

**THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO 1995****TERMS OF REFERENCE**

The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995.

For the purposes of this Inquiry "child" means any person under 18 years of age;

"institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; "relevant period" means the period between 1922 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

11.—(1) The welfare authority shall obtain the advice of the Fire Service before opening a new Home or making any structural alterations to an existing Home, and shall arrange for the periodic inspection of each Home in its charge by the Fire Service.

(2) The welfare authority shall ensure that periodic fire drills and practice are carried out in each Home in its charge, so that the staff, and so far as possible the children, are well versed in the procedure for saving life in case of fire.

(3) The welfare authority shall report to the Ministry forthwith any outbreaks of fire in any Home in its charge.

12.—(1) The person in charge of a Home shall ensure that generally order is maintained by his personal influence and understanding and that of his staff, and resort to corporal punishment shall be avoided as far as possible.

(2) Where correction is needed for minor acts of misbehaviour, the punishment shall take the form of forfeiture of rewards or privileges (including pocket money) or temporary loss of recreation; provided that a light tap of the hand may occasionally be applied to the hand of a child with the object of indicating urgent disapproval rather than that of inflicting pain.

(3) Other forms of corporal punishment shall be subject to the following conditions:—

(a) It shall be inflicted only on the hands or posterior with a light cane and shall not exceed six strokes in the case of a child over 10 years of age, and 2 strokes in the case of a child over 8 and under 10 years of age. No child under 8 years of age shall be so punished.

(b) It shall not be administered by any person other than the person in charge of the Home or in his absence his duly authorised deputy.

(c) a second member of staff shall invariably be present to witness the proceedings.

(d) No caning shall be administered in the presence of another child.

(e) Any child known to have a physical or mental disability shall not be subjected to corporal punishment without the sanction of the medical officer.

(4) Particulars of the administration of corporal punishment under paragraph (3) of this Regulation (giving the name and age of the child concerned, the offence and the number of strokes of the cane awarded him) shall be entered in the record book referred to in the Schedule to these Regulations.

(5) At the commencement of each quarter, the welfare authority shall furnish to the Ministry a return giving particulars of corporal punishment imposed during the preceding three months.

## **“Definitions of abuse and systemic failings**

The Terms of Reference of the Inquiry require it to consider whether “there were systemic failings by institutions or the state in their duties towards those children in their care”, children in this context being children in residential institutions (other than schools). This requires the Inquiry to address three questions. (a) What were the duties of the institutions and the state towards the children? (b) What constitutes “abuse”? (c) What amount to “systemic failings”?

The Inquiry is minded to apply the following broad definitions when considering the evidence it gathers. These are intended to be broad, general definitions because the Inquiry will not seek to exhaustively define in advance everything that might amount to “abuse” or “systemic failings”, and therefore when the Inquiry comes to consider specific circumstances it may be necessary to amplify these definitions in the context of those circumstances.

1. The duty of an institution was to provide an environment in which the children in their care would (a) receive proper physical care in the form of food, clothing, accommodation and medical attention; (b) be free from emotional, physical, or sexual abuse, or from neglect; and (c) develop through the provision of child care in accordance with standards acceptable at the time

2. The state had the same duty towards children as a voluntary or religious institution where the state directly provided residential institutional care, either by central government in the form of places of detention, hospitals or residential schools for children with special needs or by local government, and later by public bodies such as health and social service boards or health and social care trusts.

3. The state also had a separate duty to ensure that all institutions maintained proper standards of care of the children in the institutions because (a) it was obliged by law to regulate and inspect the institutions, or (b) it funded either all or part of the capital and/or running costs of the institutions.

4. “Abuse” was behaviour which either (a) involved improper sexual or physical behaviour by an adult or another child towards a child; or (b) in the case of emotional abuse, was improper behaviour by an adult or another child which undermined a child’s self-esteem and emotional well-being, such as bullying, belittling or humiliating a child; or (c) resulted in neglect of the child; or (d) took the form of adopting or accepting policies and practices, such as numbering children or ignoring or undermining sibling relationships, which ignored the interests of the children.

