

HIA REF: [to be put on]

NAME: Simon Marsh

DATE: 26 May 2016

THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO 1995

Witness Statement of the Northern Ireland Office

I, Simon Marsh, will say as follows: -

This statement responds to the letter from the Inquiry dated 5 May and addresses the issues raised by the HIAI in that document. Given the passage of time it is constructed from NIO records.

Background

2. The Northern Ireland Office ('NIO') was established in March 1972 on the imposition of direct rule, and at that time it was envisaged as a temporary solution to the immediate problems posed by the 'Troubles'. The primary function of the NIO was to search for a political solution to the instability in Northern Ireland. Although the NIO had responsibility for the overall management of the security situation in Northern Ireland, it was not responsible for its operational management. Rather, the Army, and later the RUC, were responsible for operations on the ground. At that time the Government's key objective was to restore law and order and re-establish devolved government in Northern Ireland.

3. The NIO also took over the functions of the Ministry of Home Affairs ('MHA'). The MHA had existed under the previous Stormont based government of Northern Ireland and had responsibility for a range of domestic matters, including police and prisons. When it was established in 1972 the NIO took on the MHA files as well as the Home Office files on Northern Ireland. The MHA was not fully integrated into the NIO until after the Sunningdale agreement in 1973.

4. Following the imposition of direct rule, other Northern Ireland departments continued to operate much as they had before, albeit under the supervision of NIO junior ministers and subject to the overall political supervision of the Secretary of State for Northern Ireland.

5. These arrangements remained in place until the 1998 Belfast Agreement paved the way for the establishment of the Northern Ireland Executive. After several false starts, the Northern Ireland Executive was established in 2007, and from that point onwards all responsibility for devolved institutions in Northern Ireland was constituted under the Northern Ireland Act 1998. The Northern Ireland Executive assumed responsibility for policing and justice in 2010.

6. In 1972 the newly formed Northern Ireland Office established the post of Director and Coordinator of Intelligence (DCI) which came to be filled by senior secondments from MI5. The DCI had no powers to direct the intelligence work of other agencies and in 1976 the RUC was given primacy over all aspects of counter-intelligence work in Northern Ireland. The main function of the DCI was to provide strategic intelligence assessments and advice to the Secretary of State for Northern Ireland and to Whitehall, in order to inform Government policy. The DCI was supported in his/her role by a small staff producing strategic intelligence assessments to inform Government policy, and by liaison officers in both RUC and Army headquarters. Assistant Secretary (Political) ("ASP") was one such liaison officer, whose role was to support the DCI, based at Army Headquarters. He/she was an MI5 officer. MI5 also had a small number of staff performing various specialist intelligence roles in pursuit of MI5's national security function.

7. In late 1979 Sir Maurice Oldfield was appointed by the Prime Minister in a senior intelligence co-ordination role between the RUC and the Army.

8. The situation in Northern Ireland a generation ago was very different from that which exists today. In the 1970s and 1980s terrorism was at its height, and there were periods

when Northern Ireland was far from stable. In each of the years 1974-1976 there were between 250 and 300 deaths in Northern Ireland arising from the security situation. As well as pursuing and prosecuting normal crime, a major focus of the RUC and the authorities more generally was keeping the population safe from terrorist organisations on both sides of the community.

Kincora Boys Hostel

9. It appears that before 1973 the Kincora Boys Hostel, as a children's home, was the responsibility of Belfast City Council Welfare Department. After that date responsibility for Kincora was transferred to the Department for Health and Social Services for Northern Ireland (DHSS(NI)). The DHSS(NI) retained a separate existence, albeit under the overall guidance of an NIO Minister. Operationally the Hostel was run by the Eastern Health and Social Services Board. Accordingly, the NIO never had a role in the operation of Kincora, nor in oversight or welfare issues.

10. Given the passage of time the NIO now has no effective corporate memory of the events at Kincora which may be material to this Inquiry. Consequently the NIO's role has been reconstructed from the files. We have found nothing on NIO files to indicate that the NIO was aware of the allegations of child abuse at Kincora before a report in the Irish Independent dated 24 January 1980.

11. I have seen nothing to indicate that NIO officials condoned or were involved in any sexual abuse of minors at Kincora at any time although the names of four then present or former NIO officials were mentioned in a list of questions to be put to a former Assistant Secretary (Political) in 1983¹.

