

The Inquiry into Historical Institutional Abuse

1922 to 1995

Procedural Protocol to be followed by the Inquiry into Historical Institutional Abuse 1922 to 1995

Introduction

1. The Inquiry into Historical Institutional Abuse 1922 to 1995 (the “Historical Institutional Abuse Inquiry” or “HIA Inquiry”) has been set up by the First Minister and deputy First Minister, and its terms of reference were published on 31 May 2012, and amended on 18 October 2012. The terms of reference can be found on the Inquiry’s website www.hiainquiry.org.
2. The powers of the HIA Inquiry are contained in the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 (“the Act”), and in the Inquiry into Historical Institutional Abuse Rules (Northern Ireland) 2013 (“the Inquiry Rules”).
3. The Act specifically requires the Chairman, in making any decision as to the procedure or conduct of the HIA Inquiry, to act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).
4. This Procedural Protocol (“the Protocol”) is subject to, and must be read in conjunction with the Act and the Inquiry Rules.¹ It is intended to provide general information and guidance as to how the Inquiry will carry out its work. It is not intended to cover every eventuality that may arise.
5. The Protocol does not apply to that part of the HIA Inquiry described as the Acknowledgement Forum. Under the terms of reference the Acknowledgement

¹ As of today, Wednesday 5 March 2013, publication of the draft Inquiry Rules by OFMDFM is awaited.

Forum is a separate part of the HIA Inquiry structure. It does not have an investigative role because its purpose is to provide a separate body to which those who experienced abuse in institutions within the terms of reference can describe those experiences in private and in confidence. For convenience, and to distinguish the investigative role of the HIA Inquiry from the Acknowledgement Forum, the investigative part of the HIA Inquiry will be referred to throughout this Protocol simply as “the Inquiry” to distinguish it from the Acknowledgement Forum.

6. The scope of the Inquiry is defined by the terms of reference which state that the

“ ..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...“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.”

Deadlines

7. An unusual, if not unique, feature of this Inquiry is that the Act requires the Inquiry to report within three years from the date the Act comes into effect. The Act also requires the Inquiry to complete its work within two and a half years from the date the legislation comes into effect (although the Act provides that in certain circumstances these time limits may be extended by the First Minister and deputy First Minister).

8. These time limits mean that public hearings by the Inquiry will have to be completed by the 30th June 2015 to enable the report to be completed and

delivered to the First Minister and deputy First Minister by the 18th January 2016. This means that in practice the Inquiry will have to fix an earlier date by which anyone who wishes to contact it must do so. This is because the Inquiry will require some time to investigate any further evidence before it can complete its hearings. In due course the Inquiry will publish the final date by which it will receive any further evidence on its website, and by any other means it considers necessary (although it reserves the right to alter, or extend this final date in exceptional circumstances). Anyone who wishes to help the Inquiry should therefore contact it as soon as possible.

Evidence

9. In broad terms the evidence the Inquiry expects to obtain will fall into one or more of the following categories.
 - a. The report that the Acknowledgement Forum has to provide to the Inquiry;
 - b. Evidence that the Inquiry obtains through its own researches, and from whatever sources it considers necessary. This will normally be documentary material, although it may appoint expert assessors to provide the Inquiry with relevant information not otherwise available to it;
 - c. Documents provided to the Inquiry as the result of requests by it to any individual or organisation the Inquiry believes may be able to assist its work. The originals of all documents relevant to the work of the Inquiry must be preserved for production to, and inspection by, the Inquiry should the Inquiry require this. Copies of documents being provided to the Inquiry by institutions (and individuals where at all possible) must be sent electronically in PDF format to inquirydocuments@hiainquiry.org. If the Inquiry wishes to inspect any original document(s) the holder of the document(s) will be contacted by the Inquiry legal team and requested to produce the document(s) at a time and place specified by the Inquiry legal team;

- d. Statements provided to the Inquiry's legal team by any individual the Inquiry believes may be able to assist its work;
- e. Oral evidence given by witnesses at the public hearings that the Inquiry intends to hold in due course;
- f. Written statements which the Chairman directs to be read at the public hearings, or directs to be placed on the Inquiry website, in either event without the maker of the statement being called to give evidence.

10. The Act provides the Chairman of the Inquiry with powers, by the service of notices, to require the attendance of witnesses or the production of documentation. While failure to comply with such notices constitute an offence and/or contempt it is hoped that both the attendance of witnesses and the production of documentation can be achieved without recourse to notices, or, if they do prove necessary, without recourse to their enforcement for any failure to comply.

