



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Committee Consideration

5 September 2012

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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

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?

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.

The Chairperson: I cannot imagine any reason why there should be any sort of delay on this.

Mr Maskey: I agree.

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.

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.

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.

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.

Ms Ruane: You could end up doing a huge disservice.

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".

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.

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.

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.

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?

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.

The Chairperson: Are we agreed that we will make a call?

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.

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.

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.

Mr Maskey: I understand that. I know that they will be here intermittently but in a structured way.

The Chairperson: Is everyone content that they have had their opportunity? I will move on.

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.

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.

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 —

Mr Maskey: We are not discussing the Bill clause by clause today; we will have time to discuss all those matters.

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.

The Committee Clerk: I have been thinking of sending the Department's letter about 1995 —

The Chairperson: To the Children's Law Centre?

The Committee Clerk: Yes.

The Chairperson: Let us get that done.

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?

Mr Clarke: That is highlighting that there is an issue now that needs to be fixed anyway.

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?

The Chairperson: We will do that.

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?

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.

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?

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 —

Mr Clarke: That is accepting that we will accept everything that is given as evidence.

Mr Eastwood: No, it is not. It is just —

Mr Clarke: It is.

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.

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.

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.

The Chairperson: We have a wee bit of debate at least.

Mr Maskey: I appreciate that.

The Chairperson: On that point, members, in the tabled papers, we have an outline forward work programme for discussion on the Bill.

Francie, are you leaving?

Mr Molloy: Yes.

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.

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.

Mr Molloy: Thank you very much for your co-operation.

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.

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?

The Chairperson: Do you want me to run through who is available?

Mr Maskey: Can I suggest that we leave it with you to schedule presentations?

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.

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.

The Chairperson: OK. The last substantive issue is whether we extend our Committee Stage.

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.

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.

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.

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.

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.

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.

The Chairperson: Yes. Are we all agreed? We should add that we are open to taking written and oral submissions.

The Committee Clerk: At this stage, we have our submissions, although the Committee Stage will run on.

The Chairperson: If an individual has not really been engaged with us and this news release makes them feel —

Mr Clarke: I suggest that we seek written submissions rather than oral ones.

Mr Maskey: Was not a formal invitation published by us?

Mr Kinahan: Let us keep at it.

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.

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.

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.

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.

The Chairperson: Are you content, Committee Clerk?

The Committee Clerk: Yes.

The Chairperson: We are content with the table showing the draft forward work programme.

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.