concerns that abuse (including clerical abuse) in non-institutional settings will not be covered by this inquiry.</p>	<p>Amnesty; CLC; Contact et al; SDLP; Committee for Education</p>	<p>This Inquiry was initiated in the 2009 Assembly debate about historical institutional abuse of children. The definition of an institution for the purposes of an inquiry formed an important aspect of consultation with victims and other key stakeholders. Setting the parameters in this way does not in any way undermine the trauma that has undoubtedly been inflicted on many other individuals as a result of abuse in domestic and other settings. However, the categories to be covered by the inquiry and investigation were selected because of the very particular vulnerable nature of this type of residential care.</p> <p>The experiences in other jurisdictions have also indicated that the profile of victims of institutional abuse is different from those who have suffered clerical abuse in other contexts. Consequently, designing a process that aims to bring closure to both categories of victim would be extremely challenging and may result in a framework that falls short of meeting the needs of both groups.</p>

Point Raised	Raised By	OFMDFM Response
<p>Learning regarding historical institutional abuse should be sought from other Inquiries.</p>	<p>Barnado's</p>	<p>The Inquiry will be setting up its own research team to examine all pertinent aspects. The panel contains members with direct experience of other Inquiries, namely:</p> <ul style="list-style-type: none"> • Norah Gibbons who was a Commissioner of the Ryan Inquiry into historical institutional abuse in Ireland; and • Tom Shaw CBE who chaired "Time to be Heard" – a pilot acknowledgement forum for those who had experienced abuse in residential children's institutions in Scotland.
<p>Concerns over issues of jurisdiction for the Inquiry.</p>	<p>Barnado's; Napier & Sons (De La Salle Order)</p>	<p>The geographical jurisdiction of the Inquiry into Historical Institutional Abuse is Northern Ireland. The Assembly would not have the power to investigate an institution in another jurisdiction. The full scope of the Inquiry is clearly defined in the Terms of Reference.</p> <p>The Terms of Reference define an institution as: "any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children".</p>
<p>Concerns about the support that will be given to elderly/vulnerable witnesses in general.</p>	<p>Poor Sisters of Nazareth; Napier & Sons (De La Salle Order)</p>	<p>The Inquiry procedures are a matter for the Chairman to decide. Victims and Survivors who wish to attend the Acknowledgement Forum will be assisted by Witness Support Officers before, during and afterwards. We are confident that support will be offered when needed throughout the inquiry and investigation.</p>
<p>Concerns about the Acknowledgement Forum report and the potential consequences of accepting what is presented to them without corroboration.</p>	<p>Napier & Sons (De La Salle Order)</p>	<p>The findings of the Acknowledgement Forum will feed into the judicial aspect of the Inquiry. The Inquiry will test the robustness of the evidence it considers. These processes are a matter for the Chairman.</p>
<p>Has any provision been made for evidence to be taken from people unable to travel to NI?</p>	<p>Napier & Sons (De La Salle Order)</p>	<p>Provision will be made under these circumstances. The detail of the process is a matter for the Chairman.</p>

Point Raised	Raised By	OFMDFM Response
<p>Consideration should be given to how victims will be protected from: “retaliation, intimidation, repeat or further victimisation”, including: “measures to ensure that the risk of psychological or emotional harm to victims during questioning or when testifying is minimised and their safety and dignity are secured.” (Source: European directive on victims of crime);</p> <p>The capacity to extend and sustain victim support as appropriate.</p>	<p>Contact et al; Barnados</p>	<p>The Acknowledgement Forum will be strictly confidential, so victims and survivors will retain their anonymity. No victims and survivors will be required to go before the judicial panel unless they wish to.</p> <p>Witness support will be provided to all victims and survivors before, during and after they attend the Inquiry. Should they have any other requirements eg: counselling; guidance on housing and benefits, or help with tracing records, there will be a support service for victims and survivors.</p>

Committee letter to OFMDFM regarding Bill clauses

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 4 October 2012

Dear Conor

Inquiry into Historical Institutional Abuse Bill

At its meeting on 3 October 2012, the Committee for the Office of the First Minister and deputy First Minister considered the Inquiry into Historical Institutional Abuse Bill, assisted by officials from the Department. Highlighted below are key actions/issues emerging from the Committee's deliberations.

1. The Committee welcomed Ministers' willingness to remove the 1945 parameter for the start of the Inquiry Panel's investigation and agreed to request that the Department bring forward the amendments necessary to change the 1945 date to 1922 in the Bill and in the Terms of Reference.
2. The Committee agreed to request that Ministers consider amending the Terms of Reference to explicitly provide for the Inquiry to make recommendations about changes to law, procedure and practice to prevent future abuse.
3. In relation to the publication of the Report, the Committee agreed to request that Ministers consider an amendment to make explicit the Inquiry Chairperson's authority to publish the Report.
4. The Committee welcomed Ministers agreement to bring forward an amendment to Clause 1(3) to provide that any amendment to the Terms of Reference will be by way of affirmative resolution.
5. In relation to Clause 5, the Committee has requested some research to inform its consideration of a possible amendment to provide that the power to bring the Inquiry to an end be exercised by way of an order subject to draft affirmative procedure.
6. In relation to Clause 21, the Committee expressed the view that "Presiding Member" be replaced with "Chairperson" and that this be amended throughout the Bill.

The Committee were made aware that the Department is also considering its own amendments to Clauses 6, 8, 18 and 19.

I should be grateful if any draft amendments, whether in response to the Committee's requests or at the Department's initiative, could be sent to the Committee as early as possible to allow Members time to consider them prior to the Committee formal Clause-by-clause scrutiny scheduled for its meeting on 10 October 2012.

Yours sincerely



Alyn Hicks
Clerk to the Committee

Committee letter to OFMDFM regarding victims' accommodation

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

Mr Conor McParland
Departmental Assembly Liaison Officer
Office of the First Minister and deputy First Minister
Room G50
Stormont Castle
Belfast

Date: 4 October 2012

Dear Conor

Inquiry into Historical Institutional Abuse Bill

At its meeting on 3 October 2012, the Committee for the Office of the First Minister and deputy First Minister considered the Inquiry into Historical Institutional Abuse Bill, assisted by officials from the Department.

The Committee agreed to request that the Department liaise with the Inquiry Chairperson in relation to the accommodation which would be available to victims and survivors attending the Acknowledgement Forum and Inquiry Panel. The Committee recommends that, if possible, a dedicated space is provided within the Inquiry's accommodation for the use of victims and survivors.

I look forward to hearing from you in relation to this recommendation within the normal timescale. Alternatively, should officials working on the Bill be in a position to update Members on this issue at the Committee meeting on 10 October 2012, this would be appreciated.

Yours sincerely



Alyn Hicks
Clerk to the Committee

OFMDFM response regarding victims' accommodation

Mr A Hicks,
Clerk
Committee for OFMDFM
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09 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

Thank you for your letter of 4 October in which you asked that the Department "liaise with the Inquiry Chairperson in relation to the accommodation which would be available to victims and survivors attending the Acknowledgement Forum and Inquiry Panel. The Committee recommends that, if possible, a dedicated space is provided within the Inquiry's accommodation for the use of victims and survivors".

The issue was discussed with the Inquiry Secretary who advised that it would not be possible to implement the Committee's recommendation as the privacy of the Inquiry and those attending would be compromised.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

OFMDFM response regarding Amendments and ToR

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
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09 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

- 1 Thank you for your letter October 4 letter indicating the Committee's proposals for amendments to the HIA Inquiry Bill and Terms of Reference.
- 2 The First Minister and deputy First Minister have also agreed amendments to:
 - Change the 1945 date to 1922
 - Require that any amendment to the Terms of Reference should be by affirmative resolution
 - To make clear in Clause 21 that "harm" includes death or injury (this negates the need to amend Clause 8)
 - To replace "presiding member" with "chairperson" throughout the Bill
- 3 The amendments to Clauses 1 and 21 are at annex 1, and the amendments to change "presiding member" to "chairperson" are at annex 2.
- 4 The First Minister and deputy First Minister have also considered the Committee's suggestion that the Terms of Reference explicitly provide for the Inquiry to make recommendations about changes to law, procedure and practice to prevent future abuse. They believe that the Terms of Reference already cover this, however are content to make this more explicit to clarify the issue.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Inquiry into Historical Institutional Abuse Bill - Amendments to Clauses 1 and 21

[***Clause 1**, Page 1, Line 7

Leave out '31st May' and insert '[new date xxxxxxxxxxxxxxxx]'

Clause 1, Page 1, Line 8

Leave out 'amend the terms of reference of the inquiry at any time' and insert 'at any time amend the terms of reference of the inquiry by order'

Clause 1, Page 1, Line 10

At end insert 'if a draft of the order has been laid before, and approved by resolution of, the Assembly'

Clause 1, Page 1, Line 12

Leave out '1945' and insert '1922'

[Long title

Leave out '1945' and insert '1922']

Clause 21, Page 10, Line 12

At end insert -

' "harm" includes death or injury;'

Annex 2

**Inquiry into Historical Institutional Abuse Bill –
“Chairperson” Amendments****Clause 1**, Page 1, Line 9

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 1, Line 21

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 5

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 8

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 9

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 2, Page 2, Line 10

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 3, Page 2, Line 41

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 3, Page 2, Line 42

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 4, Page 3, Line 11

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 4, Page 3, Line 13

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 4, Page 3, Line 16

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 5, Page 3, Line 21

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 5, Page 3, Line 23

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 5, Page 3, Line 28

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 6, Page 3, Line 37

Leave out ‘presiding member’ and insert ‘chairperson’

Clause 6, Page 3, Line 39

Leave out 'presiding member' and insert 'chairperson'

Clause 6, Page 4, Line 2

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 6

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 14

Leave out 'presiding member' and insert 'chairperson'

Clause 7, Page 4, Line 15

Leave out 'presiding member' and insert 'chairperson'

Clause 8, Page 4, Line 23

Leave out 'presiding member' and insert 'chairperson'

Clause 8, Page 4, Line 27

Leave out 'presiding member' and insert 'chairperson'

Clause 8, Page 5, Line 1

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 5, Line 19

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 5, Line 27

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 6, Line 1

Leave out 'presiding member' and insert 'chairperson'

Clause 9, Page 6, Line 4

Leave out 'presiding member' and insert 'chairperson'

Clause 12, Page 7, Line 8

Leave out 'presiding member' and insert 'chairperson'

Clause 13, Page 7, Line 39

Leave out 'presiding member' and insert 'chairperson'

Clause 13, Page 8, Line 1

Leave out 'presiding member' and insert 'chairperson'

Clause 13, Page 8, Line 3

Leave out 'presiding member' and insert 'chairperson'

Clause 14, Page 8, Line 15

Leave out 'presiding member' and insert 'chairperson'

Clause 21, Page 10, Line 11

At end insert

' "chairperson" means chairperson of the inquiry;'

Clause 21, Page 10, Line 15

At end insert

' "member" includes chairperson;'

Clause 21, Page 10

Leave out line 18

Clause 21, Page 10, Line 22

Leave out 'presiding member' and insert 'chairperson'

Ammended Terms of Reference

The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 194522-1995.

For the purposes of this Inquiry "child" means any person under 18 years of age; "institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; "relevant period" means the period between 194522 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- an Acknowledgement Forum,
- a Research and Investigative team and
- an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.

The functions of each are as follows:

An Acknowledgment Forum

An Acknowledgment Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 194522 – 1995. The Acknowledgment Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair.

A Research and Investigative team

A Research and Investigative team will report to and work under the direction of the Chair of the Inquiry and Investigation. The team will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;

- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

An Investigation and Inquiry Panel

An Inquiry and Investigation Panel will produce a final report taking into consideration the report from the Acknowledgement Forum, the report of the Research and Investigative team and any other evidence it considers necessary. The Panel will be led by a Chairperson supported by two other members, who will be appointed by the First Minister and deputy First

Minister. The Chairperson of the Inquiry and Investigation will also be responsible for the work of the Acknowledgement Forum and for the Research and Investigative Team.

