Northern Ireland Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020: Executive Office

25 March 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Colin McGrath (Chairperson)
Mr Mike Nesbitt (Deputy Chairperson)
Ms Martina Anderson
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Dr Mark Browne	The Executive Office
Mr Gareth Johnston	The Executive Office

The Chairperson (Mr McGrath): I welcome Gareth and Mark. Mark, this is your second or third visit to the Committee, so we can forgo the introductions. We all know who we are.

Dr Mark Browne (The Executive Office): Yes.

The Chairperson (Mr McGrath): I will pass over to you to give us an introduction on the statutory rule.

Dr Browne: Thank you very much, Chair, and thank you for the opportunity to come to the Committee and talk about the rules. As the Committee will be aware from the previous briefing on the redress scheme for historical institutional abuse (HIA), a key aspect of the critical path for implementation is the development of the rules that will direct the HIA Redress Board's procedures for how it will operate. That is, of course, just one of many strands of work that has been required. Alongside the development of the rules, we have been working with colleagues on the shadow redress board to develop an application system and to make the first appointments to the board. There has also been important work done through the interim advocate with victims and survivors on the whole application process and the application form, and the board itself has assigned staff and developed its protocols and processes.

Mr Justice Colton was appointed by the Lord Chief Justice before Christmas as president-elect of the redress board. Since then, intensive rounds of work have been undertaken by redress board officials, officials in the Executive Office, our solicitors and the Office of the Legislative Counsel (OLC) to develop a previous initial draft of the rules and ensure that they cover all the procedural areas that the board will require.

It is important that I emphasise that the rules are procedural. They put flesh on the bones of the Historical Institutional Abuse Act 2019. As secondary legislation, the rules can do only what the

primary legislation specifically allows them to do. There is no free run in drafting the rules: they have to be covered by the primary legislation.

Gareth will take you through some of the key areas in a moment, but the rules deal with, for example, how applications are made, what information is needed to support an application and how decisions are communicated. The plan is to make the rules this week and for them to commence on Tuesday. We recognise that that breaches the 21-day rule, and, in the light of that, we gave the Examiner of Statutory Rules an advance copy. Gareth will say more about the consultation arrangements on the rules with victims and survivors. I will now hand over to Gareth, who can take you through the detail.

Mr Gareth Johnston (The Executive Office): I will deal first with the consultation arrangements and how we consulted and engaged with victims and survivors to develop the rules. Last year, as part of the overall consultation on HIA policy and legislation, we consulted on an earlier draft of the rules. At that stage, we called them subordinate legislation and indicated that we would be working with an incoming redress board on their detail.

In the consultation paper, we described how the rules had dealt with the key interfaces that victims and survivors would have with the board; what they would need to submit with an application form; the proofs of identity that would be needed; arrangements for oral hearings, which were confined to exceptional circumstances; how the board would request any further information that it needed; how victims and survivors would be notified of the board's decisions; and the arrangements for appealing. We also explained how legal expenses for obtaining a solicitor's help in applying would be covered from the public purse. Overall, 526 responses were received to the consultation —

Ms Anderson: How many?

Mr Johnston: — but those dealt with policy issues.

Dr Browne: There were 526 responses.

Mr Johnston: Yes, 526. Those dealt with policy issues. Issues about the procedural rules really did not feature in the consultation responses.

Following the appointment of the president-elect of the redress board and engagement with him on what the detail of the rules needed to specify, in February we again engaged with victims and survivors' groups on the rules through the interim advocate's office, and an advanced draft of the rules was shared at that stage. The interim advocate organised a briefing with representatives of the groups, and I attended to take them through the main areas covered by the rules.

I turn to the rules themselves and highlight some of their key features. Rules 3 and 4 deal with applications and reflect the Hart recommendation that it should be possible to deal with the great majority of applications based on the papers without requiring a victim or survivor to take part in an oral hearing. The rules allow the board to determine the form in which applications are made, and board officials have engaged with victims and survivors on that. They allow forms to be submitted electronically to help speed up their processing. They ask people to submit their birth certificate and one of the same forms of identity as are required to vote but give the board discretion where such forms of identity are not available for whatever reason.