5. A “systemic failing” by an institution consisted of either (a) a failure to ensure that the institution provided proper care; or (b) a failure to ensure that the children would be free from abuse; or (c) a failure to take all proper steps to prevent, detect and disclose abuse, or (d) take appropriate steps to ensure the investigation and prosecution of criminal offences involving abuse.

6. A “systemic failing” by the state consisted of a failure to ensure either (a) that the institution provided proper care; or (b) that the children in that institution would be free from abuse; or (c) a failure to take all proper steps to prevent, detect and

disclose abuse in that institution, or (d) take appropriate steps to investigate and prosecute criminal offences involving abuse.

7. “Systemic failings” could also have taken place in one or more of the following ways:

- (a) where some or all of those who had contact with children in residential establishments, including volunteers and visitors, adopted abusive child care practices in common;
- (b) where staff in managerial positions within residential establishments initiated, encouraged or condoned abusive child care practices;
- (c) where people in positions of responsibility for the institutions running residential services initiated, encouraged or condoned abusive child care practices;
- (d) where those responsible for the inspection, oversight, policy-making or funding of the institutions providing residential services initiated, encouraged or condoned abusive practices, or failed to take appropriate steps to identify, prevent or remedy abuse.”



# Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013

## 2013 CHAPTER 2

An Act to make provision relating to an inquiry into institutional abuse between 1922 and 1995. [18th January 2013]

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *The inquiry*

#### **The inquiry**

**1.**—(1) The First Minister and deputy First Minister acting jointly may cause an inquiry to be held under this Act (“the inquiry”).

(2) The terms of reference of the inquiry are as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 18th October 2012.

(3) The First Minister and deputy First Minister acting jointly may at any time amend the terms of reference of the inquiry by order after consulting the chairperson if a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) The inquiry may be known as the Inquiry into Historical Institutional Abuse 1922 to 1995.

(5) The inquiry panel—

- (a) must not rule on; and
  - (b) has no power to determine,
- any person’s civil or criminal liability.

#### **Appointment of members**

**2.**—(1) Each member of the inquiry panel must be appointed by the First Minister and deputy First Minister acting jointly by an instrument in writing.

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 STATUTORY RULES OF NORTHERN IRELAND
 

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**2013 No. 171****INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE**
**The Inquiry into Historical Institutional Abuse Rules (Northern  
Ireland) 2013**

*Made* - - - - 24th June 2013

*Coming into operation* - 25th July 2013

The Office of the First Minister and deputy First Minister, in exercise of the powers conferred by section 21 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 (a), makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Inquiry into Historical Institutional Abuse Rules 2013 and shall come into operation on 25th July 2013.

**Interpretation and application**

2.—(1) In these Rules—

“the Act” means the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013;

“acknowledgement forum” means that part of the inquiry described in the terms of reference as the Acknowledgement Forum;

“applicant” in relation to an award means an applicant for the award and in respect of any time after a determination that the award should be made to him includes the person who submits a bill for any amount pursuant to that determination;

“award” means an award under section 14 of the Act;

“bill” means a claim for any amount in respect of expenses or compensation payable as part of an award;

“core participant” means a person designated as such under rule 5;

“counsel to the inquiry” means the qualified lawyer or lawyers appointed by the chairperson to act as counsel;

“designated email address” means the email address notified by a person to a member of the inquiry team, in writing, as the email address to be used for email communication with that person;

“designated fax number” means—

- a. The names of:
  - i. any applicants to the Inquiry who do not wish their identity to be disclosed;
  - ii. any other individuals identified to the Inquiry as having been abused, or as having been a witness to abuse;
  - iii. any individual accused of abuse, except for those who have criminal convictions for abuse (as determined by the Inquiry);
  - iv. any individual who the Inquiry considers may be the subject of criticism by it and whose name the Inquiry considers should be redacted;
  - v. individuals, not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
- b. Personal information of individuals such as addresses, telephone numbers, dates of birth, national insurance numbers;
- c. Any other information from which the identity of an individual could be discerned such as the names of relatives;
- d. Irrelevant material in documents that contain other relevant material.