On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. Bearing in mind the need to prevent future abuse, the This report will make recommendations and findings on the following matters:

- An apology - by whom and the nature of the apology;
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

The Northern Ireland Executive will bring forward legislation at the beginning of this process to give a statutory power to the Inquiry and Investigation to compel the release of documents and require witnesses to give evidence to the Inquiry and Investigation. It is hoped that the legislative power will not be needed, however; the power will be available if required. As far as possible the Inquiry should be inquisitorial in nature rather than adversarial.

A Witness Support Service will be established by to support Victims and Survivors throughout their contact with the Inquiry process. The Office of the First Minister and deputy First Minister will establish a wider Victims Support Service to provide support and advice to victims before, during and after the inquiry.

OFMDFM response regarding amendments

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

10 October 2012

Dear Alyn

Inquiry into Historical Institutional Abuse Bill – Amendments

- 1 Thank you for your letter October 4 letter indicating the Committee's proposals for amendments to the HIA Inquiry Bill and Terms of Reference.
- 2 I have written separately indicating that the First Minister and deputy First Minister have agreed amendments relating to items of that letter.
- 3 In response to item 3 of that letter, I now attach at ANNEX A draft amendments in relation to the publication of Inquiry reports.
- 4 Also at ANNEX A are OFMDFM amendments dealing with
 - the submission of reports to the First Minister and deputy First Minister
 - the laying in the Assembly of inquiry reports by First Minister and deputy First Minister
 - the use of live TV links to hear evidence from victims – this will facilitate the hearing of evidence from witness, who because of age, infirmity or distance, would have difficulty attending the inquiry in person
 - the protecting of witness identify – scope for the Chairperson to protect witnesses in the event that this is ever needed

Yours sincerely

Colette Kerr

PP. Conor McParland
Departmental Assembly Liaison Officer

Annex A

Draft amendments relating to the submission, publishing and laying of reports

New Clause

After Clause 10 insert-

'Reports

Submission of reports

*.—(1) The chairperson must deliver the report of the inquiry to the First Minister and deputy First Minister at least two weeks before it is published (or such other period as may be agreed between the First Minister and deputy First Minister acting jointly and the chairperson).

(2) In this section “report” includes an interim report.’

New Clause

After Clause 10 insert-

‘Publication of reports

*.—(1) The chairperson must make arrangements for the report of the inquiry to be published.

(2) Subject to subsection (3), the report of the inquiry must be published in full.

(3) The chairperson may withhold material from publication to such extent—

- (a) as is required by any statutory provision, enforceable EU obligation or rule of law, or
- (b) as the chairperson considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

- (a) the extent to which withholding material might inhibit the allaying of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by withholding any material;
- (c) any conditions as to confidentiality subject to which a person acquired information which that person has given to the inquiry.

(5) Subsection (4)(b) does not affect any obligation of a public authority that may arise under the Freedom of Information Act 2000.

(6) In this section—

“public authority” has the same meaning as in the Freedom of Information Act 2000;

“report” includes an interim report.’

New Clause

After Clause 10 insert-

‘Laying of reports before the Assembly [j26]

*. Whatever is required to be published under section (publication of reports) must be laid before the Assembly by the First Minister and deputy First Minister acting jointly, either at the time of publication or as soon afterwards as is reasonably practicable.'

Draft amendments relating to live links

Clause 6, Page 3, Line 40

At end insert

'(2A) Subject to any provision of rules under section 18, a statement made to the inquiry on oath by a person outside Northern Ireland through a live link is to be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in Northern Ireland.'

Clause 6, Page 4, Line 3

At end insert

- '(4) In this section "live link" means a live television link or other arrangement whereby a person, while absent from the place where the inquiry is being held, is able to see and hear, and be seen and heard by, a person at that place.
- (5) For the purposes of subsection (4) any impairment of sight or hearing is to be disregarded.'

Draft amendments to protect identity

***Clause 8**, Page 4, Line 21

At end insert -

'(c) disclosure or publication of the identity of any person'

* **Clause 18**, Page 9, Line 24

At end insert -

'(1A) Rules under subsection (1)(a) may in particular make provision conferring power on the chairperson to make orders similar to witness anonymity orders under the Criminal Evidence (Witness Anonymity) Act 2008.'

Committee letter to OFMDFM regarding additional amendment

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

Mr Conor McParland
 Departmental Assembly Liaison Officer
 Office of the First Minister and deputy First Minister
 Room G50
 Stormont Castle
 Belfast

Date: 11 October 2012

Dear Conor

Inquiry into Historical Institutional Abuse Bill

I refer to the Committee's letter dated 4 October 2012 and the request at paragraph number 2 that Ministers consider amending the terms of reference to explicitly provide for the Inquiry to make "recommendations about changes to law, procedure and practice to prevent future abuse"

At its meeting on 10 October 2012, the Committee considered the Department's response dated 9 October 2012 and the proposed amended terms of reference which included the insertion in red [Bold Italics] in the section of the terms of reference set out below:

*On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. **Bearing in mind the need to prevent future abuse**, the report will make recommendations and findings on the following matters: ...*

Some Committee members expressed reservations about this approach and considered that the inclusion of an additional bullet point in the list of matters which the inquiry's report will make recommendations and findings about would provide greater clarity.

The Committee agreed to write to the Department to request that consideration is given to the insertion of an additional bullet point [Bold Italics] to better make explicit the inquiry's remit in this regard, as set out below:

This report will make recommendations and findings on the following matters:

- *An apology - by whom and the nature of the apology;*
- *Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;*
- *Recommendations as to an appropriate memorial or tribute to those who suffered abuse;*
- *The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.*
- ***Recommendations about changes to law, procedure and practice to prevent future abuse.***

I should be grateful if consideration could be given to this request and a response provided in time to inform the Committee final clause by clause consideration at its meeting on 17 October 2012.

Yours sincerely



Alyn Hicks
Clerk to the Committee

OFMDFM response regarding additional amendment

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

16 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

Thank you for your letter of 11 October in which you asked that consideration be given to the insertion of an additional bullet point to make explicit the Inquiry's remit in regards to making recommendations about changes to law, procedure and practice to prevent future abuse.

Ministers are of the view that the Terms of Reference already have considerable scope. They consider that the Committee's proposed amendment would take the inquiry well beyond the scope of what it was set up to do, and so they will not adopt it.

Yours sincerely

Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

OFMDFM response regarding privacy and restriction Orders

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

17 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

At the Committee meeting on Wednesday 10 October, officials indicated that there may be further amendments proposed by OFMDFM.

Attached at Annex 1 are OFMDFM amendments dealing with:

- Privacy of Acknowledgment Forum proceedings
- Making it an offence to contravene a Restriction Order

Further amendments that OFMDFM may have will be provided to the Committee as soon as possible.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Privacy of Acknowledgement Forum proceedings

Clause 7, Page 4, Line 5

After 'Subject to' insert 'subsection (3) and'

Clause 7, Page 4, Line 16

At end insert

'(3) The proceedings of that part of the inquiry described in its terms of reference as the Acknowledgment Forum are to be held in private and references to the inquiry in subsection (1) do not include that part of the inquiry.'

Contravention of a Restriction Order

Clause 13, Page 7, Line 22

Leave out from 'fails' to the end of line 24 and insert 'without reasonable excuse-

- (a) contravenes a restriction order; or
- (b) fails to do anything which that person is required to do by a notice under section 9, is guilty of an offence.'

Clause 14, Page 8, Line 13

Leave out 'a notice under section 9 or a restriction order' and insert ', or acts in breach of, a notice under section 9 or an order made by the chairperson'

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

17 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill the Inquiry into Historical Institutional Abuse Bill

At the Committee meeting on Wednesday 10 October, officials indicated that there may be further amendments proposed by OFMDFM.

Attached at Annex 1 are OFMDFM amendments dealing with Protection of evidence

I have also updated the legislative reference in the amendment in relation to anonymity (1A) (b) previously provided and apologise for any inconvenience.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Protection of the Acknowledgement Forum documents

Clause 18, Page 9, Line 24

At end insert -

‘(1A) Rules under subsection (1)(a) may in particular-

- (a) provide that evidence given for the purposes of any particular part of the inquiry must not be disclosed -
 - (i) in the proceedings of any other part of the inquiry unless the chairperson so orders; or
 - (ii) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of Convention rights (within the meaning of the Human Rights Act 1998);
- (b) make provision for orders similar to witness anonymity orders within the meaning of section 86 of the Coroners and Justice Act 2009;

OFMDFM response regarding payment of expenses

Mr A Hicks,
Clerk
Committee for OFMDFM
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

17 October 2012

Dear Alyn

The Inquiry into Historical Institutional Abuse Bill

At the Committee meeting on Wednesday 10 October, officials indicated that there may be further amendments proposed by OFMDFM.

Attached at Annex 1 are OFMDFM amendments dealing with Payment of Expenses.

Yours sincerely

Signed Conor McParland

Conor McParland
Departmental Assembly Liaison Officer

Payment of Expenses

Clause 11, Page 6, Line 21

Leave out 'OFMDFM may award such amounts as it thinks reasonable' and insert 'The chairperson may, with the approval of OFMDFM, award reasonable amounts'

Clause 11, Page 6, Line 26

After 'where' insert 'the chairperson with the approval of'

Clause 11, Page 6, Line 30

Leave out 'attending the inquiry to give evidence or' and insert 'giving evidence to the inquiry or attending the inquiry'

Clause 11, Page 6, Line 32

Leave out 'OFMDFM' and insert 'the chairperson'

Clause 11, Page 6, Line 35

After 'OFMDFM' insert 'and notified by OFMDFM to the chairperson'

Clause 12, Page 7, Line 1

At end insert

'(1A) OFMDFM must pay any amounts awarded under section 11.'

Clause 18, Page 9, Line 28

Leave out 'inquiry panel' and insert 'chairperson'

Clause 18, Page 9, Line 28

Leave out 'panel' in the second place where it occurs and insert 'chairperson'.

Ministerial letter to Chair regarding statement on amendments to ToR



Stormont Castle
BELFAST
BT4 3TT

TEL: 028 9037 8158
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e-mail: ps.ministers@ofmdfmi.gov.uk

Mr Mike Nesbitt MLA
Chair of the OFMDFM Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Our Ref: SUB/970/12

17 October 2012

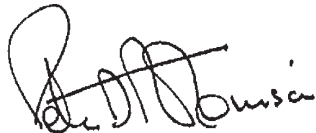
Dear Mike

WRITTEN STATEMENT TO THE ASSEMBLY TO ANNOUNCE THE AMENDED TERMS OF REFERENCE FOR THE HISTORICAL INSTITUTIONAL ABUSE INQUIRY

We are writing to inform you that we intend to lay a written statement before the Assembly on 18 October 2012 to announce the amendments to the Terms of Reference for the Historical Institutional Abuse Inquiry.

A copy of the statement is attached. The content of this statement should not be released until 18 October 2012 at 10am.

Yours sincerely



RT HON PETER D ROBINSON MLA
First Minister



MARTIN McGUINNESS MP MLA
deputy First Minister

Ministerial Statement on amendments to ToR

Office of the First Minister and Deputy First Minister

Written Ministerial Statement by Rt Hon Peter D Robinson MLA First Minister and Martin McGuinness MP MLA deputy First Minister

Announcement of Amendments to the Terms of Reference of the Historical Institutional Abuse Inquiry

Published at 10.00am on Thursday 18 October 2012

Our 31 May 2012 Statement to the Assembly set out the Terms of Reference for the Executive's Inquiry and Investigation into Historical Institutional Abuse, in which the "relevant period" meant the period between 1945 and 1995 (both years inclusive).

We have considered very seriously representations from stakeholders and from the OFMDFM Committee that the Terms of Reference should be amended.

Having consulted the Chair we have concluded that it is appropriate to amend the relevant period of the inquiry from 1945-1995 to 1922-1995 and to add the words "Bearing in mind the need to guard against future abuse". Otherwise, everything is as announced on the 31st of May 2012.