Rules 5 and 6 mean that, in the unusual circumstances in which someone made an application but died before it had been decided, the person's spouse, civil partner or cohabiting partner will be able to continue with it. That reflects the general arrangements in the Act for family members of deceased persons to bring claims.

I highlight rule 7 to the Committee particularly. The board is required to approach the institution in which someone resided for corroborating information, but the rule puts important timetables on how long the institution has to respond. An initial response is expected within seven days and a full response within 28 days from the date of the notice. If you turn to rule 10, you will see the power to compel the giving of evidence where, for example, an institution refuses to comply. However, we have engaged with the main institutions, which have confirmed that they expect to be able to meet the time limits.

Rule 9 means that, if the board wants further information from an applicant or their solicitor, they need to give an initial period of at least 21 days and then send a reminder and give a further period of 14 days. That is for information that they want from applicants themselves.

I will deal with rules 11, 12 and 13 together. They give people 21 days to decide if they want to accept an award or to appeal it. However, if there is a reason why they have not been able to confirm that within that 21-day period, rule 20, which is towards the back of the set of rules, allows the board to consider extending the time. In fact, there is a general power for the board to extend the time periods in the rules. The award is paid by Bacs transfer. Rule 13 also reflects the discretion of the board, which is a discretion that it has under the Act to make an initial payment of £10,000 in circumstances where it is satisfied that someone qualifies for a payment but has not yet decided on the full quantum.

Rules 14 to 17 and the schedule at the very back of the rules are about the legal advice and assistance, of which applicants are encouraged to avail themselves. The Hart report, recognising that claims for redress raised difficult issues, said that, in order for victims and survivors to pursue their claims effectively, they should be provided with legal advice and assistance, including in presenting the necessary evidence to the board. We want to make sure that what an applicant has experienced is expressed fully to the board so that they can get fair redress.

In setting payment rates for legal input, two considerations have been uppermost in our minds. First, they need to be adequate so that victims and survivors do not have to pay for advice. Hart dealt with that point when he recommended tying them into County Court scales for successful applications, which we have done. They also need strong cost controls, and we want to discourage solicitors from submitting applications that simply do not meet the criteria. The normal route, as I said, is for applications to be considered on the papers. Table 1 on page 11 of the rules sets out the scale of rates, which range from £298 for a solicitor when £10,000 is awarded in compensation, to £911 when the award is from £55,000 to £80,000. Those are the core rates.

At the top of page 8, you will see that it states, if a written application is unsuccessful, the solicitor is entitled to the sum of £150 only. That was calculated based on two and a half hours at the green form rate. You will also see, at the top of page 8, in the third line of text, that there is an important additional safeguard in that the board has discretion to disallow even that £150 if an application is wholly without merit. That would give the board a means of dealing with a situation where, for example, repeated unmeritorious applications were coming from a single source.

The 2019 Act, under which the rules are made, provides that an oral hearing should be held where the panel considers that there are exceptional circumstances that make it necessary to hold one in the interests of justice. That is an important rider to the scales for oral hearings, which are outlined in table 2 at the back. Those are again based on the County Court scale costs. For example, an application that led to an award of £40,000 and that, in exceptional circumstances, had required an oral hearing would attract solicitors' costs of £5,800.

Rule 18 provides that, in the exceptional circumstances of an oral hearing, the expenses of any witnesses can be covered. Finally, rule 21 means that if there is a mistake somewhere in the procedures, an applicant will still get the award that they are entitled to.

I am happy to take questions.

The Chairperson (Mr McGrath): Mark, are you happy with that?

Dr Browne: I am happy to move to questions, Chair, yes. Absolutely.

