



CONFERENCE REPORT

TIME FOR JUSTICE

*Delivering a human rights compliant inquiry
for the victims of historical institutional child
abuse in Northern Ireland*

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Amnesty International
PROTECT THE HUMAN

CONTENTS

WELCOME AND INTRODUCTION Patrick Corrigan, Northern Ireland Programme Director, Amnesty International	PAGE 3
ADDRESS ON BEHALF OF THE OFFICE OF THE FIRST & DEPUTY FIRST MINISTER Robin Newton MLA, Minister, Office of the First & Deputy First Minister	PAGE 5
DELIVERING A HUMAN RIGHTS COMPLIANT INQUIRY FOR THE VICTIMS OF HISTORICAL CHILD ABUSE IN NORTHERN IRELAND Duncan Wilson, Head of Strategy and Legal, Scottish Human Rights Commission	PAGE 6
OUR DEMAND FOR JUSTICE IN NORTHERN IRELAND Margaret McGuckin, Survivors/Victims Institutional Abuse Northern Ireland	PAGE 13
OUR CAMPAIGN FOR JUSTICE IN THE REPUBLIC OF IRELAND Andrew Madden, Victim/survivor of clerical child abuse and campaigner	PAGE 15
LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND Marian Shanley, Legal Reform Commissioner	PAGE 19
LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND Norah Gibbons, Advocacy Director of Barnardos, Ireland	PAGE 23
LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND Pearse Mehigan, Solicitor, Legal Adviser to One in Four, Ireland	PAGE 35
REDRESS, RESTITUTION AND SUPPORT Maeve Lewis, Executive Director, One in Four, Ireland	PAGE 37
ESTABLISHING A NORTHERN IRELAND INQUIRY: THE LEGAL CONTEXT Fiona Doherty, Barrister-At-Law	PAGE 40
REDRESS, RESTITUTION AND SUPPORT DESIGNING A VICTIM-CENTRED SYSTEM Deirdre Kenny, Advocacy Director, One in Four, Ireland	PAGE 45
WORKSHOP FEEDBACK	PAGE 51
SUGGESTIONS ON THE WAY FORWARD FOR THE SURVIVORS AND VICTIMS OF INSTITUTIONAL ABUSE Jon McCourt, Margaret McGuckin, John Meehan and Brian Doherty	PAGE 53

WELCOME AND INTRODUCTION

Patrick Corrigan, Northern Ireland Programme Director, Amnesty International

Welcome Minister, ladies and gentlemen to this important conference: Delivering Justice for the Victims of Historical Institutional Child Abuse.

Since its establishment, Amnesty International has stood for justice and has stood with the victims of injustice. In that time we have stood with prisoners of conscience, with victims of torture, with the refugee and the dispossessed. Today is no different when we stand with those of you who have suffered as children, whilst supposedly in the care of institutions to which society entrusted you. That trust was abused.

Individual abusers and those bodies – including but not exclusively the Catholic Church – under whose auspices that abuse was perpetrated, often in a systematic fashion, bear a terribly responsibility for what was done to you and to hundreds, perhaps thousands of other children.

Those perpetrators, both individual and institutional, deserve to be brought to account for both their actions and inactions, even if those events date from decades past.

But ultimate responsibility for the violation of the rights of children in care rests with the State. In the days when the abuse against you was carried out, the State may have been the old Northern Ireland government. Today we look for the delivery of justice to the new Northern Ireland government. We are glad that government is represented here today in the person of Minister Robin Newton and officials from the Office of the First and Deputy First Minister.

Today we also hear from many courageous, expert and experienced voices from whom we seek to learn. We will hear from Margaret McGuckin, John Meehan and Jon McCourt who will give us a glimpse of the pain and damage done to children like them in institutions across Northern Ireland and tell us how, today, they are working to

secure belated justice for themselves and the many more they represent.

But we also hear from those who have made this journey before and we seek to learn the lessons from elsewhere on this island and beyond.

From Andrew Madden and Bernadette Fahy we hope to learn the lessons – often very painfully learned by them – of how they stood up to the most powerful institutions in the land, government and church, and secured a measure of justice and redress for themselves and others.

From Maeve Lewis and Deirdre Kenny of One in Four, we hope to hear about the counselling and advocacy support which that fantastic organisation has helped to deliver and which has been and continues to be so important to so many in the Republic.

Norah Gibbons and Marian Shanley, both members of the Ryan Commission of Inquiry into Child Abuse, are with us today to share the experiences of Ryan and other inquiries with which they have been involved.

Pearse Mehigan, who has acted as both legal adviser to One in Four and lawyer for victims dealing with the Redress Board, will talk us through that crucial side of the process.

We have lessons to learn from them all – what worked, what hasn't worked so well and what insights they might have for our process in Northern Ireland.

Today we will also examine the legal and political context in Northern Ireland for a process of inquiry and redress with the help of human rights lawyer Fiona Doherty, who brings much experience from the Saville Inquiry; and Assembly member Conall McDevitt, who has been acting as an adviser to the Victims and Survivors Group. This is not a case of "any inquiry will do". It must be designed to meet the needs of victims and the human rights obligations set down in international law. It must be

independent, impartial and effective in delivering justice. Those who have experienced institutional abuse in Northern Ireland must participate in its design to ensure it is fit for purpose. It cannot permit side deals which offer immunity to those who committed the abuse or others who may have helped to cover up that abuse. It must not short-change the victims and survivors in offering them the redress and compensation to which they are due.

Duncan Wilson from the Scottish Human Rights Commission and Khara Khan-Glackin from the Northern Ireland Human Rights Commission will be helping us to examine relevant international human rights standards and how they could be applied to

these requirements. Alex Tennant and Jacqueline Melville from NICCY will help guide us through the implications of inquiry for current child protection practices here.

When we met the First and Deputy First Minister on this issue in July, we received assurances that they had heard the cry for justice and they that would lead from the front, cutting through any inter-departmental barriers, in order to deliver the justice that is demanded. We are delighted and honoured that Minister Robin Newton has chosen to be with us this morning and we hope that he will be able to add to those assurances and give us an update on progress. Please welcome Minister Robin Newton.

ADDRESS ON BEHALF OF THE OFFICE OF THE FIRST & DEPUTY FIRST MINISTER

Robin Newton MLA, Minister, Office of the First & Deputy First Minister

Thank you Patrick for your kind introduction, and a very good morning to you all.

I am very pleased to be here today and have the opportunity to address you at this important conference, through which you are hoping to inform and assist the process of identifying a way forward for the victims and survivors of institutional abuse here.

I want to assure you that the Executive is committed to identifying a way forward for dealing with the matter and to do everything in its power to ensure that what regrettably happened in the past will never be allowed to happen again.

In line with this commitment many of you will already be aware and indeed I know some of you were actually present, when the First Minister and deputy First Minister met with a group representing the victims and survivors of institutional abuse on the 22nd of July this year.

This meeting was linked to an options paper produced earlier this year by the Health Minister Michael McGimpsey, on the potential ways forward on dealing with historical abuse here.

During this meeting the group outlined their views on a range of issues such as:

- an apology;
- the establishing of a public enquiry;
- an assurance that no child would be put in a similar situation today; and
- the establishment of a Redress Board to consider the needs of victims, the possibility of legal support and how compensation and financial support could be managed for victims.

The members of the group also expressed their hope that the matter could be taken forward as quickly as possible.

The First and deputy First Minister listened to the testimonies and views of the group. They recognised the hurt and also saw the

strength and the courage in people dealing with this issue. They share the desire of survivors to achieve a satisfactory form of closure on the matter, for all those who have been affected.

I understand the very complex legal and relationship issues involved with this matter, but I am also mindful of the time with which some have carried their suffering and we are determined to move on the matter as quickly as possible.

To this end Ministers agreed that OFMDFM would now take the lead in progressing the matter and would immediately form a working group with those departments that have operational responsibility for the issues.

I am pleased to say that this work has commenced. The group has met several times and is currently working on actions to address issues such as looking at the immediate needs of people for counselling, health and advice. The group will also work with representatives to establish a conduit for survivors to input their ideas to Ministers.

I am sure that today's Conference and its findings will also be used to inform the ongoing discussions. I want to reassure everyone here that this matter is one which the Executive is keen to move forward on at the earliest opportunity. In agreeing any way forward however the Executive will want to be certain that it is the right way forward for all those affected by what is an extremely complex and sensitive matter.

What happened in the past was wrong. We are determined however to do everything in our power to ensure that those who were affected achieve closure and that the necessary mechanisms are in place to ensure that it will never be allowed to happen again.

You are no longer alone.

Thank you.

TIME FOR JUSTICE – DELIVERING A HUMAN RIGHTS COMPLIANT INQUIRY FOR THE VICTIMS OF HISTORIC INSTITUTIONAL CHILD ABUSE IN NORTHERN IRELAND

Duncan Wilson, Head of Strategy and Legal, Scottish Human Rights Commission

Introduction

Good morning everyone and thank you for the invitation to talk with you today. I am very pleased to have the opportunity to share with you the work which the Scottish Human Rights Commission has undertaken to develop a human rights framework for responding to historic child abuse. I wish I were able to join you in person, but we are hosting an international event in Scotland starting today, so I hope the technology does not fail us for this exchange.

In the time I have available, I would like to briefly explain what the Scottish Human Rights Commission is, how we came to be working on responses to historic child abuse and what we have done.

First of all let me say that every context of abuse is different, both at the individual level and at the systemic level, and while I hope that the lessons from experience in Scotland may be a useful comparison, it is obviously for the people of Northern Ireland, particularly those affected by historic abuse, to determine what is right for you. That having been said, there are certain international standards – which are based on legally binding commitments which both the UK and Ireland have undertaken, which tell us what the State (the Government, the justice system, the police, social work and others) should do to remedy the ongoing effects of abuse, and to ensure justice for those who have experienced abuse. I will give an outline of what those laws require.

Firstly though a little context on the organisation I represent, the Scottish Human Rights Commission.

About the Scottish Human Rights Commission

The Scottish Human Rights Commission (the Commission) is a national human rights institution – an independent body established by an Act of the Scottish

Parliament to promote and protect human rights for everyone in Scotland. The Commission has a unique role on human rights in our country. It is wholly independent of Government, and operationally independent of Parliament, but is not a “non-governmental organisation” like Amnesty.

The Commission is similar to your own Northern Ireland Human Rights Commission, with whom we work very closely, and we both have a role in promoting understanding of and fulfilment of internationally recognised human rights, as a bridge between the United Nations human rights system (which has given both Commission’s what it calls “A status” to reflect our independence and the strength of our human rights mandates) and our domestic contexts.

What the Commission has done

The Commission has been operational since December 2008 and following a nationwide consultation, our main priority has been the promotion and protection of human dignity, particularly in relation to care.

We have, for example, supported the development of a Charter of Rights for People with Dementia and their Carers; we have produced training and awareness raising resources relating to the care and support of older people, which are being rolled out to thousands of workers and regulators as well as users of care services; we have undertaken an independent evaluation of the human rights based approach adopted at The State Hospital, the high security mental health institution for both Scotland and Northern Ireland; and we have worked with Adult Protection Committees (which aim to protect adults at risk of harm from abuse) to enable them to understand the importance of human rights to their work.

Finally, and most importantly for today, we have developed a human rights framework

of recommendations on how to design and develop a process of justice, remedies and reparation for historic child abuse.

Before I discuss how we developed the human rights framework, and what it included, let me explain a little about the context of historic abuse in Scotland.

The Scottish context

As with other countries including Ireland, Canada, Australia, New Zealand, there has been increasing recognition over last 20 years of a history of abuse in Scottish institutions of child care.

There have been prosecutions of individuals from a wide range of institutions, and at least three formal inquiries (in Fife, Edinburgh, and at a residential institution in Ayrshire called Kerelaw). There were also at least two individual petitions to the Scottish Parliament (in 2000, 2002) related to historic child abuse in Scottish institutions. These petitions follow a procedure in the Scottish Parliament where anyone can write to the Public Petitions Committee in the Parliament to ask their help in securing action on an issue which is of concern to them, on which they feel the Government or Parliament should be doing more, or doing better.

the allegations and the petitions related to care provided in **all** It is very important to note that all of these steps – the prosecutions, the investigations, **forms of institutions** – state and private, those of different faiths and those without a religious basis.

Scottish Responses

In response to all of this, successive Governments have taken a number of steps. These include:

On 1 December 2004 the then First Minister Jack McConnell issued an apology on behalf of the people of Scotland for past child abuse in residential care homes.

In 2005 the Scottish Government created a National Strategy for Survivors of Childhood Sexual Abuse.

The Government commissioned an independent Historic Abuse Systemic Review, a review of the law, policies and strategies surrounding residential child care over a number of decades to see what can be learned from the past to improve child care in the future. This review was undertaken by the former Chief Inspector of Education for Northern Ireland, Tom Shaw, who reported in 2007.