12. Once the NIO had become aware, in January 1980, of allegations of child abuse in Kincora and allegations that Government servants might have been involved in this

¹ Letter of 24 February 1983 from ACC Whiteside RUC to John Bourn NIO, disclosed to HIAI.

abuse the NIO was fully supportive in ensuring that the material events were investigated and that any perpetrators brought to justice.

Information provided in Parliament

13. On 22 February 1980 Peter Robinson MP was told by the then NIO Minister of State in that the RUC had only become aware of allegations of child prostitution at Kincora on 24 January 1980. The same date was given in response to a similar question on homosexuality. By 1982 it had become clear that this information had been incorrect and that in fact police had been aware of suggestions of homosexuality some years beforehand; it seemed likely that the misunderstanding had arisen from vague terms used in telephone conversations prior to drafting the reply.

14. The earliest document we have found on NIO files relating to Kincora is dated 6 March 1980; papers relating to the Parliamentary reply referred to in the previous paragraph are assumed to have been destroyed in accordance with normal procedures.

The McGonagle Inquiry

15. On 15 January 1982, following the convictions in December 1981 of three members of staff at Kincora as well as convictions in relation to two other children's homes, the Secretary of State for Northern Ireland announced the McGonagle Inquiry. This was established by DHSS(NI) under Article 54 of the Health and Personal Social Services (NI) Order 1972 and its terms of reference were as follows:

“To hold an inquiry into the administration of personal social services at children’s homes and young persons’ hostels in which criminal offences leading to recent convictions were committed, and in particular:

“To investigate the reasons for the failure to identify malpractice at an earlier stage;

“To examine and assess the adequacy and effectiveness of present policies, procedures and practices for:

“(i) the recruitment and supervision of staff employed in such establishments;

“(ii) the supervision and protection of children and young persons in such establishments, with particular reference to the roles and responsibilities of residential staff and filed social workers;

“(iii) the management of such establishments, including arrangements for the admission and discharge of children and young persons and for the promotion of their welfare while resident;

“And to make recommendations and necessary with a view to preventing any future malpractice.”

16. In his statement the Secretary of State noted with concern allegations that there had been a cover-up to protect other guilty men from prosecution (There had by that time been three prosecutions of Kincora staff members and a number of further convictions in relation to two other homes). The Secretary of State said that there had been a thorough police investigation into the criminal aspects of incidents at Kincora and other homes in the course of which some 700 persons had been interviewed. He said that no evidence of any involvement of a criminal nature by Northern Ireland Office officials, police officers, legal figures or leading businessmen had been produced to the police, or disclosed by the investigation. He said that he did not consider there to be any case for a public judicial inquiry, but there was an urgent need to draw out and apply the lessons in the field of residential child care, and in particular the adequacy of present management policies, procedures and practices. These were matters, he said, that fell within the responsibility of the DHSS(NI) and other social services bodies. He announced that the independent Inquiry would be chaired by Stephen McGonagle, formerly the Northern Ireland Ombudsman: it would conduct its inquiries in private but its report would be made publicly available.

17. The McGonagle Inquiry did not, in fact produce a report; it wound up on 5 February 1982 before it was able to commence work. This was principally because three members of the Inquiry felt they had received insufficient assurance from the RUC that there were no further offences to be investigated arising out of Kincora and other associated cases. (They did however indicate they would be glad to serve after that.)

18. On 16 February 1982 the then NIO Permanent Secretary held a meeting with the Chief Constable of the RUC. A record of that meeting reveals the Chief Constable told the NIO that a new police investigation had commenced, by context into allegations around Kincora. It was based on information provided to the RUC by journalists on 10 February 1982. The record shows that the Chief Constable advised the NIO that he had asked Her Majesty's Inspectorate of Constabulary to provide a Chief Officer from another force who would be asked: to look at allegations that the results of police enquiries had been suppressed in 1975/76 and that there had been some form of cover-up; to look at allegations of maladministration on the part of the RUC; and to take an oversight of the current enquiries. The note suggests that the Permanent Secretary said that the Secretary of State would wish to make a statement to Parliament, making clear that there would be an inquiry with a judicial figure as a chairman after the police investigations and any criminal proceedings had been finalised.

