

Chairman's statement at the opening of the Bawnmore and Kincora Module

31 May 2016

This is the last Module in the Inquiry's programme of public hearings, which started on 13 January 2014. We have so far held 203 days of hearings, and, apart from 18 days when all or some of the day took the form of closed sessions held to avoid prejudicing criminal cases which were imminent at the time, all our hearings have been held in public.

We have so far investigated 20 residential homes and other institutions. In addition we have carried out two more investigations. One was into the way children from residential homes in Northern Ireland were sent to Australia under the Child Migrant Scheme. The other was into Fr Brendan Smyth's abuse of children in residential homes in Northern Ireland, and the way his religious order and a number of Roman Catholic Dioceses dealt with allegations against him.

Our most recent Module concerned certain aspects of the state involvement in the inspection and financing of children's homes. Because some information was not provided by the Department of Health, Social Services and Public Safety in time, and still has not been provided, we had to adjourn that Module on 27 April. We will return to those matters and complete that Module in the coming weeks.

This Module will deal with the last two residential homes we intend to investigate during our hearings. They are the former Bawnmore Children's Home in Newtownabbey, and the former Kincora Boys' Home in East Belfast, although the greater part of the hearings will relate to Kincora.

Before Mr Aiken, junior counsel to the Inquiry, starts to open the Kincora element of the Module I want to take this opportunity to explain the scope of the investigation the Inquiry intends to carry out in the coming weeks into sexual abuse of children under 18 who were living in the Kincora Boys Home. The Inquiry's Terms of Reference require it to examine whether there were systemic failings by institutions or the state in their duties towards those children under 18 in their care in Kincora between the years of 1922 to 1995.

During that part of this Module devoted to the Kincora Boys' Home the Inquiry will investigate the following matters.

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- The nature and extent of sexual abuse perpetrated on residents of Kincora, abuse that resulted in the arrest, conviction and sentence of Mains, Semple and McGrath.
- Who perpetrated that abuse?
- Whether the abuse of boys resident in Kincora occurred in Kincora itself or elsewhere in Northern Ireland?
- When such abuse occurred?

The Inquiry will investigate whether there were systemic failures to prevent such abuse on the part of those responsible for the management of Kincora, or on the part of other state entities. The following entities will be investigated.

- Belfast County Borough Welfare Committee and Department, and its successor the Eastern Health and Social Services Board.
- The Royal Ulster Constabulary.
- The Secret Intelligence Service (commonly known as MI6)
- The Security Service (commonly known as MI5)
- The Ministry of Defence.
- The Northern Ireland Office.

In respect of each of these entities the Inquiry will investigate the following matters.

- Whether members of the organisation or body concerned knew of the abuse?
- What they knew?
- When they knew?
- What did they do with any knowledge they had?
- What should they have done with any knowledge they had?

These are broad headings, and as part of these investigations the Inquiry will consider the full ambit of previous investigations carried out into Kincora arising from, or connected with, these matters, as well as the responses of these organisations or bodies to those investigations. This will include the Hughes Inquiry; several investigations by the RUC, and the investigation carried out by the Sussex Constabulary under the direction of Sir George Terry. It will also involve the examination of the steps taken in later years by the RUC, the Secret Intelligence Service, the Security Service, the Ministry of Defence, the Northern Ireland Office and the Cabinet Office to address the allegations made in the media and elsewhere about what the various state agencies did, or did not, know about the sexual abuse of children in Kincora, and what those agencies did, or should have done, with any such knowledge.

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Concerns have been expressed by some that the ability of this Inquiry to investigate matters relating to Kincora is handicapped by the absence of powers of compulsion. The Inquiry has powers of compulsion which it does not hesitate to rely on if necessary. However, the reality is that any court or inquiry having powers of compulsion does not need to use those powers when there is voluntary and full co-operation by those from whom information and documents are sought. It is only where full co-operation is not forthcoming that a court or inquiry has to consider resorting to any such powers, and this Inquiry is no different.

On 4 September 2013 the Inquiry announced that Kincora was one of the institutions that it intended to investigate. Following the announcement in 2014 that there was to be a public inquiry into child abuse in England and Wales, on 21 October 2014 the Secretary of State for Northern Ireland responded to calls that matters relating to Kincora should be considered by that Inquiry by announcing that Her Majesty's Government considered this Inquiry was the better forum for that investigation.

The Secretary of State gave the assurance "that there will be the fullest possible degree of co-operation by HM Government and its agencies to determine the facts". In her statement she gave a number of other assurances that had been sought by this Inquiry, including the assurance that

"all Government departments and agencies, who receive a request for information or documents from the Inquiry will co-operate to the utmost of their ability in determining what material they hold that might be relevant to it, on matters for which they have responsibility in accordance with the Terms of Reference of the Inquiry."

This assurance, and the related assurances dealing with the verification of documents, funding and the Official Secrets Act were acceptable to this Inquiry. The Inquiry has been provided with full and voluntary co-operation by all HM Government departments and agencies. Not only have we been able to inspect the material they have provided at our request, which includes material that we were able to identify from the material already provided by them that might also be relevant, but we are going to examine the relevant material during these public hearings.