In 2008 Scottish Ministers announced that they planned to trial a form of truth commission on historic child abuse which was later given the working title, "Acknowledgement and Accountability Forum".

In late 2009, the Scottish Government announced a Pilot Forum would be established to listen and validate survivors experiences, create a historical record, signpost to services available and test out a confidential committee model. Since June 2010 the Time to Be Heard pilot Forum has been operational.

SHRC Responses

The Commission developed a Human Rights Framework for the design and implementation of a comprehensive process of justice, remedies and reparation for survivors of historic child abuse. We based the framework on a progressive interpretation of international human rights law, including European and United Nations human rights treaties, research on the views of survivors and others whose rights were affected, and experiences elsewhere in the world.

The legal review:

- Sought to define child abuse in human rights terms, understanding how different treatment may have been considered to amount to torture, cruel, inhuman and degrading treatment; violation of physical and mental integrity; we noted that human rights standards related to abuse have evolved overtime and pointed to the importance of judging conduct according to the prevailing standards at the time.

- Considered the rights of everyone affected by a process of redress, not only survivors of abuse but also surviving relatives, former staff members (who have rights related to protection of reputation, fair hearing etc)
- Clarified responsibilities for redress – looking to the role of the State, private institutions and individuals
- Clarified what duties of response are – including investigation, prosecution, reparation. Importantly the Commission considers that victims of human rights abuses who have not had access to an effective remedy in the past should be entitled to realise their right to an effective remedy as it is understood today, and not be limited to remedies which were required under human rights law at the time of the abuse;
- Considered human rights in the design as well as the implementation of the processes of justice, remedy and reparation.

- **Legality**, an explicit link to legal standards.

Participation

Everyone whose rights are affected has the right to participate in all relevant decisions and the form of remedies available to them. To enable people to participate appropriate information should be available in accessible formats, and necessary support should be provided.

Realising the right to participate in decisions requires action. In both the design and the implementation phases effective communications and outreach strategies are needed to ensure that everyone who is affected knows about the development and implementation of the Forums and other remedies

International experience suggests that “*it is essential to involve victims in the process of designing and implementing the [remedy and reparations] programme.*” International standards on involvement in decisions which affect rights require involvement at the time when “*all options are open*”, and a genuine opportunity to influence outcomes.

Research undertaken to support this framework suggests the importance of ensuring the process is seen as inclusive throughout including in the leadership of the process as has been secured for example in respect of Truth and Reconciliation Canada.

Accountability

Accountability lies at the heart of any process of justice, remedy and reparation. It includes a range of steps to ensure that those responsible are held to account, where appropriate; that systemic lessons are learned to reduce the likelihood of similar abuses in the future; and that individuals whose rights have been violated can access remedies and reparation.

Who should be accountable?

In international human rights law the State is accountable to respect, protect and fulfil human rights of everyone, everywhere in its jurisdiction (whether at home, in a state or a private institution). Acts of public authorities

The Commission’s recommendations

The Commission consciously based its recommendations on international best practice and the ceiling, not floor, in international human rights law, as well as views of all affected. In other words, we did not ask – what is the minimum which is required in order to comply with human rights law? We asked – what does best practice and a reasonable, but progressive, interpretation of international human rights law suggest should happen?

Across all of its work the Commission promotes a simple model for a “human rights based approach”. This “PANEL” model includes five elements:

- **Participation** of people in decisions which affect their human rights;
- **Accountability** of duty bearers;
- **Non-discrimination** and equality;
- **Empowerment**;

will also generally attract State responsibility.

The Government and other parts of the State has to make sure that people who work for it do not commit abuses; as well as taking effective measures to prevent abuses by others, and acting to protect individuals from abuses which it knows or ought to know of. The State also has the duty to ensure access to justice, effective remedies and reparation for victims of human rights abuses, as I will explain a little later.

International and domestic human rights law also increasingly recognise responsibilities of other actors, including public authorities, private institutions and individuals. In particular, since the Human Rights Act entered into force across the whole UK on 2 October 2000, private actors which perform a “public function” must comply with rights in the European Convention.

How?

Where there are reasonable grounds to believe serious abuses have taken place there is a human rights obligation on the State to investigate those, to identify liability and punish perpetrators as appropriate. This does not depend on a formal complaint, but *“it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim’s wish that the facts should be promptly and impartially investigated”*.

The purpose of the investigation should be to identify what happened and the context in which it happened. So the investigation has a constructive aim – to establish what went wrong, in order that lessons can be learned for the future.

The nature of investigation requirements depend on who the alleged perpetrator is and the gravity of the alleged abuse.

Investigation and prosecution

a. where there are reasonably substantiated allegations of State involvement in serious abuse there should be an “effective official

investigation”. An effective official investigation, where required under the European Convention on Human Rights, should be:

- i. Prompt;
 - ii. Carried out at the initiative of the State;
 - iii. Independent and impartial;
 - iv. Capable of determining who is responsible and punishing them;
 - v. Open to public scrutiny;
 - vi. Accessible to the victim.
- b. where there are reasonably substantiated allegations of abuse not involving someone who works for the Government (a State agent), the investigation requirements under human rights law are in development. In this case another form of investigation may be appropriate, but it should be capable of identifying any failure of the State to comply with its duties to prevent abuse and protect people from a real and immediate risk of abuse which it either knew of. To give an example, the State duty to prevent a risk of abuse includes a duty to have in place adequate legislative safeguards against abuse. The UK has been criticised in this respect for laws which permit the “reasonable chastisement” of children.

Effective remedies

In response to abuses, the State should ensure the victim’s right to an effective remedy is upheld. This right demands access to justice in practice, not only in law, for everyone whose human rights are violated and a victim centred proportionate and participatory reparations process which seeks, to the extent possible, to repair the damage caused by abuses. Other institutions, to the extent that they are accountable, should contribute to reparations for survivors.

- a. **access to justice** – in the course of our work survivors in Scotland have repeatedly mentioned barriers to securing access to justice for serious abuse. These barriers include difficulty in securing legal representation and legal aid, a lack of adaptation of remedies to needs of survivors of abuse, and the

manner in which the so-called “time-bar” has been applied by the Scottish courts.

b. Reparation is a process of trying to repair – to the extent possible – the effects of human rights abuses. The right reparation package for any individual victim of human rights abuse should be guided by two key principles – proportionality to the gravity of the abuse, and participation of the victim themselves in determining the right package for them. Although reparation is a State duty, international best practice suggests that institutions should contribute to reparations funds in a proportionate manner. In international human rights law reparation has five elements:

- i. **Restitution** – restoring things that were lost due to the abuse e.g. access to education, health;
- ii. **Adequate compensation** – compensation should be available, the amount to be determined on an individual basis and should be an amount which can be considered “just satisfaction” for the abuse of rights endured. It can be no fault compensation and could be through an ad hoc redress mechanism. The Scottish Government is currently of the view that the Criminal Injuries Compensation Authority is the appropriate mechanism through which to seek compensation. However, this has a number of limitations – including a time limitation to events after 1964, and a number of survivors have told the Commission of varying experiences in using this mechanism. Some feel they were compelled to repeat their experience to a large number of people such that it amounted to an unnecessary infringement of their right to private life; others found the experience

traumatising, in particular feeling they were cross-examined;

- iii. **Rehabilitation** – can involve access to mental health services such as counselling, as well as other courses – in Scotland some survivors have suggested parenting skills would be useful;
- iv. **Satisfaction** – many survivors in Scotland, as elsewhere, have called for measures of satisfaction such as effective apologies and a formal recording of the truth. In relation to securing effective apologies there are international principles of best practice on the form an apology should take, and the Commission has also noted experience from Canada, some states in the US and Australia, where “apology laws” have been passed to mitigate concerns from institutions that an apology could be used as a basis for civil liability or to void insurance contracts;
- v. **Guarantees of non-repetition** – reparation is also forward looking, to identify what went wrong and learn lessons for the future.

Non-discrimination

All aspects of the design and implementation of any Forum or other remedies for historic abuse should be free from both direct and indirect discrimination, and genuinely accessible to all. Ensuring non-discrimination in any process of justice and remedy means, amongst other things:

- Unreasonable limitations on access on any ground – age, language, poverty (cost) etc – should be avoided;
- There should also not be any unreasonable limitations to the scope of justice and reparations measures in relation to experience

the experience of abuse – i.e. where it took place, in which type of institution, at what time it took place (although conduct should be considered according to the prevailing standards at the time);

- Some of those affected may now be living abroad, sometimes as a direct result of their experiences. It will be necessary to consider how any remedy and reparations package can be accessed by them;
- There should be consideration of extending remedies and reparation to certain classes of indirect victims (such as relatives in some circumstances).

Empowerment

Empowering people to know their rights and how to exercise them will be a necessary feature of any process which seeks to secure justice for people in extremely vulnerable situations such as survivors of historic abuse. Empowerment includes increasing awareness of what rights people have; what abuse is; how to access remedies.

Empowerment also includes supporting people to be involved and protecting them from a risk of any reprisals or risks to their physical or mental health as a result of participation.

Legality

Any human rights based response to historic abuse should explicitly apply the full range of human rights legal protections. In its work the Commission considered the rights of everyone who is likely to be affected by such a process, including survivors of abuse, their relatives, staff and former staff of institutions and their relatives.

In determining whether conduct amounted to an abuse of human rights the Commission recommended that the definitions to be applied should be at least those that were accepted at the international level at the time (to determine whether the State complied with its obligations). In defining

remedy however, everyone who has not yet had access to an effective remedy should benefit from the current standard of the right to an effective remedy, including access to justice and reparations.

Some of the relevant human rights which should be considered in the design and implementation of remedies and reparation for historic abuse include:

The Prohibition of torture, inhuman and degrading treatment or punishment:

In its work the Commission outlined how definitions of serious ill-treatment have evolved over time to include physical, sexual and emotional abuse and serious neglect. The definition of serious ill-treatment in human rights terms is neither static nor uniform. It evolves over time to reflect developing standards across Europe (and the world) and the “threshold” for treatment to be considered inhuman or degrading is not a one-size-fits-all. It depends on the particular circumstances of the individual, and factors such as age, physical and mental health and the relative power between the victim and perpetrator can all be aggravating factors.

The right to respect for private and family life, home and correspondence and the protection of reputation

This is a very broad right and its implications for remedy, justice and reparation steps are very significant. The right is of course not absolute, and all limitations must justify the tests of legality, legitimate aim and proportionality. Relevant elements of this right include:

- Physical and mental integrity (other forms of abuse which do not pass the threshold of inhuman or degrading treatment);
- Protection of family life – there may be reports of denial of correspondence, the right to know your family, visits etc;
- Freedom of movement – an unknown number of children were sent overseas from Scottish care, reportedly to Australia, Canada or New Zealand;

- Privacy and reputation – individuals who may be named during any process of remedy should have their right to respect for private life and reputation taken into account in the design and implementation of the process;
- Access to information related to one's own time in care, such as medical and care records.

The right to a fair trial and fair hearing

Issues related to the right to a fair hearing may arise in the Forum and other remedies in two ways: 1) where individuals (notably former staff) feel that, during the period under review, their right to a fair hearing was not respected where they have been accused of ill-treatment; 2) during the Forum or in other remedies themselves.

This right will be engaged in proceedings where individuals may be dismissed, placed on child protection registers, or otherwise have their employment rights affected by determinations of abuse.

Care should be taken in designing the entire remedy framework of the need to uphold the rights of persons who may be accused. The right to a fair trial and a fair hearing is an absolute right, so cannot be limited. At least, everyone with an interest should have the opportunity to make representations to the

Forum and to have their side of events heard.

Next steps?

The pilot forum called Time to be Heard has completed its hearings and will report its findings early in 2011. There is currently a Petition before the Scottish Parliament's Petitions Committee from two survivors who are calling for more expansive remedies and the implementation of the Commission's Human Rights Framework. In May 2011 the Scottish elections will be held, which will determine composition of the next Scottish Parliament.

Thereafter the Commission will gather together all of those affected by the issues raised, including decision makers, representatives of institutions and survivors themselves, to identify how to implement the recommendations included in the Human Rights Framework.

In the meantime, we will continue to exchange experience internationally as well as domestically, to promote good practice in securing the right to access justice, to an effective remedy and reparations for survivors of historic child abuse.

Many thanks for inviting me to speak to you today, and good luck with the rest of your discussions.



OUR DEMAND FOR JUSTICE IN NORTHERN IRELAND

Margaret McGuckin, Survivors/Victims Institutional Abuse Northern Ireland

Today was a day where, for the first time in many, many years, I felt, we finally had a voice, a platform an invitation to speak. That we were invited to speak and not being told to be quiet, or called liars, as had continuously occurred over the years, was a very big step forward for many of the survivors/victims lives today. It was a time to be heard, but more importantly, believed!

