



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Historical Institutional Abuse: Interim
Advocate for Victims and Survivors

12 February 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Trevor Clarke
Mr Trevor Lunn
Mr Fra McCann
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Mr Brendan McAllister Interim Advocate for Victims and Survivors of Historical Institutional Abuse

The Chairperson (Mr McGrath): We are still quorate at the moment. I remind members that, under the new dispensation with smaller Committees, the quorum is five. If other members come back, that will be great, but I would like to hold on to those who are here for the rest of the session.

I welcome Brendan McAllister. We appreciate you coming up to discuss the work that you have been undertaking as the interim advocate. We have had nearly one and a half sessions prior to this one, and I know that you were here. A lot of the issues have already been raised, so this will give us an opportunity to look at them from the angle of your work. Thank you for doing that. Do you want to give us a synopsis of the work that you have been carrying out, and then we can progress to questions from members?

Mr Brendan McAllister (Interim Advocate for Victims and Survivors of Historical Institutional Abuse): Good afternoon, Chair and members of the Committee. You have received advance briefing papers on my areas of work, but I would like to draw your attention to some specific issues.

Firstly, the legislation. From the time of my appointment last July until November, a major focus of my work was to reinforce the campaign to introduce the Historical Institutional Abuse (Northern Ireland) Bill at Westminster and to get it passed into law. Since then, attention has shifted to the whole area of implementation. Yesterday, we had the second in a series of four engagement meetings between representatives of victims' groups and officials. With support from the president of the redress board, Mr Justice Colton, and senior officials from the Executive Office, those meetings are an important opportunity for victims and survivors to contribute to the design of the redress scheme, drilling into the detail of the application process, the question of how cases will be assessed by the board, board procedures, legal representation, our duty of care to applicants, and Executive Office proposals for a public information campaign.

Let me make a particular point about the level of payments to victims. When the HIA Bill was on its way into Parliament, I became concerned that, with the lapse of time since Judge Hart's report in 2017, the upper limit of £80,000 proposed by him and laid down in the Bill might not be a proper reflection of today's levels of payment, so I asked for a legal opinion from senior counsel. In the event, as you are well aware, the Bill was rather quickly passed into law. However, counsel's opinion is that, indeed, the upper limit for payments — the so-called cap — is too low. I am advised that the reference guide for civil compensation cases — the so-called green book — was revised in February 2019 and, consequently, payment levels were raised by 36% to 40% across the board. For example, someone deemed to have suffered the most severe psychiatric damage could receive between £82,000 and £210,000 in compensation in a civil court. My legal advice is that, all things considered, the cap should have been raised from £80,000 to somewhere between £109,000 and £114,000. This would have made better provision for the most egregious cases and, perhaps most significantly, I believe it would have increased the average HIA payment.

I have conferred with leaders of victims and survivors' groups about this matter. They are conscious that, had the Assembly been restored in time to pass the HIA legislation, I would have been making a case to you for the maximum payment of £80,000 to be raised to somewhere between £109,000 and £114,000. However, the HIA groups recognise that the imperative must be to get the redress scheme up and running as quickly as possible, so they are willing to accept the prospect of the amounts being paid out being less than they might have been. I feel that it is important to put the matter on the public record today. At a time when there are pressures on the public purse, the cost of the oncoming HIA scheme could have been significantly higher than it is.

A second issue that I specifically want to mention concerns my efforts to improve services to support HIA victims. I commissioned an independent needs assessment, which informed me that the main concerns of HIA victims are welfare advice; mental and physical health; social support; information retrieval; and assistance with the redress process. A proposal for a bespoke unit is under consideration between me, the Executive Office and a potential service provider.

I have also been briefing the groups on progress. The proposal is to establish a one-stop shop with an outreach capacity across Northern Ireland, which will work with HIA clients to design individualised care packages and signpost them to the most appropriate help. I am hopeful that that facility can open its doors some time this summer. In the meantime, it is sometimes a struggle to meet more immediate needs, especially around the need for emotional support. Therefore, I am also in discussions to establish interim arrangements to provide timely emotional support to individual victims, especially those who may feel overwhelmed by the prospect of going through the redress process.