These Terms of Reference will be referred to in Clause 1 of the Inquiry into Historical Institutional Abuse Bill, which will state that "The terms of reference of the inquiry are as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 18th October 2012.

Terms of Reference

The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995.

For the purposes of this Inquiry "child" means any person under 18 years of age; "institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; "relevant period" means the period between 1922 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- an Acknowledgement Forum,
- a Research and Investigative team and
- an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.

The functions of each are as follows:

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An Acknowledgment Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1922 – 1995. The Acknowledgment Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair.

A Research and Investigative team

A Research and Investigative team will report to and work under the direction of the Chair of the Inquiry and Investigation. The team will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;
- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

An Investigation and Inquiry Panel

An Inquiry and Investigation Panel will produce a final report taking into consideration the report from the Acknowledgement Forum, the report of the Research and Investigative team and any other evidence it considers necessary. The Panel will be led by a Chairperson supported by two other members, who will be appointed by the First Minister and deputy First Minister. The Chairperson of the Inquiry and Investigation will also be responsible for the work of the Acknowledgement Forum and for the Research and Investigative Team.

On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. Bearing in mind the need to guard against future abuse, the report will make recommendations and findings on the following matters:

- An apology - by whom and the nature of the apology;
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

The Northern Ireland Executive will bring forward legislation at the beginning of this process to give a statutory power to the Inquiry and Investigation to compel the release of documents and require witnesses to give evidence to the Inquiry and Investigation. It is hoped that the legislative power will not be needed, however; the power will be available if required. As far as possible the Inquiry should be inquisitorial in nature rather than adversarial.

A Witness Support Service will be established by to support Victims and Survivors throughout their contact with the Inquiry process. The Office of the First Minister and deputy First Minister will establish a wider Victims Support Service to provide support and advice to victims before, during and after the inquiry.

Correspondence with Inquiry Panel

Inquiry into Historical Institutional Abuse Bill

Correspondence with Inquiry Panel

04 .07.12 – Inquiry Panel Chairman Statement to Committee

13.09.12 - Committee letter to Panel Chairman providing list of submissions

20.09.12 – Committee letter to Inquiry Chair, invitation to give evidence 26.09.12 meeting

26.09.12 – Inquiry Panel Chairman Opening Statement to Committee

Inquiry Panel Chairman Statement to Committee

Historical Institutional Abuse Inquiry Statement by the Chairman Sir Anthony Hart to the Ofmdfm Committee - 4 July 2012

Mr Chairman and members of the Committee, I am grateful to the Committee for giving me this opportunity to explain publicly how I see the Inquiry into historical institutional abuse in Northern Ireland between 1945 and 1995 going about its work at this early stage.

First of all, can I say that I consider it a privilege to have been asked to conduct this important Inquiry, and as its Terms of Reference make clear, the remit of the Inquiry is to “examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945 and 1995”. Although funded by the Northern Ireland Executive, the Inquiry is an independent body, and the matters within its remit will be thoroughly and rigorously investigated without fear or favour by myself and by those who will be appointed to assist the Inquiry in various capacities, whether as panel members or staff.

For the purpose of the Inquiry, the Terms of Reference define a child as someone who was under the age of 18, and “institution means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period [which means between 1945 and 1995], provided residential accommodation and took decisions about and made provision for the day to day care of children.”

The Inquiry will have to investigate matters of the utmost sensitivity and importance for all of those who experienced life as children in those institutions, some of whom may wish to describe their experiences going back more than 60 years. Perhaps the greatest single challenge for the Inquiry at this stage is trying to ascertain how many institutions will fall within our remit, and how many children went through those institutions in the 50 years from 1945 to 1995. There is no central database to which we can turn that will answer either of these questions, and so it will be necessary to try and identify those institutions, and it is clear that this is not an easy task.

The initial work that has been done suggests that there were possibly over 100 separate locations that provided such residential care at different times, and so far we have identified

- 97 homes/hostels/adolescent units/respite units/orphanages/nurseries
- 13 industrial schools/training schools/young offenders centres/Borstals
- (at least) 14 schools/homes for people with disabilities
- (at least) 13 hospital units for children with mental illness/learning disabilities
- there were also a number of workhouses and their infirmaries in operation for a period after 1945

On further investigation it may be that some of these may fall outside our remit, but I hope this conveys something of the potential scale of our task. Nor do we know how many children went through these institutions. Various estimates have been given as to how many children may have been in such institutions during the 50 years covered by the Inquiry's remit, but until people come forward to contact us, and we can obtain more information from the records of these institutions, these estimates are only that - estimates.

The Inquiry will therefore have to consider what did or did not happen to many children, perhaps thousands, in a large number of institutions over many years. This will be a complex and demanding task, particularly given the time frame set by the Terms of Reference for the

completion of its Report, and one that will involve a great deal of time and effort, because of the number of institutions, the number of children and the 50 year span of the Inquiry.

I have no doubt that many of those who will be affected by the decision to set up this Inquiry, some of whom may be well on in years, are very anxious that it should start its work as soon as possible. Through the Committee I would like to assure them in particular, and the public in general, that I am fully aware of such concerns, as are those working with me. A good deal of detailed preparatory work has already been carried out by the Inquiry in recent weeks to plan and set up the necessary procedures to enable it to carry out its task, but some further time will inevitably pass before the Inquiry will be able to put in place the necessary staff, premises and computer systems that are essential to allow the Inquiry to carry out its work efficiently and speedily once the necessary legislation has been passed by the Assembly. Andrew Browne (who is with me today) is the Secretary to the Inquiry and has been working extremely hard since his appointment on these matters. We do not yet have permanent premises, but much work is being done on the design of the necessary computer system which we have to have in place to record and handle data before we can invite members of the public to contact us.

Whilst the Inquiry will require the legislation which your Committee is scrutinising to be in place to fully carry out its work, I want to emphasise that everything possible will be done in advance of the legislation being passed so that the Inquiry will be ready to move to the next stage as soon as the legislation is brought into force.

As the Terms of Reference make clear, an equally important part of the Inquiry is the Acknowledgement Forum. It has a separate team of very experienced panel members, and will provide an opportunity for victims and survivors to recount their experiences to those panel members on a confidential basis. I should like to take this opportunity to place on record the very valuable contribution its members have made to our work so far. I have found it immensely helpful to have the benefit of their experience of similar work elsewhere, and I am accompanied today by Mrs Norah Gibbons who is one of the Acknowledgement Forum panel and performed a similar role with the Ryan Commission.

It is intended that the Forum will start its work as soon as the necessary staff and procedures are in place, and whilst it is not yet possible to give a precise date by which the Forum will start to hear from those who wish to speak to it, I hope that it will be possible to have the Forum operational well before the end of this year.

The Inquiry will make every effort to have facilities in place as soon as possible, including a website, to allow anyone who wishes to contact the Inquiry or the Forum to do so on a confidential basis.

Committee letter to Panel Chairman providing list of submissions

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

Andrew Browne

Secretary

Inquiry into Historical Institutional Abuse

Andrew.Browne@ofmdfmni.gov.uk

Dear Andrew

13 September 2012

The Inquiry into Historical Institutional Abuse Bill (the Bill)

At its meeting of 12 September 2012, the Committee for the Office of the First Minister and deputy First Minister agreed to invite the Inquiry Chairperson to come to Committee again on the Bill, at its meeting on Wednesday 26 September 2012.

The Committee also agreed to forward to the Inquiry copies of all the submissions received by the Committee to date. The numbering of the attached submissions reflects the numbering in Members' Bill Folders and I am happy to forward a hard copy if required.

A number of the submissions appear to raise issues on which the Chairperson may be able to assist the Committee and I shall write to you again in relation to those which I have noted.

If any point requires further clarification I shall be happy to discuss. Please call me on 07765171330 / 0289 520379 or contact the Committee office on 02890 521904.

Yours sincerely,



Alyn Hicks
Committee Clerk

Committee invitation to Inquiry Panel Chairman

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

Andrew Browne
Secretary
Inquiry into Historical Institutional Abuse
Andrew.Browne@ofmdfmi.gov.uk

20 September 2012

Dear Andrew

The Inquiry into Historical Institutional Abuse Bill (the Bill)

I refer to our recent telephone calls and emails and I now write to confirm the Committee's invitation to Sir Anthony Harte to the Committee's meeting on 26 September 2012.

.As you will be aware since his last appearance before the Committee on 4 July 2012, the Committee has taken evidence from a number of respondents to the consultation including the NI Human Rights Commission, SAVIA, Amnesty International, Contact/Nexus/Victim Support, C McAteer & Co, Barnardo's, Poor Sisters of Nazareth and the De La Salle Order. Transcripts of the evidence sessions can be found on the Committee's web page <http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/Minutes-of-Evidence/>

The main purpose of the session is to seek the views of the Inquiry Chairperson on those concerns and issues raised in the written submissions from the witnesses listed above and in their oral evidence to the Committee. Some of the issues raised will be matters for OFMDFM to respond to. However, there are a number of issues raised which the Inquiry Chairperson may have to manage, including "matters of evidence and procedure in relation to the inquiry", in the context of the Rules of Procedure envisaged under Clause 18 of the Bill.

Without wishing to in any way limit the Inquiry Chairperson's comments, the Committee agreed that it would be helpful if Sir Anthony were able to address the issues listed in Appendix 1.

I should be grateful if Sir Antony, in his opening remarks to the Committee, could include a very brief update of his work and involvement to date on the Inquiry and Bill and the work still to be done in preparation for the commencement of the different strands of the Inquiry.

Opening remarks normally last up to 10 minutes, after which Members will take the opportunity to ask questions – usually for around 30-40 minutes. You should note that the proceedings will be recorded, will be open to the public and the media, and will be covered by Hansard.

Members' briefing papers for this session will include, should Sir Anthony wish to refer to them, the following:

- Ministers' statement of 31 May 2012
- The Bill
- The Explanatory & Financial Memorandum
- Submissions to the Bill
- The Hansard of preceding evidence sessions

If any point requires further clarification I shall be happy to discuss. Please call me on 07765171330 / 0289 520379 or contact the Committee office on 02890 521904.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alyn Hicks', with a long horizontal flourish underneath.

Alyn Hicks
Committee Clerk

Appendix 1

1. Possible formal right for the Inquiry Chairperson to request Terms of Reference to be amended.
2. Possible formal right for the Inquiry Chairperson to request an extension of the 2 years 6 months anticipated duration of the inquiry and investigation stage.
3. Inquiry Panel – possible to make recommendations about changes to the law, practice and procedure arising out of their investigations.
4. Whether there is a need for “abuse” or other terms need to be defined.
5. Interim Inquiry Report – to provide the Inquiry’s initial views on redress and enable Executive to progress discussion and agreement on that issue without waiting the anticipated 2 and a half years for the final Inquiry Report.
6. Different elements of redress (reparation) - restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
7. Publication of the report by Inquiry or by OFMDFM – who publishes, when and in what form.
8. Implications of extending scope of Inquiry to include those who suffered abuse wherever it occurred –could Inquiry/Acknowledgement Panel usefully hear about abuse that occurred outside institutions and make recommendations about how it could be dealt with.
9. Implications for subsequent civil or criminal proceedings where the substance of the allegations are being investigated in front of the Inquiry Panel – potential prejudice to such prosecutions succeeding or to the rights of the institutions/individuals who may be defending proceedings. Relevance/application of Article 6 of the ECHR to the Inquiry proceedings and any implications for subsequent civil/criminal proceedings.
10. Level of detail (in terms of alleged abuse and disclosure of documents/record) which institutions and individuals facing accusations will have access to.
11. Risk of self-incrimination in the context of inquisitorial approach by the Inquiry Panel.
12. Issues of discovery and privilege attaching to documents which come into existence for the purposes of the Inquiry. How will data protection obligations, particularly in relation to sensitive personal data be dealt with.
13. 14 day time limit for bringing judicial review proceedings – NIHRC regards it as “unworkable” – no effective access to courts/judicial reviews.
14. Airing of allegations in public which may not stand up when examined – in context of immunity from suit and damage to reputation.
15. Consulting/seeking the views of victims/other parties in relation to any restricted reporting orders the Inquiry may be considering making.
16. The Terms of Reference state that “A Witness Support Service will be established[by] to support Victims and Survivors throughout their contact with the Inquiry process”. Will the support to witnesses extend to vulnerable/elderly witnesses whose conduct is being investigated by the Inquiry? (Sisters of Nazareth)
17. The arrangements envisaged to publicise the Inquiry both inside and outside Northern Ireland, including a list of the Institutions being investigated, and arrangements such as video-link to take evidence from witnesses who may be abroad or confined to their homes.