I spoke about the traumatic years that were spent locked up behind those red-bricked walls, where boredom took hold often, loneliness engulfed one so badly it hurt, like an open wound. How, when you ached for the love of your sister, who was just through the metal railings beside you, one was pulled away roughly, never to feel the warmth of her hand in mine. To be separated in those early years left us in years to come like strangers to each other, too late to form a bond, one that was taken from us and cruelly shattered.

We were treated like objects, animals at times, treated with disdain and humiliated daily. The institution was cold, our "foster parents" were cold, so uncaring, unloving and heartless, that it left us feeling the same way they were. The regime was regimental in its daily routine towards us.

And if one stepped out of line, it was a battering of a wooden cane or leather strap. Fingernails would be embedded into one's wrists as you were trailed along by the hair, to be locked in a dark cupboard, and left to cry there alone, a further reminder, as we were often told, that no one wanted you nor would anyone want to come and get you out. These are the feelings one carries the rest of one's life. I think the important issue here at this time is that we are not forgotten about again! We will not and cannot let this happen!

I believe this is just the tip of the iceberg, with so many people having not spoken out yet, and sadly so many having brought their stories to the graves with them. With lots of encouragement these people are speaking out now. Only recently I have found out

about the younger of my two brothers, who were locked away with us, that he was sexually abused and mistreated terribly all of his time in the institution. He was abused by Brothers who after stripping him, beat him mercilessly with leather straps. These people who were supposed to be looking after him repeatedly raped him nightly.

These children thought this was a normal pattern of behaviour. They knew nothing else. I have even heard them say, 'that it wasn't all bad'. Because they felt that they at times were special because "they" had been chosen! Perpetrators got away with doing this, because it was never believed if any one dared to make a complaint. They were a law unto themselves. This must be investigated. This is only one story. I have been meeting with many people now, who have told me the same stories over and over again.

What I have heard a lot of is that when the children were let out for holidays, they had to endure being repeatedly sexually abused, because when they told the Orders in charge, they were disbelieved, told they were liars and bad evil ones, and sent back out again the next holiday occasion?

The next big issue is loss of identity. Children being pulled apart and separated in the orphanage was bad enough, but to one day know you had other siblings and the next, for them to be spirited off to another country or state, the pain and hurt endured was unbearable. Grown-ups, not knowing where they were genuinely from. Believing they were from Belfast, or N.I. only to find out they were from the South of Ireland. Children from Belfast, or other areas of N.I., sent away to Wales, Australia, Canada, etc now finding out they are from opposite parts of the world. Children having been separated, (misplaced) are still trying to find their birth mothers and family members. Help is needed here in N. Ireland, to encourage this!

Lack of Education means illiteracy. The issue of not being self sufficient, inefficient in

all sorts of day to day activities, is still a big problem: children unprepared for the outside world, when told to leave the Institutions; unprepared for any kind of relationships in the workplace, marital, and in general; children found they were very afraid and vulnerable, after being locked away for so long, that they felt like strangers on the outside. They stood out in this mass of people, knew they were different, were told they were different, were made fun of, and in many, many cases, because of, we believe, what had already happened in the Institutions, (or not) they were again subjected to continuous sexual and physical abuse.

I know of many of our people I've spoken to, that they tried desperately to get back to the Institution from where they had just gotten out of, because they were so cut off, so unaccustomed to the outside world, they could not engage with anyone, or had not the acquired intelligence to do so.

We believe there must be a special status given to ourselves because of our exceptional circumstances. More effort and expense is needed in these areas to look at what can be done for our people, in whatever area is lacking. More opportunities of getting together to share stories etc, can

only be a good thing. We deserve the time to prepare ourselves, at long last, for some form of future ahead, a future that was snatched from us, as innocent children. A time to laugh and cry, to heal and hopefully to disengage ourselves of the baggage we have carried for so long and to gain some understanding of our situations. We need to reassure one another, that what took place in these institutions was not our fault!

We need a place where we can continue to meet, as we are already trying to do, to re-educate, to learn from the past, to put wrongs to right, etc, but we need help and support and the facilities and means to enable this to take place.

We would encourage our people to leave the blame where it belongs, to leave the responsibility of costs of an Investigation etc, not upon the shoulders of the already heavily burdened, survivors/victims, but placed back to the State and the Religious Orders.

This is their problem. We await the outcome. But don't leave it until too late for us all. We deserve to be treated with some sort of respect and justice!

Society owes us just that!

OUR CAMPAIGN FOR JUSTICE IN THE REPUBLIC OF IRELAND

Andrew Madden, Victim/survivor of clerical child abuse and campaigner

It is worth noting at the outset that there were 3 different processes which led to a collective uncovering of the childhood experiences of thousands of children in Ireland and which also uncovered what different authorities knew about them. We've had the Ferns Inquiry, the Child Abuse Commission & the Redress Board and the Dublin Inquiry.

I was most involved in the Dublin Inquiry and to a lesser extent the Ferns Inquiry but each of these processes had their similarities, not least of all the role the media played in bringing them about.

In April 1994 I first moved information into the public domain to the effect that a Catholic priest who had sexually abused me as a child, years earlier, was still a serving priest in a Dublin parish with all the access to other children that such a position afforded him at that time.

It took until November 2009, some 15¹/₂ years later, before the Irish government was ready to publish a Report into how the Catholic Archdiocese of Dublin and others had handled allegations of child sexual abuse against priests – that huge delay in the government's response does not say much for how seriously it takes the safety, welfare and protection of children.

This was after all a priest, Ivan Payne, who I had reported to the Church in 1981, who with the full knowledge of Church authorities in the Archdiocese of Dublin, had compensated me in 1993, and yet there he was up until the middle of 1995 still a serving priest in a Dublin parish.

Thanks to the Murphy Report we know why the Archdiocesan authorities left him where they did for so long, but what took the Government so long to respond and what were the steps taken to eventually have the full truth exposed?

The initial response from the Archdiocese of Dublin to my revelations in 1994 was

dishonest. Speaking about the compensation, a spokesperson told the Sunday Times on 14th August: 'That is not the way the procedure works. If a priest had violated a code he is charged before a court. The issue of money does not arise.' That was a year after Cardinal Connell had helped Ivan Payne out, with a loan from Diocesan funds to pay the compensation. And speaking about the decision to reappoint any such priest the Diocesan response was, what was to become the often-repeated lie, that such offending priests are only ever reappointed after medical opinion to the effect that it was safe to do so.

The response from the Government that should have been concerned about the obvious risk to children was total silence. More details were moved into the public domain during 1995 and by September of that year Gardai were conducting their own investigations into Ivan Payne. By early 1998 Payne had been convicted for sexually abusing 10 boys over a 20-year period. Many of those offences were committed by Payne after I had told Catholic Church authorities about him in 1981 – the problem therefore could not have been more plain for all to see: moving Payne from one parish to another had caused the sexual abuse of more children.

So how many times had the Catholic Church in Dublin or indeed in Ireland done this? What processes had they engaged in to cause them to believe, if indeed they ever did, that reassigning such a person to a position where he had access to children was a safe thing to do? How many other priests with a similar record of the sexual abuse of children had been similarly reassigned putting other children at risk? These were among the many questions I wanted the State to ask the Catholic Church.

I wrote to then Taoiseach Ahern in March 1998 asking that an Inquiry be set up to investigate these and related matters. I briefed the media too as I considered it was

important that the wider public know that such a request had been made and I hoped that like me, they would watch for the Taoiseach's response.

When it came some 3 months later it was hugely disappointing. Mr. Ahern declined to set up such an Inquiry, saying that the church was not a public body and inquiries could only be established 'for the purpose of inquiring into definite matters of urgent public importance'. Seemingly for Mr. Ahern the sexual abuse of children by priests did not qualify as a matter of urgent public importance.

For the next 3 to 4 years, more and more allegations about Catholic priests and child sexual abuse came into the public domain and more of those who had been abused spoke publically about their experiences. At the same time that these developments had been taking place, the Irish public were also learning about the abuse that children who had been detained in industrial schools and other such institutions had suffered.

After years of campaigning by a small but very determined group of people who had been detained in such institutions, coupled with the broadcasting of the documentary series 'States of Fear', in 1999 the Government announced the setting up of what was to become the Child Abuse Commission and the Redress Board, and I'm sure you'll be hearing more about that later from other speakers. I think what was instrumental there was the huge impact the revelations as detailed in States of Fear had on the public. Such was the media and public reaction, Government had no choice but to announce that Inquiry.

Along with others I did my best to keep the need for an Inquiry into the Catholic Church in the public domain, working with media at a national and international level to keep the campaign going. But it wasn't easy - on one side we had a Government that was as deferential to the Catholic Church as it was uninterested in the needs of those who had been abused or who were concerned about the safety of children. On the other side we had a Catholic Church that used every trick in the book to ward off any such Inquiry.

In 2001 Irish Catholic Bishops announced the setting up of an audit of all Dioceses in the country. Despite the involvement of retired judge, Gillian Hussey, this audit was to have no credibility whatsoever. It lacked the total independence and the powers that such a process requires.

Early in 2002 the BBC documentary 'Suing the Pope' was broadcast and such was the impact it had, the Government was forced to set up the Ferns Inquiry to identify complaints and allegations made against clergy of the Diocese of Ferns, and to report upon the response of Church and Civil Authorities.

During summer of the same year I participated with Mary Raftery and Mick Peelo in their making of the award winning Prime Time special Cardinal Secrets. This programme detailed what the Archdiocese of Dublin knew about 8 priests against whom allegations of child sexual abuse had been made. Again, the impact was huge: people were shocked to learn in quite some detail about the nature of the allegations and the response from Church authorities.

As with 'States of Fear' and 'Suing the Pope', the broadcast of Cardinal Secrets was fundamental to Government eventually changing its mind and agreeing to an Inquiry. No revelation of abuse, no clear instance of cover up, no child's welfare was enough to cause Government to act - only when media and public outrage reached a certain level was Government moved to respond. Seemingly political expediency was a necessary component.

So at long last, in October 2002 there was agreement to investigate how allegations of child sexual abuse against priests in the Catholic Archdiocese of Dublin were handled. It was however to be a further 3¹/₂ years before the Inquiry would start its work.

Michael McDowell was Justice Minister at that time and he wanted to legislate for a new form of public Inquiry to investigate matters of urgent public concern that would be an attractive alternative to the cumbersome expensive Tribunal model. We agreed to wait for such an alternative but were angered and frustrated that it took

the best part of 2 years to pass the necessary legislation and a further 18 months to agree terms of reference and put practical arrangements in place to facilitate the Inquiry. During that time, Colm O’Gorman, Marie Collins and I met with Minister McDowell and his officials regularly to keep this Inquiry high on their agenda and to discuss progress, or lack of it. We also met with opposition party leaders and justice spokespersons to secure their support for the legislation, to keep them updated and to encourage them to raise matters in the Dail. We were not too upset at the sight of the occasional row in the Dail chamber over how long things were taking. We also kept interested parties in the media informed as their reporting of the snail’s pace of progress in Leinster House sometimes had the desired effect.

I made reference earlier to the Terms of Reference. It was very important to stay very close to the Minister and his officials as these were being set. Left to their own devices officials would have limited the effectiveness of the Inquiry with weak Terms of Reference. We didn’t win every argument; I was concerned for example about the imposition of a time limit of 18 months for the Inquiry; we asked Department of Justice officials what would happen after the 18 months – the Inquiry would be acting outside of its Terms of Reference was the reply. Anyone wishing to prolong proceedings with slow or non co-operation would find that very convenient. I was unimpressed. In the end Judge Yvonne Murphy and her team took all the time they needed, to do the job properly.

We were happy too, to agree to only a sample of allegations between 1975 and 2004 being investigated providing that the Terms of Reference stated that the sample had to be a representative sample, as was the case. Chapter 11 of the Murphy Report spells out how the representative sample was put together by the Inquiry.

When it comes to the Terms of Reference, I really cannot emphasise enough how important the detail is. Anyone in talks with Government officials needs to be very clear about what is wanted from the Inquiry and needs to be able to ensure that the Terms of Reference deliver exactly that. In the Dublin

Inquiry the period of time being investigated was 1975 – 2004. But if an allegation was made against a priest in 1984 for example, it was important that the Inquiry had the power to examine how any previous allegations against the same priest were also handled, even if such allegations predated 1975 because how an earlier allegation was handled helps to make a determination on whether a later allegation was handled properly or not.

The legislation on which this Inquiry was based allowed for the Inquiry to be held in private, this can be a matter of concern for some people. You may have noticed there has been much political opposition in Leinster House to the banking inquiry also being held in private, under the same legislation. I am not concerned about private inquiries so long as the legislation on which they are based requires the relevant Minister to publish the final Report. The fact of both the Ferns and Dublin Inquiries being held in private did not have any negative impact on the effectiveness of their publication or on the attention they received, worldwide.

So, in short what steps do I think were most helpful to us?