I am conscious that, as Members of the Assembly, you will be interested in issues that will require significant ministerial attention in the time ahead. I refer specifically to sensitive matters such as acknowledgement, apology and memorialisation. In that regard, I intend to convene a series of seminars between Easter and the summer to assist victims and survivors and relevant others to begin to form more coherence and consensus about how these matters may be addressed. I expect to submit advice to Ministers and, indeed, to the Committee in due course.

Finally, I take this opportunity to acknowledge the long journey that victims and survivors have had to get to this point. They are appreciative of the support that they have received from all the political parties in Northern Ireland. The historical institutional abuse of children is a grave injustice that stretches across generations. Many of its victims have died. Those who have fought the HIA campaign carry their childhood friends, often their brothers and sisters, in their hearts, and, of course, the people who have done most to bring justice and truth to bear on this situation are victims themselves.

The Chairperson (Mr McGrath): Thank you very much, Brendan. Those words, I am sure, will echo with members and further afield, and I thank you for them. Although I am relatively new to this area, I have been heartened at how everybody right across government — from the Northern Ireland Office to Ministers to the Executive Office — is trying to push in the right direction and the same direction. It can be a very slow process at times with government, but it is maybe moving a little bit faster because everybody is pushing in the right direction, and our part in that is to provide scrutiny. That is what we want to do. We want to try to provide the scrutiny that allows us to make sure that things are moving at the right pace and to maintain that accountability because we feel, as does everybody, that there needs to be accountability for victims to ensure that they get all the services and redress that they need.

I know that members will have questions. I will begin. The Committee has already received one or two requests for people to come and provide a presentation. We will take a look at that later, but it gives us

some comfort to know that there are opportunities for groups to meet you and mechanisms and procedures for the groups to make their views known, and that those views are being listened to. Is there a structure in your work to allow that and to maximise opportunities for groups?

Mr McAllister: The approach that I have adopted since coming into the role in July/August is to appreciate that victims' groups are very evolved. At this stage, they have a lot of experience as advocates in their own right. You will be aware of that. They are very politically tuned in and very able. I have been anxious from the very start not to undermine or take away in any way from the voice that victims have already developed for themselves. Of course, there is a range of voices and a number of groups. The normal contact that I offer groups includes sometimes meeting with a number of members but paying particular attention to contact with group leaders. I have one-to-one meetings with people on behalf of groups, and I occasionally meet groups as a whole. Our discussions on the establishment of the redress board involves a number of groups coming together with officials and me.

Mr McCann: Brendan, thank you very much for the information. I agree that many people are going into a process in which they may have to relive all the difficulties and horrors they went through. Do you or anybody else have any input into the application forms or in how this is handled to ensure that it is done as sensitively as possible and in a way that takes into account the difficulties for the person who is making the application?

Mr McAllister: Thank you, Mr McCann. The application form is at a fairly advanced stage. The officials at the redress board have been working with technical experts to design an online application. There will also be a hard copy version for people who do not like to use computers or to go online.

Victims' groups are very vigilant about the matter. They know their people very well and do not want individuals sitting in their homes around Northern Ireland being intimidated by either a computer screen or a form that has come through the door. We are trying not only to put sufficient support in place but, to start with, to make sure that the application form is fit for purpose. By that, I mean that it not only gathers the information that the redress board will need but is victim-sensitive. Those discussions are ongoing. Next Tuesday, in fact, the acting secretary of the redress board will make a presentation to representatives of the groups and talk them through the online application. That will be an important opportunity for victim representatives to critique the process.

The second part of your question is on the sensitivities involved. You heard from civil servants today about the machinery that has been put in place to run the scheme. In a sense, you can observe the necessary bureaucracy that is going into it and the involvement of the judiciary, but I have a concern about the emotional support that people need beyond the technical side. We are taking steps to have a number of personal support workers available so that, where we perceive people to be in need of support around sensitive matters, we can quickly get that in place. We will establish protocols with the redress board and all the key stakeholders involved in the process so that they recognise quickly when someone needs help and where there are sensitivities so that that can be addressed quickly.

Mr McCann: Christopher touched on this — that is twice that I have mentioned you today — and he has mentioned it before: the processes. Initially, when the personal independence payment form came out, they said that it was easy to complete, but it was anything but. Have you had sight of the form?