12. This will mean that the information which is subject to the Restriction Order will be blacked out in any versions of those documents which are published by the Inquiry and it will not be permissible to publish what lies behind the redactions.

13. In respect of a redaction in a document which relates to the name of an individual, a designation for that person, which will be used as the public identifier for that individual during the Inquiry's work, will be inserted beside the redaction.

**THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO 1995**

**RESTRICTION ORDER**

**Pursuant to section 8 of the Inquiry into Historical  
Institutional Abuse Act (Northern Ireland) 2013**

**WARNING**

If, without reasonable excuse, you contravene this Restriction Order you will be committing an offence contrary to Section 16 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 and may be liable on conviction to a fine, or to a term of imprisonment, or to both.

Further, if you contravene this Restriction Order, or threaten so to do, the Chairman of the Inquiry into Historical Institutional Abuse 1922 to 1995, by virtue of Section 17 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013, may certify the matter to the High Court of Justice in Northern Ireland. The High Court may hold you in Contempt of Court, and may imprison you, fine you or seize any assets you may hold.

**IMPORTANT INFORMATION ABOUT THIS ORDER:**

- a. This Order is being made because the Chairman considers it conducive to the Inquiry fulfilling its Terms of Reference and is in any event necessary in the public interest.



- b. This Order binds all persons (whether acting by themselves or by their servants and/or agents or in any other way) and all companies (whether acting by their directors or officers, servants and/or agents or in any other way).
- c. The names of individuals whose identity is protected pursuant to the Inquiry's Redaction, Anonymity and Restriction Order Protocol will be redacted and will be the subject of designations in documents published by the Inquiry during the course of its public hearings.
- d. Personal information such as addresses, telephone numbers, fax numbers, email addresses or other information which may identify an individual whose identity is protected pursuant to the Inquiry's Redaction, Anonymity and Restriction Order Protocol will be redacted in documents published by the Inquiry during the course of its public hearings.
- e. The Inquiry reserves the right to remove the anonymity (and consequently any redaction and designation) presently provided to individuals pursuant to its Redaction, Anonymity and Restriction Order Protocol where it deems it necessary to do so in the discharge of its functions.
- f. In due course the Inquiry will write its report and will determine who should be named in it.

## **THE ORDER**

**IT IS ORDERED** that until further Order:

1. The name of any individual whose name has been redacted and who has been given a designation by the Inquiry, or any other information from which that individual might be identified, shall not be disclosed without the written consent of the individual concerned.
2. No report or disclosure in connection with the Inquiry proceedings may:

- a. reveal the name of an individual whose name has been redacted and who has been given a designation by the Inquiry without the written consent of the individual concerned;
- b. reveal any other information from which an individual, whose name has been redacted and who has been given a designation by the Inquiry, might be identified without the written consent of the individual concerned;
- c. publish any picture or other image of the facial features of any individual whose name has been redacted and who has been given a designation by the Inquiry without the written consent of the individual concerned;
- d. reveal the address or contact details of any individual giving evidence to the Inquiry without the written consent of the individual concerned.

#### VARIATION OR REVOCATION

3. Anyone affected by any of the restrictions set out above may apply to the Chairman to vary or revoke any restriction.

Dated this 21<sup>st</sup> day of November, 2013

Signed:           *A. A. Hart*          

Sir Anthony Hart

Chairman of the Inquiry into Historical Institutional Abuse 1922 to 1995

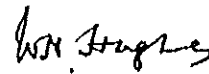
## REPORT OF THE COMMITTEE OF INQUIRY INTO CHILDREN'S HOMES AND HOSTELS

Dr M N Hayes  
Permanent Secretary  
Department of Health and Social  
Services for Northern Ireland

31 December 1985

In accordance with your Warrant of Appointment dated 21 March 1984, we hereby submit our report. All findings and recommendations contained therein represent the unanimous view of the Committee.