- Firstly both media and public respond well to the sharing of personal experience – having people who can share experience which makes it easy for the wider public to understand what happened and why an Inquiry is needed is vital.
 - It was also important for us to be clear about what we wanted and to present it professionally, coherently and consistently.
 - In addition to engaging with media we regularly met with politicians, both government and opposition.
 - To the best of our ability we presented a united front.
 - We never gave up.
- We were very fortunate that investigative journalists like Mary Rafferty worked hard to help us uncover and expose the truth.

- And once Government had agreed to the Inquiry, we monitored the setting up of the Inquiry as much as we could and became very involved in the preparation of the Terms of Reference – too important to be left to government ministers or their officials.

I have been asked to also address the issue of justice and whether or I think victims/survivors have achieved it. For me personally I feel I have had justice insofar as Ivan Payne had to face the criminal justice system and serve a gaol sentence as handed down by the courts. But my campaigning over the years was always about much more than my own case.

For many people the Ferns, Ryan and Murphy Reports represent the only justice they may ever receive. For all of the offences detailed in the Ferns Report only 1 alleged offender ever faced the courts. And we were told in the Murphy Report only 1 in 5 priests out of the total representative sample of 46 was ever convicted in the criminal courts. Add to this the fact that no person in the governance of any diocese has ever been prosecuted for his part in

covering up such abuse and what we are left with is the justice that comes from at least knowing that the truth is out. There is justice too in knowing that an organisation which has had so much power over people has now had to account to some degree to those same people for how that power was used or abused. It suits Cardinal Brady and Pope Benedict to attempt to portray those who have been abused in a bad light – both have made reference to victims wanting the Catholic Church to be humiliated. Being required to account to an Inquiry of the people is not about humiliation – it is about accountability, and that in itself is justice of sorts.

And finally, there was no compensatory element to the Dublin Inquiry, but having listened to some of the people who have been before the Redress Board I think one lesson for anyone to learn who maybe seeking something similar is to make sure Government doesn't engage those who have been abused in a process that causes them to feel that they have been disbelieved, disrespected and abused all over again.

LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND

Marian Shanley, Legal Reform Commissioner

I would like to thank Amnesty Northern Ireland for the invitation to speak here today and to congratulate them on what is already a most successful conference.

I came to this issue in 2003 without any previous exposure to it whatsoever. I was a lawyer and had never encountered child abuse before. It was an extraordinary learning curve and I feel very privileged to have been part of the telling of this part of our history in Ireland.

The Ferns Report (2005) and the Dublin Diocesan Report (November 2009) both dealt with allegations of child sexual abuse by catholic priests and in particular at the way complaints were handled by the Church and State authorities. The CICA report (May 2009) dealt with abuse of children who were in the care of the State in residential institutions.

These three reports had one significant factor in common. They all dealt with abuse by third parties, by men (and men were by far the most serious offenders) who were not related to the child. Ireland had had its fair share of sexual abuse scandals within the family context. The Kilkenny Incest Inquiry chaired by Judge Catherine McGuinness which reported in 1993, and the West of Ireland Farmer case in 1995 catalogued stories of physical and sexual abuse by fathers on their families that left the Irish public sickened and angry that the obvious distress of the children in each of these cases was ignored by the authorities and social services for so long. They demonstrated the power of evil people to inspire such fear that their victims were forced to collude in the cover-up of their actions and more alarmingly they showed how apparently upright decent people, pillars of the community could be guilty of the most heinous crimes.

It was not until after Fr Brendan Smyth's arrest in Belfast and the publicity that surrounded the seeking of a search warrant by the Northern Ireland Authorities in 1994, that Irish society was fully exposed to the

phenomenon of the systemic abuse of children by third parties who were in a position of trust and authority over these children. From the point of view of the public at large, the scale of the abuse perpetrated by this one man came as a profound shock. Paedophiles operating within their families will usually restrict their abuse to their families but men like Brendan Smyth and Sean Fortune in Ferns who operated in the community had dozens and even hundreds of victims.

It is impossible to overstate the difficulties facing those people who first spoke about their experience of sexual abuse by catholic clergy - Andrew Madden has spoken eloquently of his struggle. These young men and women were vilified and ignored by Church and State and there was a general sense of disbelief that such atrocities could have occurred in the safe environs of the church. However as more and more accounts of abuse began appearing in the media, the public became uneasy that something very wrong had happened in the church and that the church was failing to face up to the truth. Colm O'Gorman and One-in-Four lobbied for an inquiry into sexual abuse by catholic clergy in the diocese of Ferns and in 2002 the coalition government set up a judicial inquiry chaired by the recently retired Supreme Court Judge Frank Murphy who was one of the most highly regarded legal figures in the country.

A key factor in the Ferns Inquiry was the strong united voice that Colm O'Gorman gave to the victims and this is something that should really be looked at by survivors in Northern Ireland. Andrew Madden emphasised the importance of survivors identifying clearly what their goals are and being focused in achieving them and I would completely endorse that. It is not just important at the stage of establishing terms of reference but it is also important that during the Inquiry there is an intelligent, rational person or persons who can understand when compromises need to be made and when they ought to take a stand.

Looking at all that has transpired since the Ferns Report was published in 2005, it is easy to forget just how ground-breaking that inquiry was. For the first time in the history of the state the Catholic Church was called to account before the people of Ireland. In addition, the interaction of church and state was put under the spotlight for the first time.

The format for the inquiry was decided after a preliminary report by a senior counsel who examined the types of allegations that were being made and assessed the level of co-operation that was likely to be forthcoming from the Church, the Health Board and the Gardai all of whom were to be required to account for their handling of sexual abuse allegations. A number of issues had to be taken into account: complainants did not want to be identified publicly; it is simply not possible to identify people as paedophiles without affording them full constitutional protection and for an inquiry to be successful in getting to the truth it has to have the co-operation of all the key stakeholders. All of these factors together with a desire to complete the work in as short a time as possible pointed to the establishment of a private non-statutory inquiry.

In addition to Judge Murphy, two experts were also appointed to the board: Dr Lorraine Joyce who was an expert in organisational management and Dr Helen Buckley from Trinity College an expert in child protection.

One of the first things the Inquiry did was to set up a two day seminar inviting experts on paedophilia, psychiatrists and psychologists who had treated priests who had abused to attend. It is indicative of the learning curve the members of the inquiry were on that a great deal of time was spent researching the whole area of child abuse in order to get an insight into the problem. This seminar was an eye-opener for most of us who had never really encountered this issue before. Videos of men who were undergoing treatment were shown where they outlined their own justifications and rationalisations for their behaviour. They did not present as monsters. They were quiet spoken, educated, charming men who dedicated their lives to identifying, grooming and

abusing children. It was chilling and unnerving to listen to them.

The extent of sexual abuse uncovered by the Ferns Inquiry was deeply disturbing. 29 priests were identified as having had credible allegations made against them representing 12% of the priests in the diocese during the relevant period. Equally disturbing was the failure of Church authorities to act on complaints. Priests were protected and moved around and, more invidiously, victims were marginalised and ostracised. The Ferns report raised serious questions as to the extent of the problem of clerical abuse outside of Ferns. Was this an aberration or would this problem be replicated throughout the country?

An equally disturbing finding was the powerlessness of the Health Boards to effectively intervene. The Health Boards have extensive powers in situations where children are being abused by their parents but really no powers where the abuse was conducted by third parties. The law deems the child's parents as the appropriate persons to decide what action to take. If the parent decided not to make a formal complaint to the Gardai, the Health Board had no clearly defined role. Since the Ferns report that has changed and the Health Board is now the body to which all allegations of abuse are referred and they can now liaise with the civil authorities and remove suspected abusers from contact with children even if the parents refuse to make a statement to the Gardai.

In November 2009, the Dublin Diocesan Report offered little comfort to those who believed that Ferns was exceptional. That report identified 320 children abused by 49 priests. Whilst the Ferns Report tended to emphasise the level and extent of abuse – or that is what the media concentrated on when reporting it - the Murphy Report moved the process along and went in to considerable detail on the Church and State response to allegations that were made known to them. A further report into the Diocese of Cloyne is due to be published later this year.

Whilst the full horror of diocesan clerical child abuse was unfolding through legal and

media accounts another extraordinary story began to be told. This was the experience of children who had been placed in residential care by the state in schools run by religious orders.

As in the case of Colm O’Gorman and others in Ferns and Andrew Madden and others in Dublin, this began with one person telling her story and having her story heard. When Christine Buckley went on the Gay Byrne Hour in 1996 it was primarily to speak about her quest for her father whom she had not seen since shortly after her birth. She began to describe her experiences in Goldenbridge orphanage and spoke of a regime of cruelty and neglect. The phone lines in RTE were jammed with callers who had had similar experiences in state care.

There followed the ‘States of Fear’ programme on RTE which was broadcast in 1999 and the publication of ‘Suffer Little Children’ by Mary Rafferty and Eoin O’Sullivan also in 1999. One after another, people who had thought they were alone in their memories of abuse spoke out and in their numbers they found strength and courage. Lobby groups were formed and pressure was brought on the Government to investigate what had happened in these schools and why it had happened. This was different from the diocesan inquiries because the State, who had placed the children in the care of these schools through the court, was implicated in the abuse that occurred.

The Taoiseach Mr. Bertie Ahern met with survivors of institutional abuse and promised to act on their complaints. In 1999 he issued an apology on behalf of the people of Ireland for ‘our collective failure to intervene, to detect their pain, to come to their rescue’. The Statute of Limitations was amended to extend the period within which actions for damages could be brought in the case of sexual abuse. Many hundreds of ex-residents went to lawyers seeking to institute proceedings. It soon became clear that both the State and religious orders faced an enormous bill for damages and an equally enormous bill for legal fees. The government decided that it would be in everyone’s best interests to take these actions out of the adversarial setting of the High Court and it

was agreed that a Redress scheme would be established to offer compensation to ex-pupils of residential schools who had been abused either sexually, physically, educationally or emotionally.

A Commission of Inquiry was also established at the same time as the Redress Board but operating independently of it. This Commission was asked to provide a forum for persons who had been abused in childhood to recount their experiences and it was asked to investigate the causes and nature of such abuse. It had two separate Committees. A Confidential Committee which Norah Gibbons was instrumental in setting up and chairing which afforded people the opportunity of speaking in complete confidentiality about their experiences and an Investigation Committee which heard evidence in a tribunal setting. The Investigation Committee allowed the religious orders and individual religious who were accused of abuse to cross-examine witnesses through their senior or junior counsel.

Whilst there were many good points about the Child Abuse Commission there were also things that we could have done better. One of the mistakes I think we made was that the Investigation Committee was ‘over-lawyered’. There were historical reasons for this. When the original terms of reference for the Committee were agreed, it was anticipated that the report would identify individual perpetrators of abuse – a name and shame exercise. This had to be reconsidered and in the end individual institutions were named but not individual perpetrators. However, the legal representation that had been deemed necessary when individual identification was anticipated, was not reduced and every priest, nun, brother, teacher or lay person who was named in a statement as well as the religious order who owned and managed the institution were fully represented at the oral hearing. This meant that there could be as many as 17 lawyers in the room when a survivor came in to tell their story. It was an extremely daunting experience. The Commission was mindful of the need to complete its work as quickly as possible. Witnesses were not getting any younger and if the work was not completed in a timely

fashion many ex-residents of these institutions would not live to see the results of the investigations. Had there been a challenge to a proposed reduction in legal representation, it would have considerably delayed the completion of the work of the Investigation Committee and it was therefore decided to just get on with it. This is something that can be considered at the very beginning of the Northern Ireland process and a more limited form of representation should be possible.

That said, it is extremely important that due process be afforded to anyone who stands to be condemned, even by implication, by the report. Duncan Wilson has spoken about the human rights issues that must apply in the setting up of any judicial inquiry and he is of course absolutely correct in asserting the rights of victims to have a voice in how the Inquiry should be conducted. However what is just as important, and in my view even more important, are the human rights of alleged perpetrators. It is simply not possible to name people as paedophiles or even to have it suggested that they may be a perpetrator of sexual abuse without affording them full constitutional rights. It must be one of the most horrific experiences to be accused of abusing a child where it is not true. Although it would be cheaper and quicker to have an inquiry that did not allow legal representation to anyone, it is not possible to do so. It is extremely important when victims and survivors of abuse in Northern Ireland embark on this journey of seeking the truth, that they fully realise the limitations of what can be achieved. We live in a democracy and everyone is equal before the law and everyone is entitled to protect their good name.

I would like to briefly mention the other pillar of the State's response to institutional abuse – the Redress Board. I think the combination of redress and investigation was a good and complete response by the state to the issue of residential abuse. Whilst I am aware that not all survivors felt their particular needs

had been met, on the whole, I think the response was courageous and fulsome on the part of the government. Of course money can never compensate for a childhood blighted by abuse but it is at least a recognition that a grave wrong had been done. Over 15000 people have received more than 1.2billion Euro from the redress board. Awards ranged from a few thousand euro to €350,000 for the most serious cases. I am firmly of the view that if these cases had been left to make their way through the courts individual awards could have been much higher and many cases which were clearly deserving would have been dismissed because of the higher threshold of proof required. On balance I suspect it would have cost far more than the €1.2 which I believe is the current estimate and legal fees would have been very high. This was €1b given to Irish citizens; it was largely spent in the state; it gave a chance to people who had never been given a break. I can think of few more worthwhile causes.