18. Barnardo's raised the issue of children who were sent by Barnardo's to care provision in England or Scotland and whether the Inquiry would look at any abuse they may have suffered outside Northern Ireland. Other children may have come from the Republic of Ireland to Barnardo's homes in Northern Ireland.
19. Will the Acknowledgement Forum consider the consistency of submissions it receives with previous accounts given to the police or other investigations?

Inquiry Panel Chairman opening statement to Committee

Chairman's Opening Statement

To the Committee for the Office of the First Minister and Deputy First Minister

26 September 2012

Mr Chairman and members of the Committee, can I take this opportunity to update you, and through you members of the public, about what the Inquiry has been doing during the two and a half months since my first appearance before your committee on 4 July.

During this time we have been working very hard on number of fronts. First of All, Geraldine Doherty and David Lane have been appointed to act as panel members with me in the public inquiry component of the Inquiry. Both have very considerable experience in the practice, management and regulation of social work and social care services in Great Britain, including residential child care services, and I am delighted that they have agreed to devote their time and talents to the Inquiry.

Secondly we have now appointed Patrick Butler as solicitor to the Inquiry, and he is with me today, together with our Secretary Andrew Browne who, you will recall, accompanied me on the last occasion. We are in the process of appointing permanent administrative staff, a process that will continue over the next few weeks, and have secured the help of a number of experienced individuals on a temporary basis in the meantime.

Much of our time has been devoted to moving into new premises, which were a bare shell, and the mundane but essential work of making them ready for occupation, installing furniture, and in particular installing telephones and computers. At the same time work has been pressing ahead with the design of our data handling systems so that when we invite those who wish to tell us of their experiences in residential institutions we will be able to deal with them efficiently, expeditiously and sensitively.

Our primary focus over this period has been on getting ready to start the work of the Acknowledgement Forum, which you will recall I said we hoped to have in operation well before the end of this year. All of this has involved a great deal of detailed preparatory work on the design of our website, and other matters such as drafting leaflets and application forms. Whilst we are very anxious to start work, all the background work is essential before we can provide a proper service to those who wish to recount their experiences to us.

I do not wish to weary you with every detail of what all of this has involved, but I am pleased to be able to announce that in a few days, barring any last minute technical hitches, we will publish advertisements in the major newspapers in Northern Ireland and the Republic inviting members of the public who wish to recount their experiences to the Inquiry, and to the Acknowledgement Forum in particular, to contact us, either by going to our website to download the necessary material, or by ringing a Freephone number when they will be sent a leaflet explaining how the various parts of the Inquiry will operate, and a form for them to fill in and return to us by Freepost stating whether they wish to speak only to the public inquiry, or only to the Acknowledgement Forum, or to both.

All applications will be treated in confidence. It will only be at that stage that we will get a clearer picture of the numbers of individuals with whom the Inquiry in both its parts will have to engage.

Once we receive completed application forms we will be able to plan who we should contact first, and when. Depending upon how many people wish to contact us this process may take

a little time, but we plan to offer the first appointments for the Acknowledgement Forum starting in a few weeks' time. We intend to give priority to those who are oldest or in poor health.

The Acknowledgement Forum will then start its programme of listening to the experiences of those who want to recount their experiences. Between then and the end of the year the Inquiry staff will also collate and analyse the information we receive from those who wish to speak to the statutory inquiry element of the Inquiry, and we will be preparing for the next stage which will commence in earnest with the enactment of the legislation you are considering.

There are a number of aspects of that which I know you wish to ask me about, and if you agree Mr Chairman I will deal with any questions about the draft legislation then.

Other Correspondence

18.06.12 – Committee's written invitation for submissions

06.09.12 – Committee letter to Children's Law Centre requesting further information

13.09.12 – Kevin Winters & Co Solicitors request for response

21.09.12 – Committee response to K Winters letter of 13.09.12

10.10.12 – Children's Law Centre response to Committee

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

[Witness Name]
[Organisation]
[Address]

[date]

Dear [Name]

Committee Stage – Inquiry into Historical Institutional Abuse Bill (“the Bill”)

Further to our telephone conversation I am writing to confirm that the Committee for the Office of the First Minister and deputy First Minister considered your written submission on the Bill at its meeting on 5 September 2012 and agreed that it would take oral evidence from **[Organisation]**.

As we discussed the briefing will be scheduled for Wednesday **[date of meeting]**. The Committee meeting normally starts at 2.00pm, in Room 30, Parliament Buildings and generally lasts 2-3 hours. Starting times for briefings can vary depending on the preceding items of business but I expect your session to start at approximately **[indicative time]**. You should be available 30 minutes before that indicative time.

Your presentation (whether one or more representatives are presenting) should last no longer than 10 minutes in total, after which Members will take the opportunity to put questions – usually for around 30-40 minutes.

You should note that the proceedings will be recorded, will be open to the public and the media, and will be covered by Hansard – a copy of the Hansard of the meeting will be appended to the Committee’s Report on the Bill.

Committee Members will have in front of them a copy of your written submission as well as a copy of the Bill itself if you wish to refer to them. Should you wish to provide any additional briefing papers, such as a bullet point sheet of key points, please forward these by e-mail, by the Thursday preceding the date of the briefing to committee.ofmdfm@niassembly.gov.uk, so that all relevant papers can be circulated to Committee Members in advance of the meeting.

I enclose a copy of the ‘Notes for the Guidance of Witnesses’ and a note giving the membership of the Committee and the Committee staff team.

If you require any further information or clarification please call me on 07765171330 or contact the Committee office on 02890 521903.

Yours sincerely,



Alyn Hicks
Committee Clerk

Committee letter to Children's Law Centre requesting further information

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

Paddy Kelly
Director
Children's Law Centre
3rd Floor
Philip House
123-137 York Street
Belfast
BT15 1AB

6 September 2012

Dear Paddy,

Inquiry into Historical Institutional Abuse Bill

Thank you for the Children's Law Centre's submission to the OFMDFM Committee on the Inquiry into Historical Institutional Abuse Bill

At its meeting of 5 September 2012 the Committee agreed to seek further information in relation to your submission and in particular to paragraph 3.10 where, in reference to the legal framework introduced by the Children (Northern Ireland) Order 1995, it states that this has "*not always been effective in protecting children and young people*"

The Committee agreed to forward to you a copy of correspondence dated 9 July 2012 received from OFMDFM in response to the Committee's request for details of the improvements in residential child care since the Children (NI) Order 1995. The request to OFMDFM arose following officials' briefing to the Committee on 6 June 2012 stated:

We are stoppin g at 1995, because that was the date of the Children (Northern Ireland) Order. When that Order came in, it radically changed the way institutions were run and it built in a lot of safeguards. So, 1945 is really around the beginning of the welfare state, and 1995 was when the situation changed quite radically.

In that context the Committee would be grateful for CLC's view on the changes introduced by the 1995 Order and subsequently set out in OFMDFM's letter together with any evidence, including cases, supporting the submission that the law has not always been effective since 1995. It would also be of assistance to the Committee if CLC could provide any evidence indicating the relative scale of the problem pre- and post-1995.

I should be grateful for a response by Friday 13 September, if at all possible.

Yours sincerely



Alyn Hicks
Clerk to the Committee

Kevin Winters & Co request for response

1st class

KEVIN R. WINTERS & CO.
SOLICITORS
3rd Floor, The Sturgen Building
9-15 Queen Street, Belfast, BT1 6EA
Telephone 028 90 241888 Fax 028 90 244804
www.kevinrwinters.com

13 September 2012

Our Ref: JR/49075/KRW/PTM

FAO: Alan Hicks
OFMDFM
GD36 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

Dear Sir

Re: **Pending Enquiry into Historic and Institutional Abuse**

We refer to the above matter and to your telephone call to ourselves on the 5th September 2012.

Thank you for the kind invitation to attend the Committee with a view to making additional submissions.

We understand that the dates 12/9 and 19/9 were available to facilitate same.

We understand that you have contacted a number of victim's representatives some of whom have expressed interest in appearing in person.

Given your request detailed consideration. However upon checking our records we note that there has been no substantive response to our substantive submission sent to you.

In the absence of a formal and detailed response to same we are of the view, at this stage, that there is no necessity to attend in person before the Committee.

We are of the view that to advance matters we do need to hear from you in writing.

Upon receipt of your reply we will give consideration to your invitation dated 5th September 2012.

We thank you for your assistance and look forward to hearing from you.

Yours faithfully
KEVIN R. WINTERS & CO.


.....

Kevin R. Winters Joseph D. McVeigh Gerard McNamara
Niall Murphy Peter Corrigan Michael Crawford Paul Pierce

Gareth Dillon Shane Moorehead Stephen McNamara
Lyndsay Crawley Marie Hans Aidan Carlin

Committee response to Kevin Winters & Co

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

Ref: JR/49075/KRW/PTM

Kevin R Winters & Co

Solicitors

3r Floor, The Sturgeon Building

9 – 15 Queen Street

Belfast

BT1 6EA

21 September 2012

Dear Sirs

Committee Stage – Inquiry into Historical Institutional Abuse Bill ("the Bill")

I refer to your letter dated 13 September 2012 which the Committee considered at its meeting on 19 September 2012.

The Committee had previously forwarded submissions received on the Bill to the Department to make officials aware of the issues raised. At its meeting on 19 September the Committee agreed to specifically ask officials to respond to the issues raised in your letter of 7 August 2012, some of which have also been raised in other submissions received.

In terms of a response at this stage to the issues you raised the Committee looks forward to hearing from OFMDFM officials on these and other issues at the Committee's meeting on 26 September 2012. Live coverage of officials' evidence to the Committee can be viewed via the Assembly website or via Democracy Live. CDs and DVDs of the meeting can also be ordered via the website and there is a listen again facility on the Committee's homepage.

The Committee's view on issues relating to the Inquiry Bill will be informed by the written submissions and oral evidence taken during the committee stage of the Bill and will be reflected in the Committee's Report.

Yours sincerely,



Alyn Hicks
Committee Clerk

Childrens Law Centre Response

3rd Floor, Philip House
123 - 137 York Street
Belfast BT15 1AB

Tel. (028) 9024 5704
Fax. (028) 9024 5679



Young Persons Freephone
Advice Line 0808 8085678
info@childrenslawcentre.org
www.childrenslawcentre.org

children's law centre
Using the Law to Promote, Protect and Realise
Children's Rights



10 October 2012

Alyn Hicks
Clerk to the Committee
Committee for the Office of the First Minister and deputy First Minister
Room 435, Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

Dear Mr Hicks

Re: Inquiry into Historical Institutional Abuse Bill

Thank you very much for your letter of 6 September 2012 in respect of the above matter. Thank you also for forwarding to us correspondence from OFMDFM sourced from DHSSPS relating to changes in residential care since 1995 post the Children (NI) Order 1995. I note the contents of this information. I note that in the context of this information the Committee requested the Children's Law Centre's views in respect of this together with evidence that the law has not always been effective since 1995. The Committee also requested details of the scale of the problem pre and post 1995.

Given the scale and scope of this request for information it would take CLC a considerable period of time and extensive research to provide the Committee with the detailed information requested. I would therefore respectfully like to suggest that the Committee request this information from expert academic sources who would have readily available the information requested by the Committee. I would like to suggest that the Committee contact Dr John Devany, School of Sociology, Social Policy and Social Work, Queen's University Belfast, who I believe would be in a position to provide the Committee with the information it requests more quickly.