19. The Secretary of State made a further statement to Parliament on 18 February 1982. He announced that he did not intend to reconstitute the McGonagle Inquiry, noting that the conclusions of the report by a Chief Officer of another police force would be made public, and said that once the police investigations and any consequent criminal proceedings were complete he would appoint a Committee with a High Court judge as chairman which would sit in public. Its terms of reference and the powers it might need could not be determined until after the results of the present investigations had become known. The Secretary of State went on to note that he would consider whether this further Inquiry should be constituted under the Tribunals and Inquiries (Evidence) Act 1921 which would confer powers of compellability. He added that because of its wider ranging inquisitorial powers the House had traditionally been wary of approving the appointment of such a tribunal.

The Investigation by Sir George Terry

20. Sir George Terry, then Chief Constable of Sussex Constabulary, was the Chief Officer provided to the RUC by Her Majesty's Inspectorate of Constabulary. He was given his terms of reference via the Home Office in March 1982. They were summarised as "to investigate allegations about the way in which the police have conducted their inquiries and in addition to have general oversight into the continuing investigations". This being an investigation reporting to the RUC his progress was not followed in detail by officials in the NIO but NIO officials were concerned that Sir George's investigation was taking too long and, on a number of occasions, the records show that Sir George was asked about likely completion dates.

21. By May 1983 it was apparent that Sir George had decided to divide his report into three parts: a summary report, and two further detailed reports under the names of two investigating officers who had assisted him. The summary report was shown to the NIO in June/July 1983 and officials expressed concerns about its style and presentation, although there is no indication that the factual content or conclusions were questioned. It appears that that the additional reports, one into the criminal investigation aspects and the other into the allegations made by the press, were not seen by the NIO, certainly at this time. If this is so, it is likely to be because they were the property of the RUC and it was felt inappropriate for the NIO to see them.

22. The conclusions, recommendations and "final comment" of the summary Report were published by the RUC on 28 October 1983. Among other things the Report concluded that there was no evidence of a homosexual prostitution ring ("what I can only describe as the fictional allegations about a homosexual prostitution ring") and no justification for the allegation that "British officials in the Northern Ireland Office" were involved in either a ring or a cover-up. He also said that the media had given a degree of prominence to "the fact that some Military circles were aware of homosexual mispractice in the Kincora Boys' Hostel", that the "military sources had been very frank and perfectly open" and that on this last he had "sought evidence from all sources including the media with negative result".

23. There was a comment made in a Northern Ireland Assembly debate that the report read as if it had been ghost-written by the NIO. The NIO records reveal that this allegation is completely without any basis.

From Terry to Hughes

24. While the Terry investigation was continuing NIO officials and others had been considering the form the subsequent inquiry into Kincora should take². In July 1983 advice³ was put to the Secretary of State. It noted that nobody had come forward with prima facie evidence to support the allegations that homosexual offenders (in either the public or the private sector) had not been prosecuted, or that people in positions or responsibility had deliberately taken no action over these offences to shield associates or to blackmail offenders for information. It canvassed three options for the promised inquiry: a 1921 Act inquiry; a non-statutory inquiry without formal powers; and an Article 54 inquiry. Arguments against a 1921 Act inquiry included the 1966 Salmon principles against light or idle use of the 1921 Act; the insubstantial nature of the allegations circulating in Northern Ireland and cost. The advice also noted the possibility that a 1921 Act inquiry could lead to witnesses revealing the structure and the activities of the intelligence services without disclosing anything improper about the conduct of members.

25. Given that the conclusion of the Terry investigation that “there is absolutely no evidence that residents of any children’s home were involved in anything remotely resembling homosexual “rings” as asserted by the media or the latter’s contentions that this so-called ‘ring’ involved police officers, civil servants, military personnel, Justices of the Peace or legal people” and that “there was no cover-up or concealment of evidence or disciplinary breaches by the RUC personnel”, the Secretary of State considered an Article 54 inquiry to be the proper approach and accordingly established an Article 54 inquiry to be chaired by a Northern Ireland High Court Judge. His Honour Judge Hughes was appointed chair in January 1984.

² See internal NIO minute of 30 June 1983, disclosed to HIAI.

³ NIO submission of 20 July 1983, disclosed to HIAI.