I think if there is one lesson to be learnt from all of this it is that where grave wrongs have been committed, it is the job of government to face up to them and offer real solutions. I think the Irish government took a brave and innovative stand on this issue and I think it is a template that is being looked at all over the world as this issue continues to grow.

LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND

Norah Gibbons

Advocacy Director of Barnardos, Ireland

Time For Justice Conference Belfast 7th October 2010

**Delivering a human rights compliant inquiry for
the victims of
historical institutional child abuse in Northern
Ireland**

**Presentation by Norah Gibbons
Director of Advocacy, Barnardos**

Establishment of CICA

- Government apology:

“On behalf of the State and of all citizens of the State, the Government wishes to make a sincere and long overdue apology to the victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue”
- CICA established:
 - Initially non statutory
 - Commission to Inquire into Child Abuse Act 2000 – amended 2002 and 2005.
- Other Actions
 - National Counselling Services
 - Statute of Limitations amended
 - Redress Board
 - Education Finance Board.

Key Milestones on Establishment

- Apology by Taoiseach May 1999
- Establishment of Non-Statutory Commission May 1999
- Child Abuse Act became law April 2000
- Establishment of Statutory Commission May 2000.

Milestones Continued

- **Public Sitings**
 - June 2000
 - How work would be done
 - Invited Submissions
 - July 2000
 - Responded to Submissions
 - Identified issues outstanding:
- Legal Representation Expenses Scheme
- Compensation Scheme
- Both agreed by Government 2001

Confidential Committee

Principal Functions of the Confidential Committee were:

- To provide a forum for persons who have suffered abuse in institutions during their childhood, and who did not wish to have that abuse enquired into by the Investigation Committee to recount their experiences and make submissions in confidence.
- To receive evidence of such abuse.
- To make proposals of a general nature with a view to their being considered by the Commission in deciding what recommendations to make.
- To prepare and furnish reports.

Confidential Committee

The mandate of the Committee was to hear the evidence of those who wished to report their experiences in institutions in a confidential setting, as defined in the legislation. The legislation provided that the Confidential Committee was to endeavour to ensure that meetings of the Committee at which evidence was being given were conducted so as to afford to witnesses an opportunity to recount in full the abuse suffered by them in an atmosphere that was sympathetic to, and understanding of, them, and as informally as was possible in the circumstances.

Confidential Committee

- Confidential Committee heard from 1,090 witnesses. Hearings commenced September 2000.
- They had been discharged from, or left, the institutions between 1922 and 2000, and were residing in Ireland, the UK and other parts of the world.

Defined Categories of Abuse

The Committee was required to hear the evidence of witnesses who wished to report four types of abuse as defined by the Acts. The definitions changed in the 2005 Act and the changes made the 2005 Act are highlighted in bold below.

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.

Confidential Committee Remit

Evidence heard from witnesses from:

- Industrial or reformatory schools.
- Other institutions which included: general, specialist and rehabilitation hospitals, foster homes, primary and second level schools, Children's Homes, laundries, Noviciates, hostels and special needs schools (both day and residential) that provided care and education for children with intellectual, visual, hearing or speech impairments, and others.

Evidence

Evidence heard covered:

- Demographic and social circumstances of witnesses before their admission to the institutions.
- The experiences and reports of abuse while in the institutions.
- Their life after leaving the institutions.

Documentation

Witnesses were invited to bring supporting documentation to their hearing, if they wished, and a number brought copies of documents relating to their admission that they had acquired under the Freedom of Information Acts 1997 and 2003, and other searches. Included among the documents provided by witnesses to the Commissioners were:

- Admission records
- Documents from institutional centres
- Medical records
- Birth certificates
- Letters from the Department of Education and Science
- Court orders
- Correspondence between their families, the institutions and relevant authorities
- Letters from the gardai and others seeking payments from parents
- General correspondence
- Newspaper cuttings relating to their admission
- Personal photographs from their time in the institution.

Reasons for attending the Confidential Committee

Reasons for giving evidence	Males	%	Females	% (*Rounding up applied)	Total Witnesses	%
To record abuse	174	29	114	23	288	26
Prevent abuse in the future	111	19	97	19	208	19
Therapeutic Benefit	98	17	85	17	183	17
To tell what happened to them	84	14	88	18	172	16
Encouraged by others	61	10	67	13	128	12
Sense of obligation	23	4	11	2	34	3
Other Reasons	31	5	31	6	62	6
Not Stated	10	2	5	1	15	1
Total	592	100	498	(100)*	1,090	100

How Confidential Committee Worked

- Listening on behalf of the State.
- Policies and Procedures outlined in advance and communicated; amended by experience.
- Non adversarial.
- No secondary gain.
- Some choice re venue, timescale.
- Choice of how evidence given within parameters:
 - Companion;
 - How hearing conducted;
 - Life before care, life in care, life aftercare;
 - Positive experiences.

How Committee Worked

- Possibility to rehear own tape.
- Total confidentiality - 2 exceptions:
 - present danger to child;
 - serious crime.
- Published to the people.
- It did not close down other options.

Witness Support Arrangements

- Witness Support Officers
- Travel expenses
- Information provision on counselling services
- Follow up contact if required – aftercare - this was very difficult for some survivors.

CICA Report

- Commission's report published 20 May 2009.
- Consists of 5 volumes including:
 - Reformatory and industrial school (Vols. 1 and 2)
 - Confidential Committee (Vol. 3)
 - Dept of Education funding issues (Vol. 4)
 - Other relevant issues and Research on adjustment of adult survivors (Vol. 5).

Response

- Special Government meeting held on 26th May 2009.
- Accepted all recommendations and reiterated apology made in May 1999.
- Minister for Children and Youth Affairs tasked with production of Implementation Plan by end July 2009.

Implementation Plan

- Plan deals with Commission's recommendations under seven categories:
 - Addressing the effects of past abuse
 - National policy and evaluation of its implementation
 - Regulation and Inspection
 - Management of children's services
 - Voice of the child
 - Children First
 - Additional issue

Key Proposals

- 99 Action points and timescale
- Memorial to victims
- Improved availability of counselling and NCS exempt from employment moratorium
- Audit of child welfare and protection resources and needs to be undertaken by HSE
- Improved inspections of provisions.

Key Proposals Cont.

- Every child in care will have an allocated social worker
- Multi disciplinary team for children in care and detention
- Improved after care provision
- Out of hours pilot provision
- Children First – publication of revised guidelines and legislation – proposal to put on statutory basis.

Implementation

- Plan accepted by Government and published on July 2009
- Challenge now is implementation in current climate
- Minister to chair a group to monitor implementation
- Implementation Plan included in new Programme for Government
- €15m. Allocated in 2010.

Challenges to Implementation

- Plan sets out a number of challenges to implementation
 - Leadership and accountability
 - Governance
 - Staffing resources
 - Information Systems and Standard Business Processes
 - Staff retention issues
 - Financial

The Journey Now

- Saving Childhood Group
- Key Campaign Demands
 - Constitutional Change
 - Child Protection Guidelines on Statutory Basis
 - GAL system for every child coming into care
 - Provision of After-care services to be compulsory
 - Vetting Legislation
 - Out of Hours provision.

LEARNING THE LESSONS FROM THE REPUBLIC OF IRELAND

Pearse Mehigan, Solicitor, Legal Adviser to One in Four, Ireland

Residential Institutions Redress Act 2002

- **Definitions.**

Abuse in relation to child means:

(a) The wilful reckless or negligent infliction of physical injury on or failure to prevent such injury to the child.

(b) The use of the child by a person for sexual arousal or sexual gratification of that person or another person.

(c) Failure to care of the child which results in serious and permanent of the psychical or mental health or development of the child or serious adverse affects on his or her behaviour and welfare or;

(d) Any other act or remission towards the child, which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour and welfare.

Award means a financial award made by the Board. As opposed to the other possible areas of redress made available to the applicant by way of State support in the way of educational grants, counselling and other support networks.

Injury includes physical or psychological injury and injury that has occurred in the past or currently exists and cognate words shall be construed accordingly.

Institution means an institution that is specified in the schedule. It is important to ensure that all relevant institutions that come within the terms of the redress scheme are scheduled.

References in the act to abuse of children in institutions or which occurred in institutions include references to any case in which abuse of a child took place not within an institution but while the child was residing or being cared for in an institution and the abuse was committed, aided, abetted, counselled or procured by or otherwise

contributed to by an act or admission of a person engaged in the management, administration, operation, supervision or regulation of the institution or a person otherwise employed in or associated with the institution.

- **Entitlement to an award on proof of:**

- (a) Identity
- (b) Residence.
- (c) Injury.

- **No fault Scheme**

An applicant shall not when presenting an application to the Board be required to produce to the Board any evidence of negligence on the part of a person referred to in the application by the employer of that person or a public body.

- **Time Limits and Statute of Limitations**

- **Deceased applicants**

Where a person who would have qualified as an applicant and who did not receive an award of settlement referred to dies after the 11th May 1999 and prior to making an application under the Act, the children of spouse of that person may, subject to sub section 3, make an application on behalf of that deceased person.

Where an applicant dies after making an application but before a determination is made by the Board the children or spouse of that deceased applicant may proceed with the application.

- **Hearings to be before a sitting of the Board**

Consisting of Chairperson and at least one member of the Board

- **Interim Awards**

Liberty to make interim awards where a preliminary decision is made to make such an award having regard to the circumstances including the age of the

applicant, it is appropriate under all the circumstances.

The Board shall be entitled to appoint medical and suitably qualified professionals including Counsel who made sit in divisions.

- **Settlements**

There is provision for settlements to be made in accordance with the Act and on making an award the Applicant may accept or reject the award and alternatively submit the award to the Review Committee for review of the amount awarded.

- **Income and Award**

Income consisting of an award under this Act shall be regarded for the purpose of income tax assessment and any payment in respect of an award under this act shall be treated in all respects as if it were a payment made following the Institutions by or on behalf of the applicant to whom the payment is made of civil action for damages in respect of personal injury.

- **Taxation of costs**

The Board shall pay to an applicant to whom it has made an award a reasonable amount for expenses incurred by him or her relating to the preparation and presentation of the application and shall be agreed between the Board and the application and in default of such agreement such expense should be determined by a Taxing Master of the High Court.

- **Prohibition on disclosure of Information**

- **Criminal Records - Expunged**

Ad Hoc groups of lawyers are vital to impose terms on government - take ownership

- **Media / Support Group**

- **Listen to victims/survivors**

It's not about you - it's about them.

- **Truth**

- **Acknowledgment**

- **Apology**



REDRESS, RESTITUTION AND SUPPORT

Maeve Lewis,

Executive Director, One in Four, Ireland

1



TIME FOR JUSTICE

Maeve Lewis
One in Four

2

Redress, Restitution, Support

What Do Survivors Need?

An Overview

3

STATUTORY AND VOLUNTARY PROVISION

1. Statutory Inquiries: Ryan and Murphy
2. Financial Redress
3. Tracing Services
4. Educational Support
5. Counselling Services
6. Advocacy Services
7. The Criminal Process

4

1. Statutory Inquiries: Ferns, Ryan Murphy and Cloyne

- Role of survivors and media
- Validated and placed on public record
- Mobilised public opinion
- Forced response from Church and State
- Apologies ?
- Criminal investigation: Murphy

5

2. Residential Institutions Redress Board

- Contribution from Church
- Lowered burden of proof
- 14, 484 applications (Dec 2005)
- 699 withdrawn, refused or nil award
- Average award €64, 200
- Experience of survivors accessing Board ?