If I can be of any further assistance to you, please do not hesitate to contact me.

Yours sincerely


Paddy Kelly
DIRECTOR



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If you are a UK taxpayer, Gift Aid your donation and we can claim back an extra 25p from your taxes for every £1 you donate.
Donate securely on-line at www.cafonline.org by selecting Children's Law Centre under "Find a Charity"
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Northern Ireland
Assembly

Appendix 6

Research Papers



Northern Ireland
Assembly

Research and Information Service
Bill Paper

25 June 2012

Jane Campbell

The Inquiry into Historical Institutional Abuse Bill

NIAR 457-12

The Inquiry into Historical Institutional Abuse Bill was introduced to the Assembly on 12 June 2012. The Bill confers powers on the First Minister and deputy First Ministers to initiate an inquiry into Historical Institutional Abuse between the years 1945 and 1995. The Bill also contains provisions to empower the inquiry panel to compel witnesses and documentary evidence. This paper outlines the background to the legislation, examines the responses to the Executive's consultation and briefly summarises the main provisions of the Bill. Some key issues are included in the final section.

Key Points

- The Inquiry into Historical Institutional Abuse was introduced to the Assembly on 12 June 2012. The Second Stage debate took place on Monday 25 June 2012.
- The Bill confers powers on the First Minister and deputy First Ministers to initiate an inquiry into Historical Institutional Abuse between the years 1945 and 1995.
- The Executive consulted widely on the nature and content of the Bill and met with Victims and Survivors and other key stakeholder groups. It was also briefed by officials who had experience of similar inquiries in other jurisdictions.
- The purpose of the Inquiry is to examine if there were systemic failings by institutions or the state in their duties toward those children in their care between the years 1945 and 1995.
- The Inquiry is also authorised to make recommendations on an apology, an appropriate memorial or tribute to those who suffered abuse and the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.
- The inquiry will have three strands consisting of an Acknowledgement Forum, a Research and Investigation Team and an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.
- The inquiry is expected to last three years and is estimated to cost between £7.5 and £9 million.

Contents

Key Points

- 1 Background and purpose of the Bill
- 2 Good practice guidance and consultation
- 3 Content of the Bill
- 4 Issues
- 5 Annexe: Ministerial Statement of 31 May 2012 containing the Terms of Reference

1 Background and purpose of the Bill

Ryan Commission

In the late 1990's the Irish Government introduced a number of measures in response to revelations of abuse of children from 1940 to 1999 in institutions run by the State and parts of the Roman Catholic Church within the Republic of Ireland. It set up the Commission to Inquire into Child Abuse¹ (the Ryan Commission) in May 1999. The Commission reported in May 2009 making 21 recommendations aimed at alleviating and addressing the effects of the abuse on those who had suffered and preventing and reducing the incidence of abuse of children in institutions.

On 2 November 2009 the Northern Ireland Assembly passed the following motion:

“this Assembly expresses grave concern at the findings of the Commission to Inquire into Child Abuse report (the Ryan Report) published in May 2009 in the Republic of Ireland; considers that such neglect and abuse of children and young people’s human rights must be subject to criminal law; recognises that children who were placed by state authorities in Northern Ireland in establishments or settings where they became victims of abuse are entitled to support and redress; calls on the Executive to commission an assessment of the extent of abuse and neglect in Northern Ireland, to liaise and work with the authorities in the Republic of Ireland and to report to the Assembly; calls on the Executive to provide funding to support helpline and counselling services which are now facing new demands; and further calls on the Executive to work, through the North South Ministerial Council, to ensure that all-Ireland protections for children and vulnerable adults are in place as soon as possible.”²

Options Paper

In response, the Minister for Health, Michael McGimpsey, agreed to prepare an Options Paper on Historical Institutional Abuse in Northern Ireland. This was issued to the Executive in March 2010³. The Minister said:

The twin issues of historical institutional and clerical abuse are very complex and responding to them in a sensitive and meaningful way represents a huge challenge for all of us. At the heart of this are all the victims, who as children suffered terrible abuse at the hands of those who were supposed to be protecting and caring for them...

I have therefore today issued an Executive paper which will enable the Executive as a whole to form a view on the way ahead.

Taskforce

An Interdepartmental Taskforce on Historical Institutional Abuse was established following an Executive announcement on 16 December 2010⁴. It was tasked with bringing forward recommendations before the Assembly’s summer recess on the nature of the inquiry. The taskforce reported its recommendations to the Executive and on 29 September 2011

1 <http://www.childabusecommission.ie/>

2 <http://archive.niassembly.gov.uk/record/reports2009/091102.htm#a3>

3 <http://www.northernireland.gov.uk/news/news-dhssps/news-dhssps-march-2010/news-dhssps-19032010-options-paper-on.htm>

4 <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-dececeber-archive-2010/news-ofmdfm-161210-historical-institutional-abuse-statement.htm>

the Executive announced that there would be an investigation and inquiry into historical institutional abuse⁵. On 31 May 2012 the First Minister and deputy First Minister announced Terms of Reference for an Inquiry into the abuse of children living in residential care between 1945 and 1995. The Inquiry would be chaired and directed by Sir Anthony Hart.

The Bill

The Inquiry into Historical Institutional Abuse Bill was introduced to the Assembly on 11 June 2012⁶. The Explanatory and Financial Memorandum (EFM) to the Bill provides a helpful explanation of the contents and policy objectives of the Bill.⁷ It states that during the planning process the department considered three options for the legislation. These were:

- an amendment to the Inquiries Act 2005 by way of an Assembly Bill to allow for its application to a Historical Institutional Abuse Inquiry,
- an Assembly Bill which sets out comprehensive provision for an inquiry into Historical Institutional Abuse, and
- an Assembly Bill which provides the inquiry panel with powers only to compel witnesses and documentation.

The Memorandum states that the proposed Bill, (presumably) option 2

“...provides a robust framework and comprehensive provision for the inquiry, while allowing for scrutiny by the Assembly”.

The Inquiry into Historical Institutional Abuse Bill 2012⁸ is enabling legislation; Clause 1 Subsection (1) authorises the First Minister and deputy First Minister, acting jointly, to set up the Inquiry. Whilst the Bill is not a duplication of the Inquiries Act 2005, some of its provisions are the same or similar.

Terms of reference : purpose of the inquiry

The Bill does not state the purpose of the inquiry; this is stated in the Ministerial Statement which contains the terms of reference. Clause 1(2) of the Bill refers to the Terms of Reference⁹ of 31 May 2012; which state that the purpose of the inquiry is to:

...examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

The Inquiry must make also findings and recommendations on:

- an apology (by whom and the nature of the apology),
- an appropriate memorial or tribute to those who suffered abuse, and
- the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.

5 <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-archive-ofmdfm-september-2011/news-ofmdfm-290911-executive-announces-inquiry.htm>

6 Officials from OFMDFM briefed the Assembly Committee for the Office of the First Minister and deputy First Minister on 6 June 2012 on the forthcoming Bill. <http://www.niassembly.gov.uk/Documents/Official-Reports/OFMDFM/Minutes-of-Evidence/Inquiry%20into%20Historical%20Institutional%20Abuse%20Bill.pdf>

7 Explanatory and Financial Memorandum <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Inquiry-into-Historical-Institutional-Abuse-Bill/Inquiry-into-Historical-Institutional-Abuse-Bill-as-Introduced-Explanatory-and-Financial-Memorandum/>

8 http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/niabill_7_11-15.pdf

9 <http://www.northernireland.gov.uk/statement-to-assembly-hia-inquiry-tor>

Terms of reference: Inquiry report

The terms of reference state that within 6 months of the conclusion of the inquiry the Chair must provide a report to the Executive. If additional time is needed the Chair may request an extension from the First Minister and deputy First Minister – which will be granted, provided it is not unreasonable.

Terms of reference : definitions

The term “abuse” is not defined in the terms of reference; neither is it defined in the Bill or the EFM. The following definitions are included in the terms of reference:

- **a child** is any person under 18 years of age;
- **“institution”** means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children;
- **“relevant period”** means the period between 1945 and 1995 (both years inclusive).

The inquiry will have three strands consisting of:

An Acknowledgement Forum

This will provide a confidential setting for victims and survivors to speak about their experiences. It will be led by a 4 person team appointed by the First Minister and deputy First Minister. The panel will deliver a report recounting the experiences of the victims and survivors.

A Research and Investigative team

The Chair of the Inquiry will direct this team; its work will involve the collection and collation of all information and witness statements provided to the Acknowledgement Forum. It will also profile the historical context at the time of reported abuses and deliver a report to the Acknowledgement Forum and Chair of the Inquiry.

An Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister

This Panel will consist of the Chairperson and two other members appointed by the First Minister and deputy First Minister. It will consider the report of the Acknowledgement Forum, the report of the Research and Investigative team any other evidence it considers necessary. Following this, it will provide a report to the Executive within 6 months of the conclusion of its inquiry and investigation.

In addition, **A Witness Support Service** will be established to support Victims and Survivors at all times during their contact with the Inquiry process.

2 Good practice guidance and consultation

This section of the paper considers best practice guidance on the setting up and running of public inquiries. The paper then outlines the consultation process undertaken by the Executive to inform the content of the Bill.

2.1 Good practice guidance

Over the past 20 years in countries such as Ireland, Canada, Australia, New Zealand and Scotland there has been increasing recognition of a history of abuse in child care institutions. Whilst it is recognised that every context of abuse is different, both at the individual level and at the systemic level, the experiences within these countries and the response of governments have much in common and provide a body of guidance material for undertaking an inquiry into historic child abuse. Looking to international standards, many of these countries have drawn up frameworks for the design and implementation of a process of justice, remedies and reparation for survivors of historic child abuse. It is possible to identify key and common approaches.

Functions of an inquiry

A review of past public inquiries¹⁰ identifies that the key functions of an inquiry can involve:

Establishing the facts

The inquiry must aim to provide a full and unbiased account of the circumstances that resulted in the abuse.

Learning from events

The inquiry must identify and report on lessons learned to inform policy and practice.

Catharsis or therapeutic exposure

An inquiry can be a platform allowing for the public (and private) venting of anger, distress and frustration. It can build a sense of fairness and be an experience encouraging healing.

Reassurance

The inquiry can help rebuild public confidence after the damage to public morale following an inquiry into distressing events. It can help repair the damages to the credibility of government and policy makers.

Accountability, blame and retribution

An inquiry can apportion blame and accountability to institutions (and individuals) for their actions, and be a precursor to litigation.

Political considerations

The composition of the inquiry panel is crucial. The review of events and systems can be a political agenda for government.

Good practice guidance also identifies a number of general principles that apply to the establishment and conduct of inquiries, these are:

1. Independence

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2. Transparency, consistent with the interest of justice and national security
3. Fairness and respect for individuals
4. Power to seek to establish the facts
5. Access to necessary resources and avoidance of unnecessary expenditure

2.2 Consultation

Inter-departmental taskforce

In line with good practice and the wishes of victims and survivors, the Executive consulted on the content of the Bill and the terms of reference for the inquiry. An inter-departmental taskforce to consider the nature of the inquiry was announced in December 2010¹¹. The taskforce included representatives from OFMDFM, DHSSPS, DE, DOJ, DSD, DFP, DOE, DEL and DCAL. It consulted with a wide range of groups and individuals including:

1. Victims and survivors and other key stakeholder groups
2. Amnesty International
3. the Northern Ireland Human Rights Commission,
4. Children's rights organisations
5. the PSNI
6. Officials in the Republic of Ireland and in Scotland who had been involved in similar inquiries

A taskforce website was established with links connecting victims and survivors to accessible and relevant information. Meetings with victims and survivors took place in Armagh, Belfast and Londonderry/ Derry in March 2011¹²

Chair of the Inquiry

Good practice guidance emphasises the value of the Chairman being involved in agreeing the terms of reference for an inquiry. The EFM confirms that Sir Anthony Hart, Chair (presiding member) of the inquiry was consulted on and agreed the terms of reference before they were published on 31 May. He was also consulted on the contents of the Bill. The EFM states:

Throughout, ministers and officials have had on-going engagement with victims and survivors, including on the establishment and terms of reference for this enquiry.