The Chairperson (Mr McGrath): Thank you very much, gentlemen, for the presentation. There are quite a number of rules and guidelines and quite a lot of detail in that. The concern, from my position as Chair, is that, once the rule has been laid, it cannot be amended; we either have to support it or not. This is a very emotive issue and one that has been hanging around for a considerable time. People are looking for a conclusion to it, and I cannot help feeling that the process has left the Committee quite boxed in: it is here and we either agree to it or do not. If we do not agree to it, it will cause a delay, yet there is a substantial amount of detail in this. The Committee should have time for proper scrutiny of it. What is the solution in a scenario like this?

Dr Browne: Chair, I will give you some reassurance about how the rules have been worked through. We are working to a tight time frame to get the amendments in place as soon as possible. The rules

have been developed and discussed with the victims and survivors' groups. Justice Colton, who is the president of the board, has gone through them in detail. He is a judge who is well used to these sorts of areas. He has gone through the rules in considerable detail to ensure that they give effect to what is set out under the Act. In so doing, he has also met victims and survivors and talked to them about any of their concerns to ensure that they are reflected in the rules. The further safeguard is that they have to be approved, and have been approved, by the Lord Chief Justice. Those are a range of ways in which the Committee can take comfort from the extent of scrutiny and engagement that there has been in bringing the rules forward.

We again emphasise that the rules can give effect only to what is already in the Act. They cannot go beyond that. They are trying to set out the detail of the process. If something emerges later on down the track that is causing a problem, the rules can be amended. While the Committee has to give a yea or nay on the rules as a whole, there is potential, if something significant emerges, for us to bring them back and say, "We need to make some sort of amendment". Do you want to add anything, Gareth?

Mr Johnston: That can be done reasonably straightforwardly by negative resolution.

The Chairperson (Mr McGrath): This is not directed at the Department — I know that the timescale has moved forward — but it seems that everybody who is part of this process has had significant time to examine the rules and have their input except us. That is most unfortunate, but the process, rather than individuals, has done that. I do not think that it is fair that we in the Committee have to give a yea or nay when we could have ironed stuff out if we had a little bit of time before, but I appreciate that we are up against the clock on this and that that leaves us with a different perspective. Are you satisfied — Gareth, this question is maybe best directed towards you — that all individuals, or the majority of individuals, who will be impacted by this have had a good, proper and full opportunity to participate in consultation and have had an opportunity to have the rules detailed and explained to them and to have their views sought? Are you confident that the majority of people have been afforded that opportunity?

Mr Johnston: As I said, when the earlier draft of the rules was put out with the policy and legislation, it was done through a public consultation that was widely circulated. After the president was appointed, we worked with him and the shadow redress board on the detail and filled out a fair amount of detail of the rules. Then, working through the interim advocate and the victims and survivors' groups, I gave a presentation. One specific point that was made there, which was welcomed, was about the arrangements for certifying documents, because we are not requiring people to go to the General Register Office for certified copies of birth or marriage certificates and the solicitor who is helping them with their applications can do that certification. Aside from that, the things that we discussed went much wider than the rules, including how people might make applications in various circumstances and some of the wider policy issues and the justification for them. We were not getting an awful lot of feedback on the procedural details of the rules.

The Chairperson (Mr McGrath): Are you satisfied that the majority of those who fall within the remit of this had an opportunity to participate and did so, or do you feel that anything was lacking on that front?

Mr Johnston: You could probably always say that you could do more, but, as I said, there was a public consultation and a more targeted consultation with the groups, so, yes, we are satisfied that we have consulted people.

The Chairperson (Mr McGrath): OK. Before I move on to Mike, Hansard are recording this from another place and are concerned that there is a lot of interference from a mobile phone. Could I ask those with mobile phones to put them on silent mode, for whatever reason? Hansard are trying to capture the meeting remotely, so people should do that. I pass to you, Mike

Mr Nesbitt: Chair, thank you very much. Gareth and Mark, thank you for your presentations.