The PSNI is a devolved institution and so it can be compelled to co-operate with the Inquiry, but it has also provided the Inquiry with full and voluntary co-operation, and we are satisfied that we have been able to inspect all material held by it which the Inquiry considers relevant to its work. That includes material that we were able to

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identify from the material already provided by them that might also be relevant, and we are going to examine the relevant material during these public hearings.

We have also acquired material gathered by the Inquiry conducted by the late Judge Hughes and his colleagues in the 1980s, including the transcripts of sixty days of evidence before that Inquiry.

A number of individuals have publicly stated that they will not co-operate with the Inquiry for various reasons. Some are applicants to the Inquiry who were in Kincora. While it is for them to decide whether they wish to give evidence in person we regret that they have adopted this position because this is their opportunity to describe in person and in public their experiences in Kincora. However, they have already made written statements to us, or have spoken to our Acknowledgment Forum. Because we consider that it is important that their accounts of their time in Kincora are placed before the public, we will place their accounts on record in the public hearings even if they do not come to give evidence in person.

In addition, there are three other individuals who we believe are in a position to give relevant evidence to the Inquiry and who have written or spoken to the media in the past about their involvement with aspects of Kincora.

- All three have been interviewed by the police in the past.
- Roy Garland has given lengthy interviews to the media and made statements to the police.
- Brian Gemmell has given interviews to the media and made statements to the police.
- Colin Wallace has also made many statements to the media, and provided material that appears in *Who framed Colin Wallace* by Paul Foot.

As will be apparent during this Module, the Inquiry has gathered a great deal of material provided by, or relating to, each of them in the past. Some of the material was provided to the police by Roy Garland and Brian Gemmell. Some took the form of correspondence by Colin Wallace with a wide range of public and other figures, including two prime ministers, other Government ministers and members of parliament. Over the years, Colin Wallace has refused to answer many questions posed to him about Kincora, by the police, by the Hughes Inquiry and now by this Inquiry.

On 8 April this year the High Court dismissed an application for judicial review relating to the Inquiry describing it as “premature and misconceived”. Last Friday the Court of Appeal dismissed the appeal brought by the unsuccessful applicant, and

decided that the Inquiry is entitled to proceed along the route which we have mapped out.

In his concluding remarks the Lord Chief Justice observed

“There is a suggestion in this case that children in Kincora were abused and prostituted in order to satisfy the interests of national security. If that is true it must be exposed. As a society we must not repeat the errors of the institutions and should remember our obligations to the children. If the suggestion is not true the rumour and suspicion surrounding this should be allayed.”

After the High Court dismissed the application for judicial review the Inquiry Solicitor wrote to Roy Garland, Brian Gemmell and Colin Wallace inviting each to become core participants in this Module. It was explained to them that this would mean that they would receive all the documents the Inquiry Chairman considered relevant, be entitled to take part in the public hearings, and to be legally represented, if necessary at public expense depending on their financial resources.

Each was also requested to provide the Inquiry with a witness statement dealing with a number of questions set out in each letter.

Each has declined the invitation to be a core participant, and has refused to engage with the Inquiry. In effect each has refused to help the Inquiry or answer our questions.

The correspondence with each will be placed on the Inquiry website this morning so that the terms of the offer made to each, and the questions each was asked by the Inquiry, are publicly available.

Throughout its existence the Inquiry has not found it necessary to take steps to compel anyone who is fit to attend to give evidence or produce documents. That has included a retired cardinal; members and representatives of religious orders from outside the jurisdiction, and other individuals and organisations who have produced documents to the Inquiry, as well as public authorities and government departments in Northern Ireland and the rest of the United Kingdom.

All of these bodies and individuals agreed to participate; to produce witnesses and documents, and to answer questions posed by the Inquiry without compulsion. That is in contrast to the refusal of the three individuals who have to date elected not to assist the Inquiry in its investigations into Kincora.

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Given the amount of material gathered by the Inquiry which has been generated by, or which relates to, the individuals concerned about the issues the Inquiry intends to investigate, the Inquiry is confident that it can thoroughly investigate all the relevant issues relating to these individuals whether or not they continue to avoid engaging with the Inquiry.

We are not dependent upon their evidence, and their refusal to co-operate or answer our questions will not prevent us from carrying out our investigations.

Nevertheless, if even at this late stage any of them decides to assist the Inquiry by providing answers to the questions we have asked, the Inquiry will enable them to do so and involve them in the Inquiry as core participants.

The door is therefore still open to them if they want to change their minds, but that door cannot remain open much longer because the Inquiry is compelled by its Terms of Reference to finish its public hearings by 18 July. Unless they come forward very soon it will simply not be possible for the Inquiry to treat them as core participants, or call them as witnesses. If they change their minds and are prepared to provide the witness statements and answer the questions we have posed to them by close of business on Friday 10 June, then we will allow them to take part in the remainder of the Module as core participants. After that it will be too late for the Inquiry to receive, consider, and investigate whatever they wish to say, and to give sufficient time for the other core participants to respond.

So that they are in no doubt about the Inquiry's position, and what we intend to do, copies of these remarks are being sent to them this morning.

ENDS