Core participants

11. The Inquiry will identify institutions which it considers it should investigate, and will attempt to contact in writing, or by any other means the Inquiry considers appropriate, the individual or organisation that appears to the Inquiry to be responsible, or to be the successor to the individual or organisation, for the institution concerned.

12. Any individual, institution or other organisation (including any government department or other public body) that considers it may have a relevant interest in matters to be considered by the Inquiry may apply to the Chairman of the Inquiry to be designated as a "core participant" in accordance with the Inquiry Rules.

13. Applications for designation as a core participant must be made in writing to the Secretary to the Inquiry, and must set out the grounds upon which core participant status is being sought.

14. The Chairman will consider all applications for core participant status in accordance with the Inquiry Rules, and, if he considers that further information is required before he can make a decision, may require the applicant to provide such further information as he considers necessary. If the Chairman thinks it necessary, he may require an applicant to appear before him to make an oral application for core participant status.

15. Core participants:

- a. will be provided with all the relevant evidence relating to that core participant which the Inquiry considers should be considered by it;
- b. will be entitled to be legally represented in accordance with the Inquiry Rules;
- c. will be entitled to formally appear at any public hearings, but only on the day or days when the Chairman considers that matters directly relevant to that core participant are likely to be at issue before the Inquiry. Unless matters directly relevant to a particular core participant are being considered at a public hearing, that core participant, and its legal representatives, will not be permitted to take part in that public hearing without the written permission of the Chairman;
- d. will be entitled to submit questions to Inquiry Counsel that the core participant would like to have asked of a witness before the Inquiry;
- e. will be entitled to seek permission from the Chairman to ask questions of a witness;
- f. will be entitled to seek permission from the Chairman to make an opening and/or closing statement to the Inquiry. If permission is sought and granted the Chairman may require the core participant to provide a written

copy of the opening or closing statement in advance of it being made orally.

Legal Representation

16. Where a core participant has appointed a qualified lawyer to act on that core participant's behalf then, subject to the relevant Inquiry Rules, the Chairman must designate that lawyer as that core participant's recognised legal representative in respect of the Inquiry proceedings.
17. Where someone other than a core participant has appointed a qualified lawyer to act on their behalf then, subject to the relevant Inquiry Rules, the Chairman may designate that lawyer as that person's recognised legal representative in respect of the Inquiry proceedings.

Costs and Expenses

18. Applications for costs and expenses (including for the costs of legal representation), to be met by the Office of the First and deputy First Minister (OFMDFM), will be subject to the relevant provisions of the Act and the Inquiry Rules, and the Inquiry's procedure for dealing with such applications is set out in more detail in a separate Costs Protocol.
19. All applications for costs and expenses will be dealt with by the Inquiry and must be made in writing to the Solicitor to the Inquiry at Patrick.Butler@hiainquiry.org. The applications should set out clearly the reasons why funding is being sought. Application forms can be downloaded from the Inquiry website at www.hiainquiry.org or obtained from the Solicitor to the Inquiry.
20. An oral hearing may be required in respect of any application, but applications for costs and expenses may be granted without a hearing. If an application is to be refused, in whole or in part, without a hearing, the reasons for so doing will be

communicated to the applicant, and the applicant will be entitled, within 7 days of being notified of the decision, to seek an oral hearing before the Chairman at which the application may be renewed.

Preliminary Hearings

21. Prior to any public hearings being held by the Inquiry the Chairman will hold such Preliminary Hearings as may be necessary to deal with applications for core participant status, applications for costs and expenses (including for the cost of legal representation), timetabling, or any other preliminary matter that he considers necessary.

Documents

22. Wherever possible the Inquiry intends to receive and transmit documents electronically, and will therefore require individuals and organisations to receive documents from it, and transmit documents to it, in an approved electronic format unless there are compelling reasons why this should not be the case. Guidance will be provided as to the format, indexing and pagination of documents to be submitted to the Inquiry.

23. In advance of public hearings the Inquiry will transmit to each core participant (or, if one has been designated, its recognised legal representative) a bundle of evidence that the Inquiry considers relevant to that core participant. Further evidence may be supplied by the Inquiry from time to time as required.