I will say first of all that I do not accept that you are up against a tight time frame. The reason for that is that some of us sat in this room, I think, in 2013, which was seven years ago, and discussed the establishment of the institutional abuse inquiry. To my mind, it has been clear for over seven years that this legislation would be required. I just put that on the record.

To what extent has this been co-designed with victims and survivors?

Dr Browne: Do you want to pick that up, Gareth? You were involved in the detail of that.

Mr Johnston: Yes, the co-design with victims and survivors has not focused so much on the rules, because they are technical and legal and we have had legal specialists working on them. An important co-design process has been running with victims and survivors through the earlier part of this year that has been facilitated by the interim advocate and his office and has involved the shadow redress board and us. For example, there has been a demonstration of the online application system that solicitors will use and that we are going to open up very shortly for victims and survivors. People were taken through the application form and made some suggestions about it, and that was a very helpful session. There have been discussions about the process and support. The co-design process has focused on the kind of practical things that victims and survivors will encounter rather than the technical details of the rules.

Mr Nesbitt: Gareth, what impact, if any, has the breakdown of relations between the interim advocate and Survivors and Victims of Institutional Abuse (SAVIA) had? SAVIA, of course, claims to be the biggest of the victims' groups.

Mr Johnston: Yes. The issue has been about face-to-face contact. The interim advocate has been continuing to circulate information to SAVIA and to give it the opportunity to contribute in that way. We recognise that that is not a satisfactory situation. We have been exploring with the interim advocate's office and SAVIA whether an alternative arrangement could be put in place. We are finalising some thinking on that with a view to going back to SAVIA with a proposal.

Mr Nesbitt: As you say, these are technical rules and they follow broader precedents. Would you say that it would be difficult for a victim without reasonably significant legal experience to approach compensation without legal aid or the assistance of a lawyer?

Mr Johnston: We certainly want to encourage people to use solicitors. That was the Hart recommendation. A solicitor will hear someone's story and will help to condense it into a format that the board can best deal with, and the board will engage with solicitors about what format of statement is most useful to it. At the same time, we recognise that not everybody will want to go through a solicitor and that there will need to be routes in for people who do not, but the message from Hart was very much encouraging people to avail themselves of that service.

Mr Nesbitt: At point 4, you define six pieces of supporting material that an applicant would need to bring. In your opening remarks, I think you said that the board has flexibility. Is that covered at point 4.23? Am I reading that correctly?

Mr Johnston: I should say that not all six are required for every applicant. In a typical situation, you will need just your birth certificate, a form of photographic identification and any medical reports or further information that you want to submit with your application. Some of those other things apply if you have changed your name or to someone who does not have full mental capacity and has a controllership arrangement. Those situations may be less common. The provision is at 4(3) and says:

> *"If it is not possible for the application to be supported by the material referred to ... the application must be supported by alternative evidence of the identity of the applicant or deceased."*

That gives the opportunity to bring forward alternatives.

Mr Nesbitt: If, for example, a victim does not have a form of photo ID that is suitable for the Chief Electoral Officer, an alternative form of ID may be allowed.

Mr Johnston: Exactly.

Mr Nesbitt: As I understand it, the data collected by Sir Anthony in the institutional abuse inquiry was locked own. Has that now been transferred, or is it open to being transferred?

Mr Johnston: Yes, it is open to being transferred. The lockdown order or the restriction order allowed any future redress board to access the information, and an extensive piece of work has been done in conjunction with the Public Record Office of Northern Ireland (PRONI) to get that indexed. A lot of progress has been made on indexing it, particularly for older people whose applications will be treated

with priority, and there has been some progress on digitising it. Arrangements are being put in place for that to be supplied securely to them.

Mr Nesbitt: To finish, I have two questions on costs that I hope can be quickly answered. On the legal costs, you have a schedule on page 11. Are there any concerns that solicitors and barristers will not consider this to be value for money and that it will be in any way off-putting for them to engage in this process on behalf of victims?

