



Northern Ireland  
Assembly

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

# OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:  
OFMDFM Briefing

26 September 2012

# NORTHERN IRELAND ASSEMBLY

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

Inquiry into Historical Institutional Abuse Bill: OFMDFM Briefing

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

**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?

**Ms Maggie Smith (Office of the First Minister and deputy First Minister):** We are talking about the announcement that Ministers made today?

**The Chairperson:** We are talking about your responses in annex 1.

**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 —

**The Chairperson:** Sorry, you have apologised, but why was it late?

**Ms Smith:** I understand that there may have been some delay in getting it from our system to yours.

**The Chairperson:** Because —

**Ms Smith:** I do not know. I genuinely did not know until you told me just now that it did not arrive.

**The Chairperson:** So you have no idea why —

**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.

**The Chairperson:** Can you perhaps get back to us as to the reason for that?

**Ms Smith:** I certainly can. I would be glad to.

**The Chairperson:** OK. What would you like to tell us?

**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.

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.

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.

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

**Ms Smith:** Yes.

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

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

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.

**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."*

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?

**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.

**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.

**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.

**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.

**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.

**The Chairperson:** Is that consistent with advice from the Examiner of Statutory Rules?

**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.

**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?

**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.

**The Chairperson:** What about 1945, Maggie, as a starting point?

**Ms Smith:** Lots of people have raised that. Ministers are very sympathetic to the removal of that parameter.

**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.

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.

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.

**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?

**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.

**The Chairperson:** Starting out, was it £7 million to £9 million?

**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.

**The Chairperson:** Can you give us some sense of the information and knowledge you have now that you did not have then?

**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.

**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?

**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.

**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?

**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."*

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.

**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?

**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.

**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.

**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.

**Ms Smith:** That is right.

**Mr Lyttle:** And there is a firm no to an interim report as well.

**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.

**Mr Lyttle:** OK. I welcome the clarity around the criminal proceedings, recommendations and timescale. That has been helpful.

**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?

**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.

**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.

**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.

**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.

**Ms Smith:** Absolutely; yes.

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

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