24. Whenever possible the Inquiry will try to provide the bundle of evidence to a core participant not less than 20 working days before the first day fixed for a public hearing relating to that core participant. Thereafter any additional documents will be provided by the Inquiry as far in advance as possible of any public hearing at which that document will be considered by the Inquiry, but there may be occasions when this will not be possible if documents become available, or their relevance becomes apparent, at short notice.

Public Hearings

25. The Inquiry intends to hold its hearings in public whenever possible. These will normally take place at Banbridge Courthouse, although preliminary hearings may take place elsewhere as necessary. The dates, locations and times of all hearings will be posted on the Inquiry website, and notified to core participants electronically.
26. A simultaneous transcript of the public proceedings of the Inquiry (except for preliminary hearings) will be provided by the Inquiry. During the hearings the transcript will be provided electronically to the Inquiry panel, to the Inquiry staff, and to the legal representatives of core participants. Members of the public will be able to follow the evidence on screen in the public hearings, and the transcript will be placed on the Inquiry website as soon as possible after the completion of the day's public hearing.
27. Generally, documents that form part of the evidence before the Inquiry will be subsequently published on the Inquiry website.

Timetabling

28. Wherever possible the Inquiry intends to consider the evidence relating to each institution in separate modules, although if a witness spent time in separate institutions on some occasions it may be necessary to deal with more than one institution at the same time.
29. From time to time the Inquiry will publish a draft timetable indicating the day(s) during which evidence relating to an institution will be given.
30. The Inquiry will normally sit on Monday, Tuesday, Wednesday and Thursday of those weeks when it sits, although if necessary the Inquiry will sit on Friday. Hearings will normally commence at 10.30am each morning (except on

Mondays), and conclude at 4.30pm, with a break for lunch, and a midway break during the morning and afternoon hearings as necessary.

Procedure at Public Hearings

31. Set out below are some of the main procedures that the Inquiry expects to adopt at the public hearings.

- a. All witnesses will be called by Counsel to the Inquiry;
- b. All witnesses will give evidence orally, and on oath (or affirmation), unless the Chairman directs that a written statement by a witness may be received in evidence without the witness having to attend to give evidence in person;
- c. If a witness is unable to attend due to illness, or infirmity, or for any other good reason, or it is inconvenient for the witness to attend (such as living outside Northern Ireland) then the Inquiry will consider whether the witness could give evidence by way of live link or any other means which the Chairman considers reasonable;
- d. Only Counsel to the Inquiry, and the Inquiry Panel, will be allowed to ask questions of a witness giving evidence to the Inquiry;
- e. If a core participant, or, if they have one, their recognised legal representative, wishes any question to be put to a witness giving evidence to the Inquiry, each proposed question must be submitted to Counsel to the Inquiry by email to witnessquestions@hiainquiry.org not less than three working days before the first day on which that witness is due to give evidence;

- f. The recognised legal representative of a core participant, or of a witness, may apply to the Chairman for permission to ask questions of a witness in accordance with the Inquiry Rules, though, given the collaborative approach envisaged between the recognised legal representatives and Counsel to the Inquiry, it is expected that such applications would be rare.

Warning Letters

32. The Chairman may at any time send a warning letter to any person who has or may be the subject of criticism in the Inquiry proceedings.

33. If the Inquiry intends to make any explicit or significant criticism of any person in the report of the Inquiry it will first send that person a warning letter:

- a. setting out;
 - i. the proposed criticism;
 - ii. the facts on which it is based;
 - iii. the evidence which supports it;
- b. giving the person a reasonable opportunity to respond to the contents of the warning letter.

34. Warning letters, and any material sent with them, will be subject to the duty of confidence imposed by Rule 15 of the Inquiry Rules.

35. The recipient of a warning letter must respond to it within the time set out in the warning letter. If the recipient believes further time will be required than set out in the warning letter an application for an extension should be made to the Chairman of the Inquiry within 5 days of receipt of the warning letter. The letter should detail the extension sought and the reasons why it is required.

The Approach of the Inquiry

36. The Inquiry, by its nature, is inquisitorial and needs to be conducted as efficiently and cost effectively as possible. It will also primarily be dealing with vulnerable individuals who may find engaging with the Inquiry difficult. Given the above the Inquiry expects a collaborative and co-operative approach from recognised legal representatives whose good and efficient relationship with the Inquiry legal team is essential for the smooth running of the Inquiry.

General

37. The Inquiry retains the right to suspend, alter or modify the procedures set out in this Protocol as circumstances require.