The inquiry terms of reference have been discussed in detail with victims and survivors, and agreed with the presiding member of the inquiry. The presiding member has been consulted on the contents of the Bill.¹³

Written submissions

Written submissions were also sought by the taskforce during the consultation.

11 The Terms of Reference for the Taskforce are available at:

http://www.northernireland.gov.uk/terms_of_reference_-_taskforce_on_historic_institutional_abuse.pdf

12 <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-march-archive-2011/news-ofmdfm-070311-interdepartmental-taskforce-on.htm>

13 EFM paragraphs 13 and 14

Northern Ireland Human Rights Commission (NIHRC)

The Northern Ireland Human Rights Commission submitted an advice paper on the human rights aspects of a public inquiry¹⁴. At this stage, the format of the legislation was unknown, and whether the Executive would model the legislation on the Inquiries Act 2005¹⁵, the 'default' legislation for carrying out public inquiries in the UK. The Commission's paper took account of the international and domestic human rights standards relevant to a public inquiry. The Commission questioned the compatibility of the Inquiries Act 2005 with Articles 2 and 3 of the European Convention on Human Rights (ECHR). It was particularly wary of the some of the powers afforded to Ministers under the Act believing these powers to be a threat to an inquiry's independence. One of the key issues for the Commission was the power afforded to Ministers in setting and amending an inquiry's terms of reference. The Commission stated that in order for an inquiry to be compliant with the European Convention on Human Rights:

The Minister should not be empowered to narrow/restrict the terms of reference after the consultation process. The Minister should be enabled to broaden the terms of reference.

The Inquiries Act 2005 had received similar criticism at the time when it was being drawn up. The Westminster Joint Committee on Human Rights thought that certain aspects of the new legislation risked compromising the independence of an inquiry, potentially breaching Article 2 of the ECHR through, for example, the power given to the Minister to bring an inquiry to a conclusion before publication of the report. This power is available to the First Minister and deputy First Minister in the Northern Ireland Bill.¹⁶

Amnesty International

Amnesty International made a submission to the taskforce¹⁷ stating:

...as enshrined in international and regional human rights treaties, victims of human rights abuses have a right to an effective remedy and reparation, which included restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹⁸.

It recommended a statutory inquiry but noted its own, previous concerns, about the ability of the Inquiries Act 2005 to provide for a truly independent inquiry. It stressed that the proposed inquiry should be independent, impartial, thorough and effective and in line with human rights standards. It should also allow for effective victim participation, and be open to public scrutiny. It supported the inquiry having powers to compel attendance and cooperation of witnesses, including officials and powers to order the production of documents, including government and medical records. It recommended sufficiently comprehensive terms of reference for the inquiry that would allow for conclusions to be drawn about those who committed abuse but would also:

...examine the responsibility of all those who either failed to protect children, or acted to facilitate or cover up abuse. In addition the terms of reference must ensure that the inquiry is also able to identify the systemic failures underlying the abuse and the circumstances which allowed it to take place and go on happening.

14 <http://www.nihrc.org/documents/advice-to-government/2011/institutional-child-abuse-public-inquiry-january-2011.pdf>

15 <http://www.legislation.gov.uk/ukpga/2005/12/contents>

16 Investigatory Inquiries and the Inquiries Act 2005 Standard Note SN/PC/02599 November 2011

17 Proposed Inquiry into Historic Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive from Amnesty International May 2011

18 Proposed Inquiry into Historic Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive from Amnesty International May 2011 http://www.amnesty.org.uk/uploads/documents/doc_21546.pdf

Victims and Survivors

In its submission to the taskforce, victims group *Survivors and Victims of Institutional Abuse in Northern Ireland (SAVIA)* called for an inquiry process which is independent, impartial and capable of delivering justice. It advocated that opportunities to participate in the inquiry process should be proactively extended to all survivors whether affiliated with any organised groups or not. It wanted government to take steps to enable participation and ensure that it would be accessible. It was also important to the group that victims should be offered support throughout the duration of the inquiry. In short, SAVIA advocated an inquiry which is:

- independent
- public
- judge-led
- supported by an independent panel of people with acknowledged expertise
- not solely based in Belfast

Officials from the Republic of Ireland and Scotland

Officials from Scotland and the Republic of Ireland with experience of similar inquiries met with the taskforce in April 2011.¹⁹

Ryan Commission

Three officials who had worked on the *Commission to Inquire into Child Abuse* in the Republic of Ireland (the *Ryan Commission*) briefed the taskforce on their experiences and key lessons learned. The Inquiry was established by legislation in 2000 and took 10 years to complete its task, working through two complementary teams, a Confidential Committee and an Investigations Committee. Of the 25,000 children who had attended the institutions in the time period concerned, around one thousand five hundred persons came forward. The Commission published its final report (the Ryan Report) in May 2009. Key lessons highlighted to the taskforce included:

- The Ryan Inquiry cost €1.2B in total and a key issue was the cost associated with legal representation. In light of this, they recommended that a panel of lawyers be appointed rather than allowing victims and survivors their own lawyers.
- For reasons of efficiency and cost effectiveness, there needs to be clear lines of authority (governance) and accountability. This needs to be established from the outset, in any legislation governing the inquiry.
- Membership of the Commission – their background was scrutinised by survivors. Important to have indemnification and absolute privilege by the State.
- Inquiry to be held in therapeutic setting. Counselling and Witness Support Officers were very important as well as pre care; care throughout the process and after care. A pro forma had been devised to report back and survivors were able to hear recordings.
- Panel of legal representatives from which the witnesses could draw assistance
- Public hearings were held between 2004 – 2007 but these should have been held at the start of the inquiry
- Acknowledgement and redress had been important for victims/survivors

19 Note of meeting with Norah Gibbons and Brenda McVeigh held on Tuesday 19 April 2011 http://www.northernireland.gov.uk/note_of_meeting_with_norah_gibbons_and_brenda_mcveigh__tuesday_19_april_2011.pdf
Note of meeting with Mr Tom Shaw and the Inter-departmental taskforce into Historical Institutional Abuse held on Monday 4 April 2011. http://www.northernireland.gov.uk/note_of_meeting_with_tom_shaw__monday_4_april_2011.pdf

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- Defined categories of abuse and institutions. Neglect was defined as one of the categories and this had a huge long term effect on survivors
 - Accessibility to records was a key consideration
 - Cross-border co-operation and sharing of information between the two jurisdictions would be an issue for consideration, bearing in mind that some institutions would already have made records/evidence available to the Ryan Commission.
 - Survivors NEED TO BE HEARD

Scottish Inquiry

Mr Tom Shaw made a presentation to the taskforce on the scope, aims, format and outcomes of an inquiry in Scotland into historical abuse in residential schools and children's homes in Scotland from 1950 to 1965. An Acknowledgment Forum Time to be Heard was established on a pilot basis for adult survivors of abuse in care to describe their experiences in a confidential supportive setting. This was modelled on Ireland's "Confidential Committee" and focused on the former residents of Quarriers Homes. The independent Forum included 3 Commissioners and two support staff along with access to an In Care Survivor Service. Lessons learned from the experience were highlighted for the taskforce and included:

- the approach was a very valuable process in terms of providing acknowledgement for victim/survivors
- lack of access to records can be a difficulty when looking into historical institutional abuse
- confidentiality of records is crucial. It is important to get permission to take notes and follow agreed procedure for handling of same
- obligation to breach confidentiality where there were allegations of criminal activity
- the Scottish approach did not have an inbuilt accountability dimension
- it is essential to have a proper, sensitive and meaningful relationship between the inquiry and survivors
- any truth forum for survivors needs to be open and accessible to all
- timeframe- the importance of considering time as a critical factor for many victims/survivors who are older/unwell
- consider neutral environment for inquiry
- the selection of the inquiry team is crucial to the effectiveness of the process

3 Content of the Bill

This section of the paper provides a broad overview of the contents of the Bill. It is subdivided as follows:

- Provisions of the Bill relating to the inquiry
- Provisions of the Bill relating to the inquiry proceedings
- Provisions of the Bill relating to expenses
- Supplementary Provisions of the Bill
- General Provisions of the Bill

3.1 Provisions relating to the inquiry

The inquiry

The *Inquiry into Historical Institutional Abuse Bill 2012* **Clause 1 Subsection (1)** authorises the First Minister and deputy First Minister, acting jointly, to set up the inquiry.

Clause 1(2) of the Bill refers to the Terms of Reference of 31 May 2012.

Clause 1(3) authorises the First Minister and deputy First Minister to amend the Terms of Reference of the inquiry at any point in the inquiry, but they must first consult the presiding officer (the Chair).

Clause 1(4) specifies the name of the inquiry as the *Inquiry into Historical Abuse Inquiry 1945 to 1995*.

Clause 1 (5) specifies that the inquiry panel must not make a ruling on or a determination on any person's civil or criminal liability.

This section contains some very important provisions of the Bill. It is worth noting however that the Bill does not state the **purpose of the inquiry**. As stated earlier, this is contained in the Terms of Reference (found in the Ministerial Statement of 31 May) and is to:

...examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

and to make findings and recommendations this plus on an apology, an appropriate memorial or tribute to those who suffered abuse, and the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.

Also note that Clause 1(3) of the Bill confers on the First Minister and deputy First Minister the **power to change the Terms of Reference** of the inquiry. They must first consult with the presiding officer. Much of the information about the inquiry and how it will proceed is contained in the Ministerial Statement/Terms of Reference (and some will be governed by statutory rules which the Department will make).

It has been stated that the inquiry will be inquisitorial in nature rather than adversarial. An inquisitorial inquiry is a fact finding exercise unlike most court cases which are adversarial. The prohibition of a ruling on civil or criminal liability in Clause 1(5) is similar to the No

20 http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/niabill_7_11-15.pdf
 21 <http://www.northernireland.gov.uk/statement-to-assembly-hia-inquiry-tor>

determination of liability clause: (Section 2) of the Inquiries Act 2005; the Inquiry Act's Explanatory Notes state:

The purpose of this section is to make clear that inquiries under this Act have no power to determine civil or criminal liability and must not purport to do so. There is often a strong feeling, particularly following high profile, controversial events, that an inquiry should determine who is to blame for what has occurred. However, inquiries are not courts and their findings cannot and do not have legal effect. The aim of inquiries is to help to restore public confidence in systems or services by investigating the facts and making recommendations to prevent recurrence, not to establish liability or to punish anyone.

However, as subsection (2) is designed to make clear, it is not intended that the inquiry should be hampered in its investigations by a fear that responsibility may be inferred from a determination of a fact.²²

What Clause 1(5) of the Bill means therefore is that the inquiry will only set out the facts as it finds them and, even where it seems clear that those facts could constitute an offence and/or civil wrong, the inquiry will not say so.

Appointment of members

Clauses 2(1) and 2(2) authorise the First Minister and deputy First Minister to appoint the members of the inquiry panel; prior to this they must consult the presiding officer (Chair).

Clauses 2(3), 2(4) and 2(5) authorise the First Minister and deputy first Ministers to appoint additional members to the inquiry panel should a vacancy arise or there is a need to otherwise increase the size of the panel. The presiding member's (Chair's) consent must be sought. A replacement presiding member may be an existing member of the panel.

Duration of appointment of members

Clause 3 governs the arrangements should a panel member leave before the end of the inquiry. Clause **3(3)** sets out the circumstances in which the Ministers acting jointly may terminate the appointment of a panel member. The grounds for termination include illness, failure to comply with inquiry duties, conflict of interest and misconduct.

