



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Research and Information Service Briefing

26 June 2012

NORTHERN IRELAND ASSEMBLY

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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 Caitríona Ruane

Also in attendance:

Ms Jane Campbell Research and Information Service

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.

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.

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.

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.

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".

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.

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.

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.

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.

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.

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.

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?

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.

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.

Ms J Campbell: Yes.

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?

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.

The Deputy Chairperson: OK.

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?

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.

The Deputy Chairperson: That would be helpful.

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 —

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.

Mr A Maskey: I appreciate that. Thank you.

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.

Ms J Campbell: I raised it for your good selves take it and discuss around it.

Mr Humphrey: If it is in the political arena, the independence is somewhat breached.

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?

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.

Mr G Robinson: Thank you, Jane, for your presentation. Has it been decided yet where the inquiry team will be housed or working from?

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.

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.

Ms J Campbell: If there is any more research at all that you want, I am here to do that.

The Deputy Chairperson: Thank you.