6

3. Family Tracing Services

Barnardo's Origins Service

- Funded by Dept of Education and Skills
- 2002 – 2009:
 - 1, 033 contacts
 - 875 complete
 - 50% + led to reunions or information about family

7

4. Educational Support

- Education Finance Board (Dept of Education and Skills)
- Funding for former residents and their families for education and training

8

5. Counselling Services

- Help Lines
- National Counselling Service – Full statutory funding
- One in Four – no HSE funding for counselling
- Dublin Rape Crisis Centre: 66% HSE funding
- Rape Crisis Network Ireland: varied levels
- Faoiseamh – Catholic Church funded (available to Northern Ireland)

9

National 24 Hour Helpline (DRCC)

2009

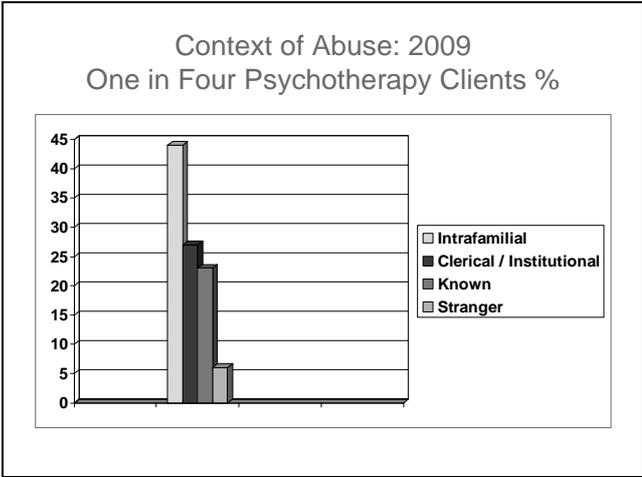
- 10, 914 counselling calls
- 53% childhood abuse
- No information on number of institutional survivors

10

Counselling Statistics 2009

AGENCY	2009
National Counselling Service	2, 853 referrals
One in Four	282 clients seen 98 on waiting list
Dublin Rape Crisis Centre	579 clients seen

11

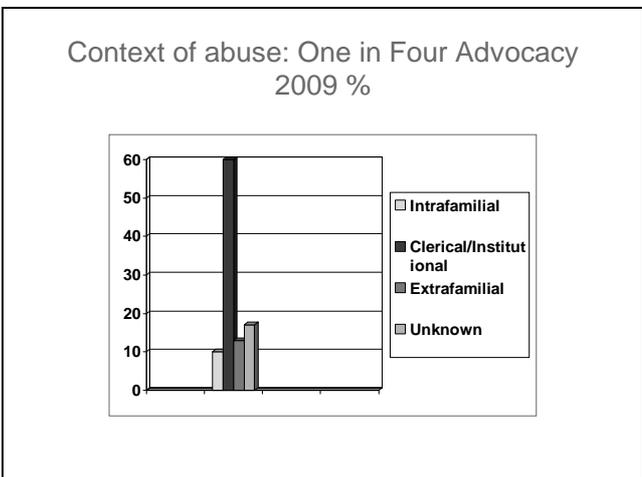


12

6. Advocacy Services One in Four: 65 % Statutory funding

	Clients
2008	426
2009	1, 140

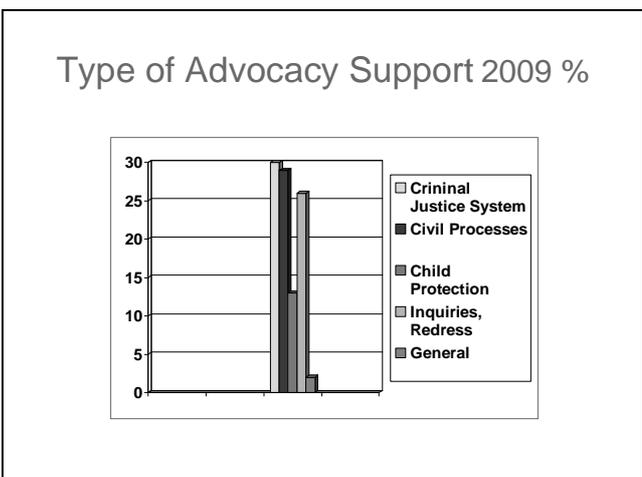
13



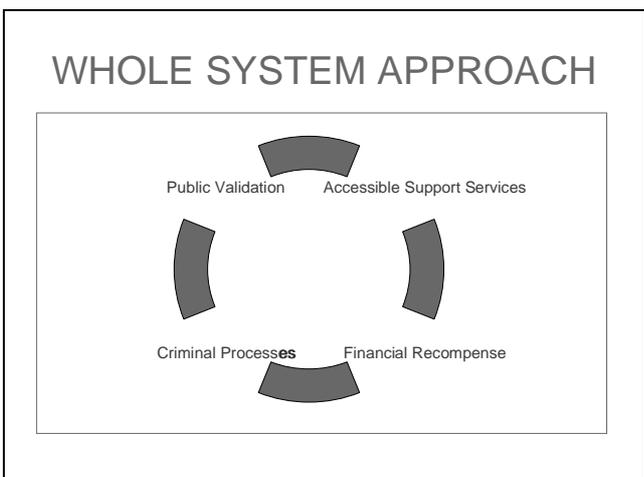
14

- ### Advocacy Support One in Four Experience
- Child Protection
 - Accessing Criminal Justice System
 - Accessing Civil Courts and Settlements
 - Support in attending Redress Board
 - Support in attending Commissions of Inquiry
 - General support re housing, social welfare, counselling referrals etc

15



16



ESTABLISHING A NORTHERN IRELAND INQUIRY: THE LEGAL CONTEXT

Fiona Doherty, Barrister-At-Law

I have been asked to speak about the legal context of establishing an inquiry into historical institutional child abuse in Northern Ireland.

I hope that the experience from the inquiries that have been held in the south shows that the type of inquiry established can have implications for how that inquiry operates and, ultimately, whether it is in a position to fulfil its task effectively and to the satisfaction of all involved. What I intend to do is speak briefly about the types of inquiry that are possible here and draw attention to some issues that may be of particular relevance in this context.

I should say first that the choice of the type of inquiry often can and should be influenced by the issues it will deal with and what it is set up to achieve. For example, is it a fact-finding exercise to establish what happened/construct a narrative from which lessons should be learned and recommendations made, or as a method of recording experiences without judgment? Does it require confidentiality, anonymity or privacy? In addition, of course, there may be some, or many, who want, as the result of an inquiry prosecutions and/or compensation.

In this jurisdiction there are currently only two ways in which an inquiry can be set up. It can either be statutory or non-statutory. As the names suggest, a statutory inquiry is one set up under existing legislation and its operation is governed by that legislation, a non-statutory or *ad hoc* inquiry is not. Non-statutory inquiries are generally free to set their own procedure, within the bounds of fairness and the law, but otherwise are unregulated.

As you all know the Ryan Commission was established by a statute, the Commission to Inquire into Child Abuse Act 2000 and the Murphy Commission under the Commissions of Investigation Act 2004.

Recent high-profile statutory inquiries in this jurisdiction that you will be familiar with are:

1. The Bloody Sunday or Saville Inquiry which was set up under the Tribunals of Enquiry (Evidence) Act 1921 (the first public inquiry conducted by Lord Widgery into the events of that day had the same basis)
2. The Billy Wright Inquiry which was initially set up under the Prison Act (NI) 1953
3. The Rosemary Nelson Inquiry set up under the Police (NI) Act 1998
4. The Robert Hamill Inquiry again initially set up under the Police (NI) Act 1998.

So from that you can see that there were a number of statutes which could be used to establish an inquiry, depending on the subject matter. However, since the coming into force of the Inquiries Act 2005 it is now the **only statutory basis** for establishing and holding an inquiry in this jurisdiction. It sets out a definite structure for the holding of an inquiry which the Inquiry must follow.

The inquiries held under that Act are always **public inquiries**, although parts can be held in private if certain criteria are met. An inquiry can only be established under the act if there is real or potential public concern about an event that has or may have happened.

The Inquiries Act has been controversial because, in contrast to the previous legislation, it reserves certain powers to the Minister who set it up. Previously, once an inquiry had been set up, matters of procedure and the running of the inquiry were generally left to the members of the tribunal to decide. Under the 2005 Act the Minister may intervene to do a number of things including:-

1. Amend the terms of reference if it is in the public interest to do so;
2. Terminate the appointment of a member of the inquiry;
3. Suspend the inquiry;

4. Bring the inquiry to an end;
5. Withhold publication of the inquiry report or part of it; and perhaps most significantly
6. Issue a notice to restrict attendance at an inquiry, or at any particular part of an inquiry – the Minister can decide that certain parts of the inquiry can be held in private; and
7. Issue a notice to restrict disclosure or publication of any evidence or documents given, produced or provided to an inquiry – the Minister can decide that certain documents shouldn't be made public.

It is these last powers that have caused the most controversy, Lord Saville in particular has been very scathing indicating that he would not be prepared to be appointed to an inquiry held under the Act and he has indicated that the two senior judges from Canada and Australia who sat with him take the same view.

As well as the Act, Inquiries Act inquiries are governed by the Inquiry Rules 2006, which deal with a number of issues including representation before the inquiry and a detailed scheme for costs assessment. It is worth noting Rule 10, which provides that, generally, it will only be counsel to the inquiry and the inquiry panel that question witnesses. If anyone else wishes to question a witness they will have to apply to the chairman for permission to do so. I know that in the current CDifficile inquiry all lines of questioning are being filtered through counsel to the inquiry and I understand that also happened in the Rosemary Nelson inquiry. This can be a source of some disquiet to those with an interest in the inquiry. Clearly how victims interact with and have access to the inquiry is vital to securing confidence in its work.

There are two provisions in the Inquiries Act that I particularly want to draw to your attention. The first relates to something I mentioned earlier and said I would come back to and it is section 2 of the Act which provides that the inquiry must not rule on, nor has it power to determine, civil or criminal liability. That precludes the inquiry from saying e.g. that an individual was murdered, unlawfully killed or assaulted. It

also precludes an inquiry saying e.g. that there was negligence. An inquiry is said to be inquisitorial (which means it is a fact finding exercise led by the inquiry itself) unlike most court cases, which are adversarial (in that they involve different interests who dictate which witnesses are called and evidence produced which is then adjudicated on by a judge). What this means in practice is that an 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.

That isn't a new departure by the Inquiries Act. Inquiries have always taken that to be the limits of their role. That was one of the reasons why there was such interest in the language used by the Bloody Sunday Inquiry in its report. An alleged leak a few days before publication indicated that the report might describe some of the deaths as unlawful killing. Those of us involved would have been astounded if that was the case, precisely because of these limits. The inquiry made clear findings of fact and those findings may point in a certain direction but criminal or civil responsibility is decided only by the relevant court. The function of prosecuting someone on a criminal charge belongs to the Public Prosecution Service here alone and it is why prosecutions were not recommended by the BSI and why the report did not say, for example, that soldiers had committed murder or manslaughter or were guilty of unlawful killing.

The second Inquiries Act provision that I would like to draw to your attention relates to how the Inquiry obtains evidence. When I say evidence I mean both documents and oral evidence from witnesses. Clearly this is an incredibly important issue for an inquiry's work because without evidence, and the means of getting it, the inquiry can't fulfil its task.

Before I go into that it's appropriate to briefly consider the other type of inquiry – i.e. the non-statutory or *ad hoc* inquiry - because this is where there may be a significant difference between the two.

Some recent examples of non-statutory inquiries are

1. The Iraq Inquiry (sometimes called the "Chilcott Inquiry") which is running now to identify what happened and examine the lessons to be learned from the invasion of Iraq
2. The Hutton Inquiry into the death of Dr David Kelly

A non-statutory inquiry is arguably more flexible in that it is free to set its own procedure, not governed by Act or Rules. But the main practical difference between statutory and non-statutory inquiries lies in what they can do to obtain evidence.

The non-statutory inquiry relies entirely on co-operation from those it is investigating. While in practice an Inquiries Act inquiry may obtain most of its evidence by way of co-operation it has extensive powers to compel production of evidence and testimony of witnesses if co-operation is not forthcoming.

In practice the Bloody Sunday Inquiry didn't have to use its powers of compulsion often. Where the subject of the inquiry is an organisation or organisations and their members or employees, it may be easier to secure co-operation through internal channels, particularly where that organisation has agreed to co-operate. In that case it was the Ministry of Defence and the Army. However, if co-operation is not secured, a statutory inquiry will be able request that the PPS prosecute that person for refusing to co-operate. Alternatively the Inquiry can resort to the High Court and ultimately ask for individuals to be sent to prison if their co-operation is not secured. Both the Robert Hamill inquiry and the Billy Wright inquiry used this power to try to obtain evidence.

Securing someone's attendance at an inquiry can be of little assistance if they can refuse to give evidence or tell the truth. For that reason the BSI secured an assurance from the Attorney General that where a person provided evidence to the inquiry that evidence would not be used in subsequent criminal proceedings against them, except where those proceedings were for giving false evidence to the inquiry. The assurance did not provide immunity from

prosecution because the evidence of others could be used against the person but what it did was ensured that a witness could not refuse to answer questions or provide other evidence by claiming that it could lead to self-incrimination.

Other inquiries have taken varying approaches to this issue. The Robert Hamill Inquiry, like the Bloody Sunday Inquiry, sought and received an assurance in relation to criminal proceedings from the Attorney General.

The Rosemary Nelson Inquiry sought and received assurances from the Attorney General in relation to criminal proceedings; from the Ministry of Defence in relation to courts martial and other disciplinary proceedings; from the civil service in Northern Ireland and Britain in relation to disciplinary proceedings and from the Chief Constable of the PSNI in relation to disciplinary proceedings.

The Billy Wright inquiry took a completely different approach. They said they would consider applications in relation to particular witnesses on an individual basis.