This clause mirrors Section 12 of the Inquiry Act 2005. The Ministerial power to remove the Chair and members of the inquiry panel "*amounts to a degree of control over the Inquiry which undermines the Inquiry's independence*" according to the NIHR.

Assessors

The inquiry presiding officer (Chair) may appoint assessors to provide expertise for all or part of the inquiry (**Clause 4**)

Under the Inquiry Act 2005 the Minister may also appoint assessors, prior to the setting up of the inquiry, and subject to consultation with the inquiry chair. This is seen by some to undermine an inquiry's ability to control its own procedures and choose individuals whom it deems can best provide expertise.

This power is not, however, replicated in the Bill.²³

End of inquiry

Clause 5 covers the arrangements for the end of the inquiry. This will be when the report is submitted and the terms of reference fulfilled. Clause 5 (1)(b) permits the Ministers acting jointly to close the inquiry at an earlier point.

In the Explanatory Memorandum the department explains this provision:

...there could arise circumstances (as yet unforeseen) in which it would be impossible for the inquiry to continue. Therefore as a safeguard, Subsection (2) provides for the Ministers acting jointly, after consulting the presiding member, to close the inquiry.²⁴

The Clause is the same as Section 14 of the Inquiries Act 2005; the NIHRC comment on this:

Even though reasons have to be provided to Parliament or to the Northern Ireland Assembly, the ability of the Minister to do such over the head of the Inquiry again undermines the independence of the Inquiry.

3.2 Provisions relating to the inquiry proceedings

Evidence and procedure

Clause 6(1) authorises the presiding officer (Chair) to decide how the inquiry should proceed and take evidence.

Clause 6(2) states the presiding officer (Chair) must act fairly and have regard to the need to avoid unnecessary cost.

Note that section 18 of the Bill authorises the department to make rules dealing with “matters of evidence and procedure”.

Public access to inquiry proceedings and information

The presiding office may decide how the public can have access to the inquiry and its evidence (**Clause 7**).

Restrictions on public access, etc.

The presiding officer may restrict attendance at the inquiry or disclosure of evidence provided to it (**Clause 8(1)**). The other subsections of clause 8 cover the circumstances surrounding restrictions on public access. Restrictions will not prevent disclosure under the Freedom of Information Act 2000 (**Clause 8(7)**).

23 See Page 4 NIHRC submission to taskforce

24 Explanatory and Financial Memorandum Section 18 Commentary on Clauses

Powers to require production of evidence

Clause 9 authorises the presiding officer to compel people via a formal notice to attend the inquiry to give evidence or provide documentary evidence. A notice can be revoked by the presiding officer in certain circumstances, for example if the person does not have the required evidence or when the evidence requested is unlikely to be or material assistance to the inquiry.

This clause of the Bill is the same as Section 21 of the Inquiries Act 2005. Consultation respondents were strongly in support of the provision of these powers to the inquiry panel; victims group SAVIA said:

*In order to conduct a thorough and wide ranging investigation, the Inquiry may have to obtain evidence from the police, other statutory authorities, as well as non-statutory agencies and individuals. It is acknowledged that the powers under the 2005 Act have been successful in compelling witnesses to give evidence or disclose information to previous inquiries and, given experience in other jurisdictions, will likely be necessary in the Inquiry.*²⁵

Privileged information etc.

Clause 10 exempts people from providing evidence under certain circumstances – for example if it is covered by legal professional privilege or because it might incriminate them, or their spouse or civil partner.

3.3 Provisions relating to expenses

Expenses of witnesses etc.

Clause 11 authorises OFMDFM to award reasonable amounts to pay for witnesses costs.

The Explanatory and Financial Memorandum states that OFMDFM are obliged to meet the costs of the inquiry acting within its Terms of Reference. It estimates the cost of the inquiry will be around £7.5-£9 million, depending on how many victims and survivors come forward and the extent of the issues to be examined in the inquisitorial sessions.

Payment of inquiry expenses by OFMDFM

OFMDFM is required to pay the inquiry expenses and Clause 12 specifies the circumstances in which they will not be paid.

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Survivors and Victims of Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive May 2011 <http://www.survivorsni.org/>

3.4 Supplementary Provisions

Offences

Witnesses failing to comply with a notice (under Clause 9) or a restriction order (Under Clause 8) will be committing an offence according to Clause 13.

It will be an offence to do anything which is intended to distort or otherwise alter evidence or conceal evidence (**Clause 13(2) and (13(3)).**

The penalties for committing an offence are six months imprisonment and/or a £1000 fine.

Enforcement by High Court

A failure to comply with a notice under Clause 9 or a restriction order may be referred to the High Court under **Clause 14**. The High Court may then take steps to enforce the order.

Immunity from Suit

Clause 15 gives the panel, legal advisors, assessors and staff immunity from legal suit for anything done or said in carrying out their duty during the inquiry.

Time limit for applying for judicial review

After receiving a decision of the inquiry an applicant is allowed a two week period in which to apply for judicial review on the decision, (**Clause 16**).

Power to make supplementary, etc. provision

Powers for OFMDFM to make supplementary, transitional, incidental or consequential provision it considers appropriate for the purposes of the Act, (**Clause 17**).

3.5 General Provisions

Rules

Clause 18 enables OFMDFM to make rules subject to negative resolution dealing with evidence and procedure under clause 6, the return or keeping of documentary evidence after the end of the inquiry and awards to witnesses under clause 11.

Application to the Crown

Clause 19 binds the Crown so that the powers conferred by the bill can be exercised in relation to Departments.

Consequential amendments

Clause 20 is an amendment to the Commissioner for Complaints (NI) Order 1996 inserting the inquiry name.

Interpretation

Clause 21 provides a definition of terms within the Bill.

Commencement, etc.

Clause 22 covers the commencement of the Act and the concluding of powers under clauses 9 and 10.

Short title

Clause 23 - The Act may be cited as the Inquiry into Historical Abuse Act (Northern Ireland) 2012.

4 Issues

This section of the paper identifies some issues for further discussion.

- The **Terms of Reference** are contained in the Ministerial Statement as opposed to the Bill. This includes the purpose of the Inquiry. Members may wish to consider and seek clarification on whether the terms of reference should be set out in the legislation.
- The Bill includes a **power for the Ministers to amend the Terms** of Reference (after consulting the presiding member). Bearing in mind the powers granted and the offences created, should the Assembly be consulted or asked to approve proposed changes to the terms of reference of the inquiry?
- **Definition of “abuse”** – there is no definition of “abuse” in the Bill or Terms of Reference. Members may wish to seek further clarification.

Note: in the *Ryan Inquiry* the Confidential Committee was required to hear the evidence of witnesses who wished to report four types of abuse as defined by the Acts.

Physical Abuse

The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child

Sexual Abuse:

The use of the child by a person for sexual arousal or sexual gratification of that person or another person

Neglect:

Failure to care for the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

Emotional abuse:

Any other act or omission towards the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

- **Definition of “systemic.”** The purpose of the inquiry is to identify systemic failings by institutions or the state. The term is not defined in the Bill or Terms of Reference (Ministerial Statement). It is not clear how the panel will identify systemic failings and whether this could mean a narrowing of the scope of the inquiry.
- **Civil and criminal liability.** The inquiry panel must not rule on and has no power to determine any person’s civil or criminal liability. The inquiry panel or Acknowledgement Forum will have to decide how to deal with victims coming forward whose evidence may raise issues of criminal or civil liability – how will that be managed? The Committee may wish to flag this as an issue on which it would want clarification.
- **Financial Effects.** The cost of the inquiry is estimated at between £7.5 and £9 million²⁶. Members may wish to understand how the estimate was arrived at, what assumptions it is based on and whether it is realistic. This is particularly apt considering the very high costs associated with legal representation highlighted to the taskforce by the Ryan Commission’s former members during the consultation exercise.

Office of the First Minister and Deputy First Minister

Written Ministerial Statement by Rt Hon Peter D Robinson MLA First Minister and Martin McGuinness MP MLA deputy First Minister

Announcement of the Historical Institutional Abuse Inquiry Terms of Reference, Chair and Acknowledgement Forum Panel Members

Published at 5.00pm on Thursday 31 May 2012

On 29 September 2011 the Executive announced there would be an Investigation and Inquiry into historical institutional abuse. We attach the agreed Terms of Reference for the Inquiry and wish to advise the Assembly of the Chair of the Inquiry and the panel members for the Acknowledgement Forum.

Chair of the Inquiry

Sir Anthony Hart has agreed to chair and direct the Inquiry. Sir Anthony has enjoyed a distinguished career as a barrister and a judge.

Acknowledgement Forum Inquiry Panel Members

The Inquiry will include a confidential "Acknowledgement Forum" in which victims and survivors can recount their childhood experiences of living in institutions to members of the Inquiry Panel. The Acknowledgement Forum Panel Members are:

- | | |
|---------------------|---|
| Beverley Clarke – | Beverley has wide experience of social work and child care, working in England and Canada. She is an independent expert witness and has worked for the Ministry of Justice and the Home Office. |
| Norah Gibbons - | Norah is Director of Advocacy in Barnardo's Ireland. She was also a Commissioner of the Ryan Inquiry into historical institutional abuse in Ireland. |
| Dave Marshall QPM - | Dave is a consultant in the field of child safeguarding, investigation and management. For 9 years he was Detective Chief Inspector and Head of the Metropolitan Police' Child Abuse Investigation Command's Major Investigation Team. |
| Tom Shaw CBE - | Tom was invited by Scottish Ministers to review the regulatory framework in Scotland designed to ensure the welfare needs and rights of Children in residential institutions from 1945-95. Subsequently he chaired "Time to be Heard" – a pilot acknowledgement forum for those who had experienced abuse in residential children's institutions in Scotland. |

Terms of Reference

The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

For the purposes of this Inquiry "child" means any person under 18 years of age;

"institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took

decisions about and made provision for the day to day care of children; “relevant period” means the period between 1945 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- an Acknowledgement Forum,
- a Research and Investigative team and
- an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.

The functions of each are as follows:

An Acknowledgment Forum

An Acknowledgment Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary, the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1945 – 1995. The Acknowledgment Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair.

A Research and Investigative team

A Research and Investigative team will report to and work under the direction of the Chair of the Inquiry and Investigation. The team will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;
- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

An Investigation and Inquiry Panel

An Inquiry and Investigation Panel will produce a final report taking into consideration the report from the Acknowledgement Forum, the report of the Research and Investigative team and any other evidence it considers necessary. The Panel will be led by a Chairperson supported by two other members, who will be appointed by the First Minister and deputy First

Minister. The Chairperson of the Inquiry and Investigation will also be responsible for the work of the Acknowledgement Forum and for the Research and Investigative Team.

On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. This report will make recommendations and findings on the following matters:

- An apology - by whom and the nature of the apology;
- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

The Northern Ireland Executive will bring forward legislation at the beginning of this process to give a statutory power to the Inquiry and Investigation to compel the release of documents and require witnesses to give evidence to the Inquiry and Investigation. It is hoped that the legislative power will not be needed, however; the power will be available if required. As far as possible the Inquiry should be inquisitorial in nature rather than adversarial.

A Witness Support Service will be established by to support Victims and Survivors throughout their contact with the Inquiry process. The Office of the First Minister and deputy First Minister will establish a wider Victims Support Service to provide support and advice to victims before, during and after the inquiry.



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper 000/00

10 October 2012

NIAR 750-12

Jane Campbell

Termination of Statutory Inquiries

- The Inquiries Act 2005 is the statutory framework which may be used by Ministers wishing to establish an inquiry with full powers to call for witnesses and evidence.
- The Act consolidated existing inquiries legislation, filled gaps and codified best practice from past inquiries. The Act was the first time all key stages of the inquiry process were laid down in statute.
- Section 14 of the Inquiries Act 2005 provides for an inquiry to be terminated by report or by notice (see page 3). The power for Ministers to terminate the inquiry by notice was believed by some to compromise the independence of an inquiry. This view was refuted by government. Clause 5 of the Inquiry into Historical Institutional Abuse Bill mirrors Section 14 of the Inquiries Act 2005.
- In 2007 the Northern Ireland Court of Appeal ruled that the independence of an inquiry could not be said to have been compromised by section 14 of the Inquiries Act 2005 (see page 4).