We sign this report but behind us are the team who have enabled us to bring it to a conclusion and whose skill, patience, humour and companionship supported us throughout the Inquiry: Mr Stephen Quinn our Secretary, Mrs Catherine Cavanagh, Miss Heather Chartres and staff, and Mr David Mercier, Solicitor to the Inquiry.



W H HUGHES



W J PATTERSON



H WHALLEY

Some parties to the Inquiry were, however, in negotiation with the Department over fees when the Inquiry's public proceedings opened on 21 June 1984 and were accordingly not represented immediately.

- 1.17 The number of parties represented during the Inquiry gave rise, in itself, to various procedural and administrative problems but a particular feature is worthy of mention. A number of former residents of homes and hostels within the scope of the Inquiry had initiated, or intended to initiate, civil actions against the statutory authorities in relation to homosexual offences committed against them while in residential care. These parties sought and were granted representation. The evidence which these parties gave about their experiences in various homes and hostels, and the counterbalance which they provided to the other interests represented, were of considerable value to us. It was, however, regrettable from our point of view that the conflict of interests between the statutory authorities and the former residents introduced, as it was bound to do, a distinct adversarial element into the Inquiry and this tended to prolong the proceedings.
- 1.18 The fact that the Inquiry was not based on specific allegations had a particular consequence for our procedures. It was not possible to implement to the letter the second "cardinal principle" of Salmon ie that a witness should be informed of any allegations which are made against him and the substance of the evidence in support of them". Our practice was to place witnesses in possession of documents relating to matters under inquiry, to give them the opportunity to make a statement to the Committee, and to conduct cross-examination on that basis. Our experience was that witnesses and their legal representatives were at least as alive to possible criticisms as we were and that witnesses were fully prepared and able to protect their interests on this basis.
- 1.19 The Inquiry proceedings were held in public for the most part. Oral evidence was taken in private on ten days out of a total of sixty days, to protect the identity and privacy of former residents while giving their evidence. All former residents were referred to by designations and we have retained that practice in this report. It was a matter of regret to the Committee that we could only take evidence on two days each week but

we had to accept, on advice, that the proper legal representation of the numerous parties could not be satisfactorily arranged for more frequent sittings.

Evidence available to the Committee

- 1.20 The sequence of events leading up to the Committee's appointment has already been described. It was absolutely essential that we had access to the papers relating to the RUC and Terry investigations and we gratefully acknowledge that we received the fullest co-operation of the Chief Constable of the RUC in this regard. During the course of those investigations a total of 565 persons made statements, including 185 former residents of Kincora and other homes. Many of these, including most of the witnesses at this Inquiry, made one or more statements to the RUC and to the Terry Inquiry team. It is significant that only a small proportion of witnesses called before us elected to submit further statements over and above their RUC and Terry Inquiry statements. In addition, the RUC and Terry Inquiry papers included a huge volume of other papers as Exhibits. This corpus of material, much of it highly relevant to the Inquiry, was the starting-point of our researches and it is fair to say that the Inquiry could not have been carried forward without access to it. Having said that, we were at pains to emphasise at all times that we did not adopt or necessarily agree with the value judgements reflected in some of these papers and that we approached the contents with an entirely open mind.
- 1.21 We also took a variety of steps to obtain further information and evidence of relevance. Firstly we placed a public notice in the Northern Ireland press inviting any person with relevant information to come forward with it. The product of this was negligible. The appeal for people to come forward with any relevant information was repeated in our 3 May 1984 public statement. Again the response was minimal. In this connection it should be recorded that the Attorney General granted witnesses before the Inquiry an immunity against prosecution for homosexual or related offences; also that witnesses giving evidence in good faith would not have been liable to civil damages for libel or slander. Both of these encouragements were publicised by the Committee. We draw attention to these matters because we believe that there may be an impression abroad that there are people in Northern Ireland who know a great deal about Kincora in particular and whose evidence might have been of value to this