Mr McAllister: Yes, I took a run-through an earlier iteration; it is being refined. The most important thing that I have impressed on the redress board is to not get carried away with having a perfect model from a professional bureaucratic point of view. The application has to make sense to victims, and that is where their engagement with the groups next week becomes really important.

Mr McCann: At the start of the welfare reform process, money was made available to employ people from the independent advice sector who had expertise in bringing people through forms sympathetically. Has there been any discussion on making a group of people available to take people through the forms?

Mr McAllister: The Executive Office has had a contract with Advice NI for some time and, as you know, it provides very good welfare advice. There is a relationship with Advice NI caseworkers, which we hope to build on. Beyond that, we also need to make sure that solicitors are suitably informed. We have been in discussion with the Department and the Law Society, and the intention is to establish a list of solicitors. To be on that list, first, you have to be a solicitor approved by the Law Society, and you must have attended an orientation event where we will make sure that solicitors, beyond their competence as lawyers, understand the sensitivities of the client group. Of course, a number of

solicitors have been involved in the HIA campaign and know groups very well, but we know that, scattered around Northern Ireland, people may have a family solicitor whom they will want to use. We will want to make sure that the legal fraternity is suitably sensitised as well.

Mr Sheehan: Thanks, Brendan, for the presentation. This is a day when we should be paying tribute to the victims and survivors of historical abuse. They should be commended for their fortitude and for the relentless way in which they pursued justice. I also commend the many people who helped victims and survivors through the process.

I was in the Ramada on the day that Judge Hart released his report. If I have a criticism of the report, it is that, on the day, I thought that the cap on compensation was too low, and I hear what you said today about that. Have you investigated how that could be redressed?

Mr McAllister: Yes, Mr Sheehan, I have had a discussion with senior departmental officials, and I have briefed the groups on what I was told. As I understand it, it would involve bringing forward an amendment to the HIA Act. I am not definite about this, but that could possibly be done by resolution in the Assembly. However, to do that, MLAs would first need to have cross-party agreement, and there would have to be consensus at Executive level. Beyond that, even if the Assembly were to move in favour of an uplift, the business case that the Executive Office has put together for the HIA scheme would have to be revised. All that would mean a delay to the introduction of the scheme. The victims' groups are anxious that their people have waited a long time and, as one of them put it to me, "It is better to have half a loaf than no bread. We are where we are". They want to keep the thing moving.

Mr Sheehan: Are you effectively saying that, if the victims want to go ahead with the original business case, the chances of increasing compensation are gone because, if that business case is revised, it will lead to delay, which they do not want? Is that what you are saying?

Mr McAllister: Thank you for the supplementary, because it is an important point of clarification. The victims' groups that I have spoken to are very concerned that the figures have come in too low. However, their understanding is that adjusting those figures would be procedurally difficult and time-consuming. Their concern is that it would cause undue delay, because, as has been said, people are getting older and people are dying. The groups are concerned about that.

Mr Lunn: On the back of that, if somebody thinks that £80,000 is not enough, is there a case for civil action beyond this? Clearly, in some cases it will not be enough. Will they still have the option of taking a civil case against the authority involved?

Mr McAllister: Indeed, Mr Lunn, Judge Hart's report indicated that, if someone felt that they were entitled to more than the proposed £80,000 maximum that he had come up with, they could take a civil case. However, there is a difficulty with that. Although, on the face of it, one could go for a larger amount in a civil claim, the procedure for a civil case would be far more onerous on and demanding of people who are vulnerable. The redress scheme is geared to be smoother and less demanding of them. Mr Stafford raised concerns about that earlier.

The second point of concern about the civil claim route is that some of these claims would be statute-barred, and people would not be eligible, but the statute of limitations does not apply to the redress scheme.

Mr Lunn: In an ideal world, if somebody wants to take a civil case beyond a successful application to this scheme, the outcome of the scheme would be pretty good evidence for what you would bring to a civil case to try to prove that case.

Mr McAllister: Yes. One would think that, on the back of the redress process, an applicant would have assembled a lot of important and relevant information.

Mr Lunn: Australia is mentioned in your papers, and you have been in touch with the Child Migrants Trust and with Tuart Place. What is the extent of the problem for people who now live in Australia?