1 Background

The Inquiries Act 2005 provides the statutory framework for establishing inquiries in the UK. When the Act came into force it was suggested that the independence of an inquiry is compromised by some of the powers afforded to Ministers. Section 14(1) (b) governing the ending of an enquiry is one of the controversial provisions¹. Clause 5 of the Inquiry into Historical Institutional Abuse Bill² is identical to Section 14 (1) (b) and has drawn similar criticism. This short briefing note examines the legislative provisions for the termination of statutory inquiries and the issue of independence.

2 The Tribunals of Inquiry (Evidence) Act 1921

The Tribunals of Inquiry (Evidence) Act of 1921³ (the 1921 Act) was the principal statute for establishing inquiries in the UK until 2005 when the Inquiries Act came into force. Statutory tribunals of inquiries established under the 1921 Act were independent of Parliament though the Act did require that they be established by a resolution of both Houses of Parliament. Inquiries were generally 'open-ended' with wide discretion and authority granted to the Inquiry Chair. There was no provision in the Act to Parliament to end the inquiry or to control the costs. The spiralling cost of inquiries was a major reason for reform of the legislation. The last four inquiries established under the 1921 Act were:

- The Dunblane School Inquiry (set up 21 March 1996)
- Child Abuse in North Wales Inquiry (set up 20 June 1996)
- Bloody Sunday Tribunal of Inquiry (set up 19 January 1998)
- Harold Shipman Tribunal of Inquiry (set up 23 January 2001)

3 The Inquiries Act 2005

The Inquiries Act 2005 (the 2005 Act) repealed the 1921 Act and consolidated and updated inquiries legislation. The 2005 Act was seen by some as an unwelcome strengthening of Ministerial control over inquiries, especially in light of the previous legislation which had given Parliament a formal role in establishing inquiries. However the government's view was that:

..the Act consolidates existing inquiries legislation, fills gaps and codifies best practice from past inquiries. For the first time in statute the Act lays down all key stages of the inquiry process - from setting up the inquiry, through appointment of the Panel to publication of reports. The Act does not, as has been suggested, radically shift emphasis towards control of inquiries by Ministers. Instead, it makes clear what the respective roles of the Minister and Chairman are, thereby increasing transparency and accountability.⁴

Ending an inquiry

Under section 14 of the 2005 Act⁵ an inquiry is ended in one of two ways.

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- 1 The House of Commons Public Administration Select Committee's view was that the Ministerial powers to end or suspend inquiries in the Inquiry Act 2005 "...calls into question the independence of inquiries" Government by Inquiry HC51 2004-05
The Joint Committee on Human Rights also expressed concern that the new legislation risked compromising the independence of an inquiry, potentially breaching Article 2 of the European Convention on Human Rights, for example section 14 - the power of a minister to bring an inquiry to a conclusion before publication of the report. Joint Committee on Human Rights, Fourth report session 2004-05 HC 224 2004-05
- 2 <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Inquiry-into-Historical-Institutional-Abuse-Bill/>
- 3 <http://www.legislation.gov.uk/ukpga/Geo5/11-12/7/contents>
- 4 DCA, "Statutory inquiries are modernised with commencement of Act", News release 140/2005, 7 June 2005
- 5 <http://www.legislation.gov.uk/ukpga/2005/12/section/14>
-

- (i) The first is **by report** (Section (1) (a))- when the Chairman or Panel notifies the Minister that the inquiry has fulfilled its terms of reference and delivers their report to the Minister.
- (ii) Under Section 14(1)(b) of the Act an inquiry can also be ended **by notice**. This empowers the Minister, (after consultation with the Chairman) to end the inquiry on any earlier date. This must be specified in a notice given to the Chairman. The notice must set out the Minister's reasons for bringing the inquiry to an end and s/he must lay a copy of the notice before Parliament (or Assembly) as soon as is reasonably practical. The power to do this has never been exercised. The Explanatory Notes to the Act explain the government's reasons for inclusion of Section 14(1) (b). These suggest that this power should only be used in situations such as when:

"...evidence... emerge[s] that obviated the need to hold an inquiry or demonstrates that the inquiry has the wrong focus, for example if it emerged during an inquiry that the event being investigated was an act of sabotage, rather than failings of a particular system, and therefore ought to be dealt with by the police rather than an inquiry. Other events might occur which also need to be investigated and it may be more appropriate to set up a single, wider-ranging inquiry, perhaps with a different Panel. Something might happen, such as a fire or a death of a witness, which means that an inquiry will no longer have access to the evidence it needs to conduct an effective investigation and it may no longer be in the public interest for it to continue. Such events are unlikely, but possible"⁶

4 Death of Billy Wright: application by David Wright for Judicial Review

The question of whether section 14(1) (b) of the 2005 Act compromises the independence of an inquiry was tested in the Northern Ireland Court of Appeal in 2007. The Billy Wright inquiry was initially set up in 1997 under section 7 of the Prison Act (Northern Ireland) 1953 but in 2005 the Inquiry Chairman requested it be converted to an inquiry under the 2005 Act. This was legally challenged on the grounds that the 2005 Act would compromise the independence of the inquiry. The challenge was initially upheld but the decision was subsequently reversed by the Court of Appeal in June 2007. The Introduction to the judgement outlines the background to the case:

[1] This is an appeal from the judgment of Deeny J whereby he granted judicial review of the decision of the Secretary of State for Northern Ireland acceding to the request of the panel which is conducting the inquiry into the death of Billy Wright that the inquiry be converted from one to be carried out under the Prison Act (Northern Ireland) 1953 to an inquiry under the Inquiries Act 2005.

[2] In broad outline the Secretary of State appeals on the grounds that the learned judge erred in concluding that the independence of such an inquiry was compromised by the existence of section 14 (1) (b) of the 2005 Act (which permits the Secretary of State to bring the inquiry to an end). It is also argued that the judge was wrong to conclude that the Secretary of State had been incorrectly advised that an equivalent power existed under the Prison Act. Finally, it is claimed that the judge was in error in concluding that the Secretary of State had been advised (and accepted the advice) that there was a presumption in favour of acceding to the request of the inquiry.

The Court then examined whether section 14 of the 2005 Act compromised the independence of the inquiry and whether an equivalent power existed under the 1953 legislation:

6 <http://www.legislation.gov.uk/ukpga/2005/12/notes/contents>

[29] This question is inevitably connected to the third issue (*viz* whether an equivalent power to bring an inquiry to an end existed under the 1953 legislation) but it also has a freestanding dimension. If the Secretary of State has power to bring an inquiry to an end, does that ineluctably compromise its independence? We do not believe that it does. The opportunity to stop the inquiry does not have a direct impact on its independence. It may affect its usefulness in that it halts the investigation on which the inquiry is embarked but it does not alter the autonomy of the inquiry while it is taking place.

The judgement concluded:

[44] We have reached the view that the independence of the inquiry could not be said to have been compromised by section 14 of the 2005 Act. This was not a consideration that the Secretary of State was required to take into account. We are of the opinion that a power to terminate an inquiry established under the Prison Act must, by necessary implication, exist and that this is at least as extensive as that expressly conferred by section 14 of the Inquiries Act. Finally, we have concluded that the Secretary of State was not advised that there was a presumption in favour of the grant of the request to convert.

[45] The inquiry panel appealed against the judge's finding that the panel was mistaken in considering that the Prison Act provided a less suitable framework for the inquiry. For the reasons that we have given, we consider that there is no absolute answer to be given as to whether an inquiry under the Prison Act is superior or more independent than one under the 2005 Act. As Mr Larkin QC for the inquiry submitted, it is not without significance that no party had argued before Deeny J in favour of the positive merits of the Prison Act as a vehicle for the inquiry into Billy Wright's murder. The applicant's submissions focused on what were perceived as the inadequacies of the Inquiries Act 2005. The inquiry's view that it could conduct a much more meaningful and effective investigation if conversion was granted is, in our opinion, an entirely tenable one.

[46] The appeal will be allowed and the application for judicial review dismissed.⁷

7 http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2007/2007%20NICA%2024/j_j_KERF5884Final.htm

The Tribunals of Inquiry (Evidence) Act 1921



CHAPTER 7.

An Act to make provision with respect to the taking of evidence before and the procedure and powers of certain Tribunals of Inquiry.

A.D. 1921.

[24th March 1921.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) Where it has been resolved (whether before or after the commencement of this Act) by both Houses of Parliament that it is expedient that a tribunal be established for inquiring into a definite matter described in the Resolution as of urgent public importance, and in pursuance of the Resolution a tribunal is appointed for the purpose either by His Majesty or a Secretary of State, the instrument by which the tribunal is appointed or any instrument supplemental thereto may provide that this Act shall apply, and in such case the tribunal shall have all such powers, rights, and privileges as are vested in the High Court, or in Scotland the Court of Session, or a judge of either such court, on the occasion of an action in respect of the following matters :—

Powers with respect to the taking of evidence, &c., before certain tribunals of inquiry.

- (a) The enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise ;
- (b) The compelling the production of documents ;
- (c) Subject to rules of court, the issuing of a commission or request to examine witnesses abroad ;

[CH. 7.] *Tribunals of Inquiry (Evidence)* [11 GEO. 5.]
Act, 1921.

A.D. 1921. and a summons signed by one or more of the members
--- of the tribunal may be substituted for and shall be
equivalent to any formal process capable of being
issued in any action for enforcing the attendance of
witnesses and compelling the production of documents.

(2) If any person--

(a) on being duly summoned as a witness before a
tribunal makes default in attending; or

(b) being in attendance as a witness refuses to
take an oath legally required by the tribunal
to be taken, or to produce any document in
his power or control legally required by the
tribunal to be produced by him, or to answer
any question to which the tribunal may
legally require an answer; or

(c) does any other thing which would, if the
tribunal had been a court of law having
power to commit for contempt, have been
contempt of that court;

the chairman of the tribunal may certify the offence of
that person under his hand to the High Court, or in
Scotland the Court of Session, and the court may there-
upon inquire into the alleged offence and after hearing
any witnesses who may be produced against or on behalf
of the person charged with the offence, and after hearing
any statement that may be offered in defence, punish or
take steps for the punishment of that person in like
manner as if he had been guilty of contempt of the
court.

(3) A witness before any such tribunal shall be
entitled to the same immunities and privileges as if he
were a witness before the High Court or the Court of
Session.

Powers of
tribunals as
to exclusion
of public
and granting
right of
audience.

2. A tribunal to which this Act is so applied as
aforesaid—

(a) shall not refuse to allow the public or any
portion of the public to be present at any of
the proceedings of the tribunal unless in the
opinion of the tribunal it is in the public
interest expedient so to do for reasons con-
nected with the subject matter of the inquiry
or the nature of the evidence to be given;
and

[11 GEO. 5.] *Tribunals of Inquiry (Evidence) Act, 1921.* [CH. 7.]

(b) shall have power to authorise the representation before them of any person appearing to them to be interested to be by counsel or solicitor or otherwise, or to refuse to allow such representation. A.D. 1921.

3. This Act may be cited as the *Tribunals of Inquiry (Evidence) Act, 1921.* Short title.

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Section 14 of the Inquiries Act 2005

14 End of inquiry.

(1) For the purposes of this Act an inquiry comes to an end—

(a) on the date, after the delivery of the report of the inquiry, on which the chairman notifies the Minister that the inquiry has fulfilled its terms of reference, or

(b) on any earlier date specified in a notice given to the chairman by the Minister.

(2) The date specified in a notice under subsection (1)(b) may not be earlier than the date on which the notice is sent.

(3) Before exercising his power under subsection (1)(b) the Minister must consult the chairman.

(4) Where the Minister gives a notice under subsection (1)(b) he must—

(a) set out in the notice his reasons for bringing the inquiry to an end;

(b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly



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