Mr Johnston: The fact that we were going to use the County Court scale costs and a reference to the tables — the scale costs have since been expanded to £80,000 — was included in the consultation last year. People would have been aware of that. I know that the Law Society is aware of it. From any anecdotal comments that I have heard, it seems that solicitors are certainly not regarding it as a money-spinner, but no red lights have been expressed to us about the rules.

Mr Nesbitt: Finally, I know this could be considered very minor in the great scheme of things, but, at paragraph 16(1)(a), which is about travel expenses for solicitors and counsel, it says:

"if the relevant distance is at least 20 miles but no more than 50 miles",

there will be a payment of £23. That is just a one-off set payment, but, if it is 20 miles, that is £1·15 a mile.

Mr Johnston: I think I am right in saying that those have been based on rates that are used elsewhere, but that applies only in circumstances where there is an oral hearing, which, under the legislation, will be in exceptional circumstances, so we are not anticipating those rates to be very much. Yes, it is a pound a mile, but the flip side is that, if you have to come 100 miles, you will only get £46, so there is a swings and roundabouts aspect to it.

Mr Nesbitt: OK. Thank you.

Mr Stalford: Thank you very much. I think that it is the shared view of the Committee that, at the end of this, we want victims to get through the process cleanly and as quickly as possible, with the minimum of stress. Has any group or individual raised concerns that that which is outlined here may cause them additional stress? Has anyone raised any concerns? If victims' groups are in with us in three or four months' time, do you foresee any issues that they may raise with us in what is *[Inaudible owing to mobile phone interference.]*

Dr Browne: We cannot give a blanket affirmation that no one will say that they have not had some sort of issue or difficulty with some part of the process. The nature of the group that we are dealing with and who will come forward means that there may be some who may struggle with these kinds of bureaucratic-type processes, which is why, indeed, Hart recommended that they should be supported through it by a solicitor, and why the provisions are there to provide that support the whole way through. The purpose of the work that Gareth described on the consultation with the victims' groups and engagement with them afterwards was to ensure that, as far as possible, the process is as simple as it can be. The underworkings of a process sometimes have to be more complicated, and that is what we are looking at today. The rules are the underworking and are not what will appear to those who make applications. What they will see is the form and the questions and broad statements that are required. This is the stuff that will guide the redress board and the mechanics behind what we see.

We have engaged with victims and survivors and have taken into account the comments that they have made. We have also engaged with the interim advocate and hope that the process that we have come up with — as Gareth said, victims and survivors have seen a run-through of the application process and were engaged in what was put in the form — will be simple enough for everyone to understand or, where it is difficult for them, to be guided appropriately by solicitors.

Mr Stalford: Will you talk me through step by step what happens when someone comes forward? I appreciate that this is the stuff that is under the bonnet, the mechanics, but will you talk me through the step-by-step process that someone will go through if they make a claim?

Dr Browne: I will let Gareth do that. He has been more closely involved in the precise details.

Mr Johnston: Yes. Someone who wants to make a claim would approach their solicitor, or any solicitor, and talk through what had happened to them and their experience. If they have any relevant evidence — if they have medical or specialist reports already — they would bring those and their identification documents to the solicitor. The solicitor would then go onto an online system that has been developed and is ready to run. Solicitors will access that through their legal aid management system (LAMS) account, which most solicitors working in the area will have, but which others can access if they need to.

The online system will guide solicitors through the necessary information for that particular applicant. For example, if someone gave evidence to the HIA inquiry, are happy for that information to be used by the redress board and do not want to supplement it, it will be a very straightforward input process for the solicitor, who will just attach the identity documents and fill in a few basic details, and away the application will go. It may be that the redress board may only require medical reports in the more serious cases. In those more serious cases, the solicitor may want the applicant to go and get the medical report or go and see a specialist and get a report from them that would be submitted to the redress board. That would also be part of the process if it was relevant.