Mr McAllister: I have to say, Mr Lunn, that I do not have details on that yet. I am beginning that part of the work only now. You will appreciate that, initially, the major preoccupation has been the legislation, the redress board and getting services in place. We are at the point now where we can begin to reach out to what I call the "HIA diaspora" across the world.

Mr Lunn: The diaspora again. You have had no feedback from those Australian organisations on what they might know about the situation there.

Mr McAllister: No. In fact, I have a conference call scheduled for Monday morning — time difference and all that — with Tuart Place. I met the director of the Child Migrants Trust in London. It is based in Nottingham and has a lot of experience across the UK on child migrants.

Mr Stalford: Thank you very much for coming along. One of the recommendations in the Hart report relates to a memorial to mark the suffering that people endured. In your role as an advocate, have you been given any ideas from people and groups as to what form that memorial should take, where it should be or what they would like to see?

Mr McAllister: Yes, I have, Mr Stalford. At different times, with individuals and groups, the conversation comes round to memorialisation: note the word "memorialisation" rather than "memorial", because, as you know, there are many ways to memorialise. There is a range of views, which is why I intend to convene a number of seminars between April and June so that we can begin a conversation among the range of victims' groups, and people can respectfully listen to each other's ideas. It comes down to some people seeing a structure as an important issue, and others could have a literary project in mind. In that respect, there is a wonderful range of creativity at work. The essential thing will be, certainly for Ministers and for the Committee, to see coherence and consensus emerging at some stage. That will be a process in itself, to give people time to think that through.

Mr Stalford: I understand that it is not my place to tell anybody, but I imagine that there is a difference between those who would want a living memorial — a trust or something like that — that engages in work for victims, as opposed to a statue or a window or something like that. It can be all those things, I suppose, but I am trying to understand where the lie of opinion would be?

Mr McAllister: Your assumptions are exactly right. In fact, you can apply it to the experience and knowledge that we all have of the legacy victims of the Troubles. In my experience as a victims' commissioner, I remember one group chose to produce a book over a couple of years. In writing the book, which was done with facilitation, people stepped forward and began to engage with each other in a way that they had not done in 40 years. When the group published its book, it represented a whole journey that they had gone on together. As you know with the Troubles, other people concentrate on stone memorials. There is that kind of range. We need to make sure that we reach a position where whatever is done has the support and consensus of the HIA victim constituency.

Mr Clarke: I am looking at your staffing structure. You seem to have been busy since you took up the post, but there are quite a lot of vacant posts. At what stage do you believe that that will all be settled to support you and your getting the work done? Out of a very small team, two posts remain to be approved and three are vacant.

Mr McAllister: Yes, Mr Clarke. I am very comfortable with you raising this issue. *[Laughter.]*

Mr Clarke: I am sure you are.

Mr McAllister: It is helpful to me. This is an area of concern and frustration. In fairness to the senior civil servants, they have been very good at committing to me and to the groups all the staff I need. However, that has been easier said than done, and one has to go through a lot of technical, bureaucratic hoops to get people in place. We were trying to get people into place quickly, and we have to allow for the fact that the commissioner has yet to be appointed. You need to give the commissioner room to read the situation and make his or her judgement about the type of team they want. As, effectively, the temporary commissioner, I have temporary staff. The two civil servants who work with me work well beyond the call of duty and with issues, especially around emotional support to people, that are beyond the norm for civil servants. I have been very lucky with the people who have been sent to me. However, we are vulnerable in that regard, which is why I am looking to support our capacity to provide emotional support beyond a core staff team. I hope that we can do that soon.

A specific area of concern for me is that, at this stage in the story, it is very interesting that a lot of people who seemed to have put their energies into the campaign to get the legislation passed have now turned their hearts and minds to deeper issues. People are coming to us with very sketchy details of how it was that they were ever in care in the first place, of what happened to their brothers and sisters or whether they had brothers or sisters or were orphans. People who are coming to us have a

lot of questions. As the interim advocate, I can write letters formally to religious orders or other institutions, but some of the letters that victims have already received have very little information, so there is a problem with record retrieval. Forensic research is needed on some of the ledgers and records that institutions have and, for that, I have specifically asked the Department to get me a research worker with forensic skills. So far, we have not been able to get the right person.