While it may initially seem unattractive to suggest that guarantees like these are given it is one thing to get a person before a tribunal it is another thing to ensure that they co-operate fully by giving evidence and telling the truth. That must ultimately be an inquiry's goal and if such assurances assist in achieving co-operation and getting to the truth then they are worth considering.

So how the inquiry obtains its evidence is probably the most important issue. Obviously terms of reference are important. Generally terms of reference are broadly drawn but it is important to consider in advance what the inquiry should be asked to do – investigate, recommend or simply record, a combination of all three or something else entirely?

The inquiry chair and panel are also important. The Bloody Sunday Inquiry was an international judicial inquiry chaired by a Law Lord sitting with a former judge of the High Court of Australia and a former judge of the Supreme Court of Canada. The

recent inquiries have been chaired by a judge with two other members who have particular expertise in the issue being investigated. For example, the Billy Wright inquiry inquired into Mr. Wright's murder in prison. The chairman was a judge and he was joined by an academic with particular expertise in prison issues and a cleric – the former Bishop of Hereford. So, the chairperson doesn't have to be a judge – indeed the current CDifficile inquiry panel is made up of individuals with healthcare experience.

There are a few other issues that I should mention:

First, I have mentioned the two possible types of inquiries that are currently available here – statutory or non-statutory inquiry. There is a third option: entirely new legislation tailored to facilitate an inquiry in this particular context. However this is not a clear possibility and would take some time to draft and pass.

Another issue is Human Rights standards. The Human Rights Act 1998 will apply to any inquiry. You have heard earlier from Duncan Wilson of the Scottish Human Rights Commission how the rights guaranteed in that Act could apply to an inquiry. Also, the rules of procedural fairness will apply. The inquiry will have to ensure that alleged perpetrators are treated fairly, that they have time and facilities to respond to allegations made against them, that they are aware of precisely what those allegations are and that they have legal representation if they need it.

Equally, the inquiry must protect the rights of victims and witnesses including their right to participate in the inquiry.

Inquiries can be private, that is not open to the public. It may be thought that the nature of the evidence to be given in any inquiry set up into historical institutional child abuse would suggest there should be privacy for those who have suffered such abuse from the glare of publicity. However, if one of the purposes of the inquiry is to allay public concern about these events and to show everyone - victims, perpetrators and the public - that they have been fully and fairly

investigated then a private inquiry may not be appropriate to achieve that.

Linked to that is the possibility of anonymity or other protective measures for witnesses. This is generally decided by an Inquiry on a case-by-case basis. In this jurisdiction there are also automatic reporting restrictions relating to the victims of some types of sexual offences that will have to be considered.

I should also say that, although one would hope that it needn't happen, the decisions of inquiries, whether they are statutory or non-statutory are subject to challenge by way of judicial review. It will be rare that such challenges succeed because the courts will be slow to intervene in issues that are left to an independent tribunal to decide unless they are clearly wrong. Having said that two challenges to the Bloody Sunday Inquiry were successful and resulted in soldiers retaining anonymity and the inquiry moving from Derry to London for a year to hear their evidence.

It seems to me that the most important things to consider are: -

1. What you want the inquiry to do;
2. The arrangements that are in place to ensure that it can do it.

Some practical issues to finish: -

1. Once an inquiry is set up it will inevitably take a considerable period of time to gather evidence before it can even begin hearings – perhaps a year or two, or even more.
2. It is also inevitable that issues (both legal and factual) that were never previously thought of will materialise and require decisions from the Inquiry.
3. There is also a certain loss of control and perhaps ownership of the issues once an inquiry is set up – the investigation is the inquiry's and although the witnesses and interested parties are a crucial part of that it is the inquiry that will run things.

4. Certain allegations made, once all the material is uncovered and tested, may not be substantiated. The purpose of an inquiry is to investigate and reach conclusions based on the evidence available, to put matters to rest once and for all, whether they are substantiated or not.
5. It could be a long and drawn out experience and often frustrating but, it is to be hoped, ultimately a healing experience and one that can bring some measure of closure.



REDRESS, RESTITUTION AND SUPPORT: A VICTIM-CENTRED SYSTEM

Deirdre Kenny, Advocacy Director, One In Four, Ireland

Examples around the world

- Redress Western Australian
- Residential Institutions Redress Board (Ireland)
- Indian Residential Schools Agreement (Canada)

Common Themes

- Addressing historical wrongs
- Perpetrated by government & churches
- Particularly vulnerable victims
- Alternative to litigation

Elements to consider

- Telling the story
- Damages
- Truth and reconciliation
- Confidentiality/Containment

The Challenge

Addressing the emotional hurt as well as achieving a sense of justice

Redress Western Australian

On 17 December 2007, the former Western Australian Government announced the \$114 million Redress WA Scheme. Redress WA was set up by the Western Australian Government in 2008 to acknowledge and apologise to adults, who as children, were abused and/or neglected while they were in the care of the State.

Redress WA also provides access to support and counselling services and, for eligible applicants, an ex-gratia payment of between \$5000 and \$45,000.

Since 1920, an estimated 55,000 children in Western Australia were under State care. Of these, 2921 are known to have been child migrants (Lost Innocents: Righting the Record, 2001) and up to 3000 were

Aboriginal children who were in institutions (Bringing them Home Report, 1997).

There have been a number of Government inquiries throughout Australia in relation to the abuse of children in State care.

All inquiries made specific recommendations regarding an apology, support/counselling services and some form of monetary redress (ex gratia payment) for the survivors of abuse.

Similar schemes have been set up in Queensland and Tasmania. Queensland's scheme offered ex-gratia payments ranging from \$7000 to \$40,000 and Tasmania offered ex-gratia payments up to \$60,000. Redress WA is the broadest scheme in that we recognise the most state care arrangements. Redress schemes have also been offered in Canada and Ireland.

The Redress Scheme was open for 12 months (from 1 May 2008 until 30 April 2009) and was advertised within WA, across Australia and to a lesser extent internationally.

To assist people who may have found out about the scheme towards the end of the application period, potential applicants registered before the 30 April 2009 (either directly or by a third party), were given until the 30 June 2009 to complete and submit their formal application.

Redress WA provided eligible applicants with an alternative to pursuing a claim through the court process that is less traumatic and less costly.

Eligible applicants are living persons who:

- (1) are aged 18 and over at the closing date; and
- (2) who were:

- Aboriginal and Torres Strait Islanders who were placed in State Care under the Aborigines Act 1905 (WA), the Native Administration Act 1936 (WA) or Native Welfare Act 1954 (WA);
- persons placed in State care under the State Children Act 1907(WA);
- wards placed in State care pursuant to orders made under the Child Welfare Act 1947(WA) including those children placed under the control of the Department;
- child migrants placed under the guardianship of the State in State care subject to the Immigration (Guardianship of Children) Act 1946(Cth) and the Child Welfare Act 1947(WA);
- persons placed under the Young Offenders Act 1994; or
- persons who the Internal Member is otherwise satisfied were placed in State care; but does not include ineligible persons;

Indian Residential Schools Agreement (Canada)

The IRSSA is the largest class action settlement in Canadian history. The Government announced on May 10, 2006 that the IRSSA was approved by all parties involved: the Government of Canada, legal counsel for former students, Churches, the Assembly of First Nations, and Inuit Representatives. Implementation of the IRSSA began on September 19, 2007.

The IRSSA includes the following:

- Common Experience Payment to be paid to all eligible former students who resided at a recognized Indian Residential School;
- Independent Assessment Process for claims of sexual and serious physical abuse;
- Truth and Reconciliation Commission;
- Commemoration Activities;
- Measures to support healing such as the Indian Residential Schools Resolution Health Support Program and

an endowment to the Aboriginal Healing Foundation.

The Common Experience Payment (CEP) is a lump-sum payment that recognizes the experience of living at an Indian Residential School(s) (IRS) and its impacts. CEP is based on:

- An application accompanied by validated personal identity documentation;
- Student residency in a recognized IRS; and
- The number of years of residency (\$10,000 for the first school year or portion thereof and \$3,000 for each subsequent year).

Total cost well in excess of \$2 billion (Churches contributing: \$40 million for Common Experience Payments)

The Redress board (Ireland)

The Redress Board was set up under the Residential Institutions Redress Act, 2002 to make fair and reasonable awards to persons who, as children, were abused while resident in industrial schools, reformatories and other institutions subject to state regulation or inspection.

The Residential Institutions Redress Board (RIRB) is a wholly independent body chaired by a judge.

There was a 3-year application period: December 2002 to December 2005.

Scheme was widely advertised in the global press and specialist publications such as 'Irish Echo'. Board officers travelled to the US and UK to hear evidence and take submissions.

The final date for receipt of applications has now passed and the Board has received a total of 14,753 applications

The Board is chaired by His Honour Judge Sean O'Leary, Judge of the Circuit Court. All applications for redress are treated in the

strictest confidence, and all hearings conducted by the Board were in private.

Redress

The Act provides that “abuse” of a child means –

- (a) the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child;
- (b) the use of the child by a person for sexual arousal or sexual gratification of that person or another person;
- (c) failure to care for the child which results 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, or
- (d) any other act or omission towards the child which results 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 following are some particular examples of abuse for which redress may be payable:

TYPE OF ABUSE	EXAMPLES
SEXUAL ABUSE	Violent anal or vaginal penetration. Victim made to masturbate member of staff or perform oral-genital acts. Sexual kissing; indecent touching of private parts over clothing.
PHYSICAL ABUSE	Serious injuries requiring hospitalisation; profound deafness caused by blows to ears. Severe beating causing e.g. a fractured limb or leaving permanent scars. Corporal punishment more severe than was legally sanctioned at the time, but leaving no permanent physical signs. Gross over-work involving inadequate rest, recreation and sleep.
EMOTIONAL ABUSE	Depersonalisation e.g. through family ties being severed without justification or through deprivation of affection. General climate of fear and apprehension. Stigmatisation by staff, e.g. through repeated racist remarks or hurtful references to parents.
NEGLECT	Severe malnutrition; failure to protect child against abusive placements; inadequate guarding against dangerous equipment in work-place. Failure to provide legally prescribed minimum of school instruction; lack of appropriate vocational training and training in life skills. Inadequate clothing, bedding or heating.

It is *not* necessary for a person to have been prosecuted or convicted of any criminal offence in connection with the abuse suffered by an applicant.

Redress

The meaning of “injury”

The Act provides that “injury” includes physical or psychological injury and injury that has occurred in the past or currently exists. Redress under the Act is payable in respect of any injury which is consistent with any abuse suffered by the applicant while he or she was resident in a specified institution.

The following are some particular examples of injury for which redress may be payable:

NATURE OF INJURY	EXAMPLES
PHYSICAL OR PSYCHIATRIC ILLNESS	
1. Physical injury	1. Loss of sight or hearing. Loss of or damage to teeth. Permanent scar(s)/disfigurement.
2. Physical illness	2. Sexually transmitted diseases. Respiratory diseases. Skin diseases.
3. Psychiatric illness	3. Severe depression with suicide attempts. Personality disorder. Post-traumatic stress disorder.
PSYCHOLOGICAL INJURY	
1. Emotional disorder	1. Inability to show affection or trust Low self-esteem; persistent feelings of shame or guilt. Recurrent nightmares or flashbacks.
2. Cognitive impairment/ educational retardation	2. Literacy level well below capability. Impoverished thought processes. Limited vocabulary leading to communication difficulties.
3. Psychosocial maladjustment	3. Marital difficulties involving sexual dysfunction. Low frustration tolerance. Shyness and withdrawal from mixing with people.
4. Anti-social behaviour	4. Substance abuse. Compulsive stealing. Physical aggressiveness.
LOSS OF OPPORTUNITY	
	1. Having to refuse employment opportunity/ promotion because of illiteracy.
	2. Need to concoct a false identity and to live a lie with workmates.
	3. Unable to pursue certain occupations, e.g. police, because of "record".

Redress

In every case the Redress Board would have to be satisfied that the particular injury resulted "as a consequence of the abuse" suffered by the applicant.

Redress in respect of the severity of the abuse and injury

An award of redress in respect of the severity of the abuse and the injury suffered by an applicant is determined by

a two-stage process. First, the Board assesses the weight to be attached to the different elements that go to make up the experiences of victims of abuse according to the following table:

Weighting scale for evaluation of severity of abuse and consequential injury

Constitutive elements of redress	Severity of abuse	Severity of injury resulting from abuse		
		Medically verified physical/p psychiatric illness	Psycho-social sequelae	Loss of opportunity
Weighting	1-25	1-30	1-30	1-15

These four separate weightings are designed to produce an overall assessment of the severity of the abuse and the injury suffered by the applicant. When they are added together, the Board look at the case overall to see whether the total assessment reached in this way is reasonable in all the circumstances for the particular applicant; where necessary, it may make appropriate adjustments to the overall assessment.