Mr Stalford: So a completed application then lands with the redress board. How is that considered?

Mr Johnston: The application goes through electronically. The redress board staff will check to make sure that everything is there, as appropriate, and that will then be put in front of a three-person panel. The panel will be chaired by a County Court judge and will have two senior Health and Social Care figures as members and it will be up to the panel then to make the decision. The board intends to provide panels with, and indeed to publish, an indication of the different bands of awards and the kind of issues that would bring an application into each of those bands.

Mr Stalford: When I hear about a three-member panel, it puts me in mind of the personal independence payment (PIP) process. Is there no point in this process where a victim is in front of a panel?

Mr Johnston: That would be very much an exceptional circumstance. Under normal cases, the application will be considered on the basis of the written evidence. If the panel felt that it needed more information or needed to explore a particular issue in exceptional circumstances in the interests of justice, it could order an oral hearing. But in those circumstances an applicant would be able to be accompanied both by their solicitor and by a companion.

Mr Stalford: I know that any of us who have had to accompany people to those PIP hearings have found just how brutal that process can be on people.

Mr Johnston: We have had two points of view. Some people would really like to have their day in court, and that's understandable. Some people never again want to appear in front of anything that looks legal, and so the exceptional circumstances provision has been trying to reach a compromise there.

Mr Stalford: Just to be clear on rule number ten. Is there a prospect of rule number ten applying to an applicant, in terms of a compulsion to appear?

Mr Johnston: The policy intention there was really about institutions, so that an institution was failing to provide information that there would be the power to compel the giving of evidence. If there needs to be an oral hearing, an applicant will get a notice that says this is where they need to be and when, but, as I said, the main policy intention was about institutions.

Mr Stalford: In terms of that process, would it be possible. I see you say there, that a legal representative or *[Inaudible owing to mobile phone interference.]* People are going to have to *[Inaudible owing to mobile phone interference.]* retell *[Inaudible owing to mobile phone interference.]* of the things that happened to them. Will there be counsellors or something like of hand to assist people through that process? In terms of — sorry, Chair?

The Chairperson (Mr McGrath): I am just going to come in because we have just been told, again, that there is terrible interference with our system and that some members of the press who are trying to cover it are unable to because of the interference. I know that your phone has been buzzing and

buzzing — that one over there — but would there be any way of putting them onto airplane mode? Whatever way the system is laid today there must be an issue.

Mr Stalford: Sorry, I will turn it off. I thought that if I moved it away from the mic, it would help.

The Chairperson (Mr McGrath): It seems to be, but it must be something in the room that it is not getting picked up. It could be a fault with the system, but it might be better and we will revert back to you.

Mr Stalford: Thank you very much. In terms of rule 10, that relates to institutions and being compelled to comply. Is there any outline or schedule of penalties for institutions or individuals who refuse to comply?

Mr Johnston: Let me just refer to the Act. Yes, section 10(7) of the Act states:

> *"A person commits an offence if the person fails to comply with a requirement of a notice under this section."*

Section 10(8) states:

> *"A person commits an offence if the person conceals, destroys, distorts or alters, or arranges for the concealment, destruction, distortion or alteration of anything required, or which there are reasonable grounds for believing might be required".*

Section 10(9) states:

> *"A person who is guilty of an offence under subsection (7) or (8) is liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 3 on the standard scale or both."*

Mr Stalford: That is fair enough. I have a final point. A signposting service would be useful for some people to allow them to get access to legal representation. You know that there are solicitors and law firms that have specialisms, and you also know that this is a community of individuals. It is a group of individuals, but they are also, in a very real sense, a community, so you might end up with one or two solicitor's offices taking on a lot of this work and specialising in it. It may be useful if there was a signposting service available for those who are victims but who are not necessarily part of that community in that broad sense and who have not been through the process. I know that it is not your job to put business in the direction of solicitors, but you could suggest this to them and say, "Look, here is a list of solicitors that we know are dealing with other people". That would be helpful and useful for people.