26. The Lord Chief Justice for Northern Ireland was consulted on the question of an Inquiry⁴. Terms of reference for the Inquiry were agreed. These were:

“Following:

“(i) the completion of the investigations of the Royal Ulster Constabulary into possible homosexual offences relating to children’s homes and young persons’ hostels in Northern Ireland;

“(ii) the investigation by the former Chief Constable of Sussex, Sir George Terry CBE QPM DL and the publication of his conclusions and recommendations; and

“(iii) the report of the team of child-care experts made available by the Secretary of State for Social Services to consider the ways in which the Department of Health and Social Services for Northern Ireland carries out its role in relation to the supervision and management of homes and hostels for children and young persons;

“[DHSS(NI) appoints . . . to]

“a) inquire into the administration of children’s homes and young persons’ hostels whose residents were subjected to homosexual offences which led to convictions by the courts or where homosexual misconduct led to disciplinary action against members of staff, and into the extent to which the bodies responsible for the provision of residential care for children and young persons could have prevented the commission of such acts or detected their occurrence at an earlier stage;

“b) consider the implications for present procedures and practices within the system of residential care, including in particular the adequacy and effectiveness of arrangements for the supervision and protection of young persons in residential care; and

⁴ Correspondence PUS-LCJ of 27 October 1983 and LCJ-PUS of 2 November 1983, both disclosed to HIAI .

“c) make recommendations with a view to promoting the welfare of such children and young persons and preventing any further malpractice;

“And to report thereon to the Department of Health and Social Services for Northern Ireland.”

27. It was decided that witnesses would enjoy qualified privilege and benefit from limited immunity from prosecution.

The Hughes Inquiry

28. The Hughes Inquiry was announced in Parliament on 18 January 1984. The Secretary of State described Sir George Terry’s investigation as “thorough” and his conclusions, as they bore on some of the wider allegations, as “clear”. He stated that the extensive investigations had produced no evidence that would justify a 1921 Act Tribunal. In his statement to Parliament the Secretary of State asserted that the Hughes Inquiry would be able to consider what more should be done in relation to the administration of children’s homes in Northern Ireland. It was for the Hughes inquiry to determine its mode of operations and from whom it would seek evidence. The Secretary of State further indicated that he believed that it would be within the Hughes Inquiry’s terms of reference to examine why no investigation had been instigated before 1980.

29. At paragraphs 60 and 61 of HHJ Hughes’ opening statement⁵ he makes clear that, although his Inquiry would not engage in hypothetical discussion of allegations of on an “establishment” cover-up of homosexual activities involving boys in care, or that British military intelligence were aware that homosexual offences were being committed by a member of staff at Kincora Boys’ Hostel, the Inquiry would take account of any evidence or information which was relevant to the administration of children’s homes or hostels or which showed that the administration of those homes or hostels was “adversely affected”.

30. On 29 February 1984 HHJ Hughes asked the Chief Constable of the RUC for sight of Sir George Terry’s papers and those relating to earlier police investigations. No

⁵ Letter from the Secretary to Hughes Inquiry of 3 May 1984, disclosed to HIAI.

answer rests on NIO files, but the NIO understands that the RUC did in fact grant access. The NIO also provided information to the Hughes Inquiry.

Mr Colin Wallace

31. Mr Colin Wallace was a Ministry of Defence information officer at Headquarters Northern Ireland from 1968 to 1975. Following disciplinary proceedings for leaking classified information he was informed that he would be dismissed, but having regard to his previous record of service he was in the event allowed to resign from the civil service with effect from 31 December 1975. He subsequently claimed that this was part of a cover-up and that giving information to journalists was an unacknowledged part of his duties. There is nothing to substantiate allegations that the NIO connived in Colin Wallace's dismissal from the Ministry of Defence as part of any attempted cover-up in relation to the events at Kincora. The NIO's interest was to stop any leaking of classified material, given that the leaking of information could have wider security implications.

32. The NIO files contain piecemeal papers about the strenuous attempts made by HHJ Hughes to get Mr Colin Wallace to provide direct evidence to the Hughes Inquiry. The papers suggest that Mr Wallace asked whether the Inquiry had access to a file he said he had submitted to the Prime Minister on 1 November 1984, presumably because he felt it contained relevant material; the NIO reply was that the file had been returned to Mr Wallace on 21 November 1984 by the Prime Minister's office, and that no complete copy of its contents had been made. Mr Wallace also asked the MoD about freedom from prosecution under the Official Secrets Act. On 29 August 1985 the Hughes Inquiry wrote to Mr Wallace indicating that he must agree to be interviewed by 13 September 1985 on the basis of the then existing assurances or be held to be not prepared to assist the Inquiry. Mr Wallace replied on 6 September 1985 laying stress on the need for the Government to release the 1 November 1984 file. On 27 September 1985 the MoD sent the NIO nine documents, three of which had been marked as extracts from the file: these latter were shown to the Inquiry.