The amount of redress will then be determined by reference to the Board's assessment of the severity of the abuse and the injury, according to the following redress bands:

Redress Bands

REDRESS BAND	TOTAL WEIGHTING FOR SEVERITY OF ABUSE AND INJURY/EFFECTS OF ABUSE	AWARD PAYABLE BY WAY OF REDRESS
V	70 OR MORE	€200,000 - €300,000
IV	55-69	€150,000 - €200,000
III	40 - 54	€100,000 - €150,000
II	25-39	€50,000-€100,000
I	LESS THAN 25	Up to €50,000

Redress

Informal settlement

Where the Board were satisfied that the applicant was entitled to redress, it would make an offer in settlement, which the applicant was free to accept or reject. If accepted the, no further proceedings were necessary. If rejected, the application could then proceed to a hearing by the Board.

Hearing by the Board

Where it was not possible to deal with applications by way of a settlement; the Board allocated a date for the hearing. The hearing, which was as informal as possible, was conducted by a panel consisting of two or three members of the Board. The hearing enabled the applicant or the Board to call witnesses to give oral evidence and to question other witnesses.

Any person named in an application as responsible for the abuse which suffered, and a representative of the institution in which the abuse took place, may also take part in the hearing.

All hearings were in private and not open to the public or to the media. In exceptional circumstances, the Board allowed a close relative or other appropriate person to be present at the hearing of the application.

Interim award

Where the Board made a preliminary decision that the applicant was entitled to an award and, having regard for age and infirmity, it could consider the payment of an interim award of not more than €10,000. This interim award would be deducted from the final award.

Final award

The final award made by the Board, which will be a fair and reasonable sum having regard to the applicant's unique circumstances, was assessed under the following four headings.

1. The severity of the abuse and injury

On the basis of the medical and other evidence available to it, the Board assessed the redress award with reference to the severity of (1) the abuse suffered, (2) the applicants physical and mental injuries, (3) the emotional and social effects of the injuries, and (4) the loss of employment and other opportunities.

2. Additional redress

In exceptional cases, the Board could make an additional award not exceeding 20% of the normal redress award where it is satisfied that it is appropriate to do so.

3. Medical expenses

The Board could make an award for reasonable expenses incurred in respect of past, present or future medical or psychiatric treatment for the effects of the injuries which the applicant suffered as a result of the abuse.

4. Other costs and expenses

The Board could also make an award for any other costs and expenses which reasonably incurred in making application for redress. This includes the reasonable costs of legal representation for the making of your application.

If a person was not satisfied with an award made by the Board following a hearing they could apply to the Residential Institutions Redress Review Committee for a review of the Board's award. The Review Committee could uphold the Board's award, or increase or decrease the amount of the award.

If the applicant accepted the award made by the Board, or by the Review Committee on review, they must have agreed in writing to give up any right to bring a claim for damages in the courts in respect of the abuse and injuries covered by the award. The applicant was given one month in which to decide if this is what they wished to do.

If they decide NOT to accept the award made by the Board, or by the Review Committee on appeal, any right they may have to bring a claim for damages in the courts is not affected in any way. But the

applicant cannot come back to the Board a second time if they find out later that the damages to which they were entitled from court proceedings are lower than the award of redress made by the Board or by the Review Committee.

Useful links

Redress Western Australia
<http://www.communities.wa.gov.au>

Indian Residential Schools Agreement
(Canada)

<http://www.ainc-inac.gc.ca>

Redress Board
<http://www.rirb.ie/>

WORKSHOP FEEDBACK

Inquiry terms of reference – setting human rights benchmarks

1. It was felt that it was of fundamental importance for there to be proper consultation with the victims/ survivors and their families with regards to the formulation of any future Inquiry's terms of reference. It was considered that the terms of reference should not be narrowly drawn. An Inquiry should not simply be asked to find whether or not abuse had taken place on a widespread scale - this was already a matter of public knowledge. Instead, it should be tasked with answering more searching and difficult questions such as *why* and *how* such abuse had been allowed to occur.
2. The group also took into account the helpful synopsis of the potential shortfalls in the Inquiries Act 2005¹ which had been identified in the initial stages of the workshop by Khara Khan-Glackin. Notably with regards to the setting of the terms of reference there was no duty of the minister to consult with victims/ survivors and any terms of reference could be set². The group was mindful of this concern and this was encapsulated in the comment that, "Victims should not become bystanders in someone else's process." In this context, reference was also made to the Hughes Inquiry into sexual abuse in children's homes which reported in

¹ These included, but are not limited to the power of the relevant Minister to remove the chair or members of the Inquiry panel (section 12), suspension and termination of the Inquiry (sections 13&14), restriction on attendance and prohibition of disclosure/ publication of evidence and documents, prevention of publication or exclusion of the report (section 39).

² Section 5 (4) only places an obligation on the Minister to consult with the Chairman before setting out or amending the terms of reference.

1986. It was felt that at the end of the process there had been no redress and no sense of closure for those who had been violated and abused.

3. It was noted that any inquiry could be very wide ranging in view of the timeframe, institutions and extent of the physical, emotional and sexual abuse involved. Each and every word would have to be carefully defined. With regards to the term "abuse" consideration was given as to whether it should be encompassed by the definition "conduct amounting to breaches of article 2 and/ or article 3 of the European Convention,"

Preliminary investigation/ scoping exercise

4. There was discussion as to whether a preliminary investigation, perhaps in the form of a non-statutory inquiry or investigative scoping exercise, could be carried out to ascertain the potential extent and remit of any Inquiry to be carried out under the Inquiries Act 2005. It was pointed out that many of the public Inquiries conducted to date (notably Bloody Sunday and the Inquiries carried out following publication of Justice Cory's reports into the deaths of Rosemary Nelson, Billy Wright, and Robert Hamill) had taken longer than anticipated to commence the oral hearings. This was for a number of reasons, including legal challenges. If a statutory Inquiry is inevitably going to be a long process, it is preferable for all parties involved to have a realistic idea of the timescale (and cost) involved from the outset so as to manage expectations.
5. Consideration was given to whether or not a non-statutory Inquiry alone may be fit for purpose. This was in the context of

the insightful talk given by Andrew Madden who suggested that it may not necessarily affect the validity of any process if the hearings are conducted in private, provided that the findings are public. The feeling of the group was that because the purpose of any inquiry is to alleviate public concern, public hearings were fundamental (although the power of an Inquiries Act Inquiry to have some hearings in private was noted). It was also felt that the powers of compelling witnesses to attend and enforcement provisions were necessary so justice

could be done, particularly in light of the experience of the Robert Hamill Inquiry.

6. The group gave consideration to the interplay of an Inquiry with the civil and criminal process.

The group considered that much could be learnt from the experiences of the Scottish Human Rights Commission in developing a human rights framework. These were outlined in the informative talk given by Duncan Wilson.



SUGGESTIONS ON THE WAY FORWARD FOR THE SURVIVORS AND VICTIMS OF INSTITUTIONAL ABUSE

Jon McCourt, Margaret McGuckin, John Meehan and Brian Doherty

On 2nd November 2009, former residents of Church Run Institutions went to the Assembly at Stormont to present a petition calling for an Inquiry into Historic Institutional Abuse. That day the 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.”

While appreciating that it takes time for processes to be put in place to deal with an issue as complex as this, there is concern among Victims and Survivors of Institutional Abuse, who are none the less frustrated by the lack of movement to date. On the 19th March the Health Minister Michael McGimpsey issued an options paper to the Executive “regarding potential ways forward on dealing with historical child abuse in Northern Ireland.”

In order to assist the Executive to speed the process here are some suggestions which should be helpful.

The ultimate responsibility for abuse rests with the offender i.e.: Where it is the wish of a Victim of Abuse, Offences should be reported to the police and the police and the Justice Department decide how they should be taken forward. All possible advice, assistance and support should be given to ensure that all incidents are reported. However failure to report should not adversely affect a victim's right to Justice.

If the offence occurred while in the employ of an organisation, that organisation has a responsibility i.e.: If abuse occurred while the abuser was a resident, or in employment either in a paid or voluntary capacity, then through failure of management, supervision and monitoring, organisations should be deemed to have failed in their duty of care towards those in their charge.

If the organisation was a contracted organisation the contractor has a responsibility. i.e.: It is not sufficient to suggest that organisations and institutions should have been capable of managing their own affairs. It should have been the duty of the initial placing organisation to regularly monitor and report on the placement and conditions in the institution.

This clearly has at least differing levels of responsibility. The Abuser, the Institution and the Placement Authority and the Government Department at that time responsible for the Safety and Welfare of “Children in Care”.

There is a realisation that this is an issue that has impacted on many lives over the years; an example can be drawn from the Redress Board by the Dublin Government established to look at Abuse in Residential Institutions in the South under the Redress Act 2002, which had around 15,000 applications.

One of the original concerns among many of those abused while in various Institutions, was that they would not be believed. However there is now sufficient acknowledgement and anecdotal evidence to suggest that physical, mental, psychological and sexual abuse did indeed take place in these institutions. While apologies issued on behalf of "Religious Institutions and Orders" have come as a relief to some of those abused, such apologies have satisfied few whose lives have already been destroyed by the experience. Such apologies no matter how genuine have come too late for many who could no longer live with the trauma and shame of their experience and sought the ultimate release by taking their own lives.

The appeal put before the Assembly was simple, that an Inquiry into Historical Abuse in Care Institutions be held by the Assembly to determine the nature, extent and impact of that abuse on children placed "in care" and that the Assembly, as a result of the outcome of such an Inquiry consider the development of a mechanism by which victims and survivors could seek redress from the responsible parties.

While realising the unprecedented nature and the possible enormity of such an undertaking, the Assembly should, as a priority consider the impact and trauma that abuse has caused to the victims and survivors, before seeking to justify not proceeding or limiting the scope of such an Inquiry.

We wish to make it clear that the term "Institutions" includes all facilities where children were put "in care" either by the State on any Agency deemed to have been acting on its behalf. It includes any facility where children were placed, on a temporary or permanent basis, by a parent or parents or guardian acting on their behalf. These include Facilities managed or run by Religious Orders of any Denomination, State Institutions, Charitable Societies, Private/For Profit Facilities including Foster and "Group Homes".

We see as a priority the immediate availability of Support and Counselling Services to all those traumatised by their experience while "in care" in Institutions. A Public Awareness campaign of the availability of such services should be considered as a matter of urgency. Access to these services should be available through self-referral as well as the usual professional channels. These services should be available without charge to the client at the point of need.

While the Assembly considers the best way to proceed we are aware that many have already instituted proceedings. This has created financial difficulty for many who currently live outside the jurisdiction. Many have already lost "up front" fees, paid without any guaranteed prospect of a settlement. Following the "Opinions of the Lords of Appeal for a Judgement in the Cause: (1) Bowden and (2) Whitton v The Poor Sisters of Nazareth and Others (Scotland) (Consolidated Appeals) on May 21st 2008, "Time Barring" has been a frustrating legal device that has been reported as the main reason for cases failing to be heard. We would ask that the Assembly consider the establishment of an Arbitration and Redress Process instead of a confrontational model as a possible solution. It would not be in the interest of Victims and Survivors to see litigation as the primary method of seeking Justice or Compensation or Redress. While many Victims and Survivors of Institutional Abuse still reside in this jurisdiction many have left in the hope of putting it all behind them. This now has put them in a position of legal disadvantage.

The Department of Justice could assist them by considering the following to expedite matters:

- Follow the example of the Dublin Government who in May 1999 announced an Amendment to their Statute of Limitations so that the "Time Barred" rule would no longer apply.

- Extending the qualification to Legal Aid to the Date and Jurisdiction of an alleged offence, rather than a restrictive timeframe and the current residency of the claimant.
- Review and amend the current legislation with regard to “Compensation Barred” claimants with specific regard to this issue. In the event that this is not feasible then broadly consider the award of settlements “without prejudice”.

We are aware of the huge financial undertaking this will be but this does not dissuade us nor should it dissuade the Assembly. We would be loath to have the taxpayer shoulder a large share of a burden that is not theirs. Bearing in mind the particular assets of “Organisations” historically responsible for “Care Institutions”, the Department of Justice should consider at the outset demanding of all those Religious Orders of any Denomination, State Institutions, Charitable Societies, Private/For Profit Facilities including Foster and “Group Homes”, a commitment to financially and morally honour their responsibilities.

These were “Criminal Acts” carried out, in the main, on properties owned by corporate entities, who “Criminally and Negligently Failed in their Duty of Care” and in the absence of a commitment or guarantee, consideration should be given to utilising “Criminal Assets Legislation” to sequester their resources. We feel a repetition of the “Land for Cash” proposal agreed with the Redress Board and the Dublin Government was a travesty that unfairly burdened the Irish Taxpayer and created the first “Toxic Bank”. It did not corporately penalise the institutions anywhere near the level that would equate with the suffering of their victims.

As final tribute to those who did not live to see this day, we would ask that the Assembly do all in its power to ensure that, where possible individual gravestones are provided on their last resting places, or that “Acknowledgement Stones” are suitably erected in their memory.

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