Mr Johnston: It is difficult to do it in that way —

Mr Stalford: I understand.

Mr Johnston: — because it would mean us favouring particular solicitors. What we can do and what the interim advocate's office will do is direct people to the Law Society. On its website, you can narrow a request down to personal injuries and to your locality and get the people who do deal with that. In practice, I suspect that the solicitors who have been dealing with a lot of these cases will have their own publicity and will advertise their availability for other victims and survivors.

Mr Stalford: Finally, I am quite glad that we are seeing this. I would like to have had a bit more notice, but it is really good that we are cracking on and getting this done, so thank you very much.

Ms Anderson: I will start on the note that Christopher left off on. Some might be wondering why, in the middle of the pandemic, we are all sitting here around the table talking about this subject, but historical institutional abuse is crucial, and we all want to see it move forward.

I acknowledge the times that are in it, but in slower times, we would prefer to have been able to be involved in the kind of scrutiny that, from my understanding and from what I know of the personnel in the Committee, will be the way that we will go forward. It will never go back to "would've, should've,

could've" and to the criticism that was made of MLAs in the past for not doing the job properly, as it was seen, that said that we should have been involved in the scrutiny that was required and demanded by society. We will do that in the time ahead, but we are dealing with the crisis that we are dealing with. We are dealing with a global pandemic, and it would be remiss for us not to mention that, in the 24 hours from yesterday to today, 2,005 people across the world died from the coronavirus. That is not the matter that we are dealing with, but those out there in construction firms and anywhere else that are not providing essential services and that have workers coming in need to give their heads a shake, protect their employees and enable them to go home protected in order that they can protect their families.

Gareth, I accept that rules like this, that is statutory rules, can sometimes be viewed as technical, but given what I just said about the coronavirus, every one of us as MLAs — God willing, we will all come through this — will probably become experts on benefits advice or on some kind of advice because of the volume of people that we are trying to deal with. Hopefully, we will be able to respond to them. I do not regard this as technical. I regard it as practical. It is the practical understanding of the law. You are saying to people that the applications have to be done in writing, and those are the things that people need to know. They need to know what supporting material is required.

I am glad to see that the power to compel is in the rules. Hopefully, that will result in any organisation that is approached with a demand for material and sources not being able to hide behind the fact that they will not be coming forward. The appeal mechanism, the payment and the travel expenses are all practical things that the victims will want to know about. Perhaps some kind of information sheet could be given out to victims.

I am disturbed to hear that the relationship is not as good with some of the victims' groups as it is with others. I have worked quite closely with all of them in many ways in the past, and, as junior Minister, I was responsible for making the recommendation that the inquiry take place. I have worked very closely, for instance, with Jon McCourt in the north-west, and I know that victims are running out of patience. They have been trying to resolve this for 50 or 60 years. This is not something that the Executive have been dealing with over that period. They have inherited it, and I am glad that we are at this point today.

You talked about the certification, Gareth. I assume that we are also coronavirus-proofing some of the stuff now, because how do you have victims sitting down with solicitors? Of course, that cannot happen; they can do it over the phone. Given what has happened to a lot of these victims, some of them are struggling, and in employment, there might even be issues with access to the kind of technology that might be required. This has happened only in recent weeks, but have you coronavirus-proofed this to take account of some of the processes that have to take place around the involvement of the solicitors? Perhaps it has not always been possible for that face-to-face interaction to take place. Has that been considered?

Dr Browne: I will make a few comments on that, and Gareth can fill in if I leave some bits out. We have been trying, as far as possible from the outset, to make the system user-friendly for victims and survivors to make sure that they get the support that they need. We have also tried to have it online as far as possible, because that helps with the management of all the material, the efficiency and the costs. We have been working on an IT system that will be capable of taking bundled documents, putting them together and getting them out to the redress board, which can potentially work virtually. We do not necessarily always have to be in the one room, provided that we have access to all the materials. We have set out the system in that way to try to make sure that, as far as possible, it can be done remotely.