33. NIO records indicate that Mr Wallace met the Hughes Inquiry on 13 December 1985.

34. In the meantime a summary note on Kincora was prepared by NIO officials at the request of the Secretary of State⁶. It described the 1970s allegations of abuse and the involvement of public servants as “very strong rumours” “apparently known to some of the social services staff but not reported to the police”. It summarised the history of the investigations and inquiries and the involvement of Mr Wallace. Its conclusion was that “Our line on this must be that we have nothing to hide and that if Wallace (or for that matter Holroyd [an acquaintance of Mr Wallace who had worked in the intelligence field]) has any evidence which they wish to put before the current inquiry then they must feel free to do so. It is not for us to judge or comment upon unsubstantiated allegations or documents of uncertain provenance”.

35. On 24 January 1986 the MoD instituted a fresh inter-departmental search for the 1 November 1984 papers that Mr Wallace said he had sent the Prime Minister: as part of this the NIO conducted its own search and failed to locate any papers from the file.

36. The Hughes Inquiry report was published on 4 February 1986. The Hughes Inquiry had focused on the running of Kincora and eight other homes. In the course of the Inquiry 66 individuals had given oral evidence and 26 submitted written evidence. The Secretary of State said in Parliament that he was confident that close study of the report would reassure the public that the various complaints and allegations which had circulated regarding abuse in the childcare system had been investigated, and that a door had been closed on the past. HHJ Hughes himself had said *‘The conduct of the police, or elected representatives, or clergymen, or military intelligence or any other persons who may have been in receipt of allegations, information or rumours relating to Kincora or any other home, was not under scrutiny in this Inquiry’*. There is little more on NIO files as the Inquiry’s recommendations largely concerned the Department of Health and Social Services (NI).

⁶ Internal NIO submission of 1 July 1985, disclosed at the request of the HIAI.

Post-Hughes

37. In or about 1989 it became apparent that that the claim by Mr Wallace that he had been involved in covert activities including the provision of disinformation in the 1970s was correct. Having consulted other Departments the MoD decided to correct the record and also invited Mr David Calcutt QC to consider whether the 1975 disciplinary proceedings had been unfair to Mr Wallace. This was announced in Parliament by means of a written answer by the Minister of State for the Armed Forces on 30 January 1990 and an oral statement by the Defence Secretary on 1 February 1990. It was made clear that no information had been found to substantiate Mr Wallace's allegations relating to a cover-up relating to the Kincora Boys' Hostel or to call into question the thoroughness of the major inquiries already made, including those of Sir George Terry or Judge Hughes. The written answer also said that if Mr Wallace had allegations that he wished to press about criminal activity or other wrong doing in Northern Ireland, the best way for him to do so would be to give any information in his possession to the RUC in the first instance, and that if this information was classified he should first consult the Director of Army Security⁷.

38. There is nothing to indicate that Mr Wallace has ever provided the information which he has repeatedly indicated that he has and which he contends is relevant to the issues of child abuse at Kincora.

Sir Maurice Oldfield

39. The HIAI has asked the NIO to address the role of Sir Maurice Oldfield, the Security Co-ordinator in 1979-80. I have seen nothing to indicate that Sir Maurice was in any way involved in child abuse at Kincora (or for that matter that he ever visited the hostel).

Conclusion

40. In summary, there is nothing to suggest any involvement on the part of NIO officials, either in the abuse itself or in any attempts to cover it up.

⁷ Papers on the NIO record relating to this are a Cabinet Secretary note of 14 September 1989; an NIO submission of 19 September 1989; and an NIO submission of 14 December 1989, all disclosed to HIAI.

41. The Northern Ireland Office regards child abuse as utterly abhorrent. It desires that this Inquiry establish the facts of what occurred in Kincora. The NIO has given the HIA all the assistance it can and will continue to do so.

Statement of Truth

42. I believe that the facts stated in this witness statement are true.

Signed  _____

Dated 26 May 2016