Mr Clarke: Is that over and above the research officer on your chart?

Mr McAllister: No, that is the one on the chart. There is another issue about that: it is one thing to excavate raw data — cold facts. Those cold facts tell very important things about a person's life, so we also need the caseworker in place, with more interpersonal skills, so that they can, in a sense, mediate data into the life of the person now. We have tried to recruit those two workers quickly from within the trawling system in the public service rather than advertise them as public positions. We are conducting interviews in the next few days for the caseworker post. We have not yet got anybody for the research officer post, and I am asking the Department to consider allowing me to advertise that post publicly.

Mr Clarke: You have probably anticipated my next question. Why are we keeping it exclusively for civil servants rather than all the posts being reached for beyond the Civil Service?

Mr McAllister: Simply to move with haste and to get people in place quickly, but that has not proved possible.

Mr Clarke: That is my point. There seems to be a culture sometimes in the Civil Service that it creates other jobs for other people, when sometimes that expertise is outside the Civil Service.

Mr McAllister: Yes, and in particular, Mr Clarke, on an issue like this, it stretches a normal civil servant to do things in an interpersonal way, whether it is with an individual or with groups. Now, of course, many people in the public service and the Civil Service are used to working with the public, but it can be on technical matters. All this work is emotionally laden, and we have to be careful about who we put at the end of a phone or at a desk to interface with these people.

Mr Clarke: Absolutely.

The Chairperson (Mr McGrath): OK, Brendan, Thank you very much indeed. That concludes members' questions. Oh, sorry. George.

Mr Robinson: Thank you for your presentation, Mr McAllister. Where are you and your team based?

Mr Clarke: They are in a caravan; they are moving out. *[Laughter.]*

Mr McAllister: Thanks, Mr Robinson. We have been in temporary offices in Great Victoria Street, and I am glad to say that the Department has now sourced a more permanent home, which will become the home of the commissioner, off Wellington Place, right in the centre of the city. It should be accessible to people; it is good for transport and anyone with disabilities. We are quite happy with what they have got for us, and we are due to move into that at the end of this month.

Mr Robinson: If a victim needed personal contact with you, would you be open to that?

Mr McAllister: Yes, absolutely. In my view, if anyone wants to sit down with me, including in their home, I will do that.

Mr Robinson: Yes, one to one.

Mr McAllister: My staff understand that there are slots in my week, including evening times, when I am prepared to go and see people, and that is done.

Mr Robinson: That is good to know. Thanks very much.

The Chairperson (Mr McGrath): OK. We will conclude the questioning. Thank you very much for coming along today. We very much appreciate getting the information and the update.

Mr Clarke: Sorry, Chairman. Something has just struck me. Can I raise one other point on the back on what Pat said about the upper limits and Mr McAllister's response?

The Chairperson (Mr McGrath): Yes.

Mr Clarke: I am struck by what Pat said — it is just sinking in — when he, and Mr McAllister, talked about how slow the process is. Do you think that, if the legislation were corrected, there could be a mechanism for providing an interim payment, with an additional payment coming later?

Mr McAllister: Again, Mr Clarke, that was the original hope: that the way the redress board would approach it is that it would receive applications and give out initial payments to everyone, which I was calling "acknowledgement payments", because there is a moral message in that, and then dig down further into each application to see whether additional moneys were merited. The redress board is not following that approach. It will consider each case in one go, if you like. It may have to adjourn a case to seek further information. It is telling me that its approach to this is constrained by the law. Therefore, it cannot distribute initial payments to people. It can give an initial instalment, but it is an instalment on the one award — one payment — and that is only what the law allows it to make.

I ask your indulgence to say that, if the Committee has the view that it could, with haste, amend the legislation to increase the cap, I think that the victims' groups would be very glad to hear that and would welcome it. Their read of the situation was that that would be complicated and time-consuming.

The Chairperson (Mr McGrath): I am absolutely not looking rid of you, but, on the third occasion, I will now try to say thank you very much for your contribution. We will take no more interruptions. Thank you very much for coming along today, and I am sure that we will be in contact with you again in the future.

Mr McAllister: Thank you.