There are some restrictions on that. We can have options on an online form, and we are working on the details of that system so it can be done online through a solicitor, which Gareth talked about. It is there and is ready to go. There is potential for downloading a form and bringing in a paper form. The difficulty with that is that it creates administrative overheads and other problems. We have tried to keep it as online as possible, but we are mindful of the fact that not everybody will be able to access it online, that they are best guided by solicitors and that this can be retraumatising, as, I think, someone mentioned, and that the necessary support needs to be there.

The recent developments with coronavirus have made some of those things very difficult, as you can imagine. You made the point about access to solicitors. It may be that some things can be done over the phone and some things can be can be emailed in, but there may be some cases where the access is not there. We are looking at that at the moment because the advice, as you know, is changing day by day and things are tightening day by day. Have we "coronavirus-proofed" this? We have been

aware of the developments and have been trying to take those into account as best we can, but the advice and, frankly, the virus are moving more quickly than all of us at this point. We have tried to take it into account as much as we can and have tried to make sure that as much as possible is online, but there is no doubt that some of the restrictions will have an impact on the capacity to ensure a flow of information. For example, information has to come from PRONI. While some of it has been digitised and a lot is being indexed, that work is not complete. The instruction to staff at the minute is to stay at home unless their work is essential. There are issues about the protection of staff and the flow of information. There is also the potential for GP records to be accessed, but, I do not think at the moment that we want to put additional demands on GPs. In certain circumstances — this would be rare — additional assessments may be required. Again, that will be difficult in the current processes, and, as I said and as you mentioned, solicitors' practices are not all fully operational at the moment.

There are huge challenges with this in the current position. We will be talking with Ministers about what is possible in terms of *[Inaudible owing to mobile phone interference.]* We recognise how important it is for victims and survivors, and we recognise the time it has taken to *[Inaudible owing to mobile phone interference.]*

Ms Anderson: When the statutory rule goes through the Assembly *[Inaudible owing to mobile phone interference.]* the protection of staff and making sure that people are working from home. I want to ensure that, in the process of agreeing these statutory rules, we do not do anything that could result in inhibiting the things that you outlined and that would need to be taken into account in the event of the spread of this virus. We are told that what will happen over the next two weeks will be very difficult for us as a society and for people in general. I am concerned and want to know and be satisfied that there is nothing that we are doing here that cannot deal with the implications of the worst-case scenario with coronavirus given that staff may not be accessible, victims might not have access to solicitors and may go to GPs — we do not want to overload the GPs — and we may not be able to do face-to-face meetings. I want to know that there is nothing that we are doing that cannot be altered or amended to deal with the crisis as it unfolds.

Dr Browne: There are at least two aspects to that and probably more. The first is this question: is there anything in the rules that might be an impediment? We think that a flexibility has been built in — Gareth referred to this earlier — to different forms of *[Inaudible owing to mobile phone interference.]* The second thing is that these rules, of course, reflect the legislation, so some aspects of the rules have to be there in order to give effect to the legislation and no flexibility can be given. Where there is the capability of flexibility, some has been built in.

The broader question that you asked is very difficult for me to answer. If you are asking me whether the whole process, from start to finish and step by step, is capable of being delivered in full in the current conditions, I would have to say, no, it is not. I cannot think of any service that is capable of being delivered fully in current circumstances. At the minute, we are looking at the implications of the ever-tightening and ever-developing advice on the process and mechanism.

Ms Anderson: If that is the case, we need to forecast what that might look like in a worst-case scenario, because victims and survivors need to know what may or may not unfold with the time frames. They are all clutching onto that and hoping that, by the end of March, applications will open and the redress board will be set up. I am hearing from you that there may be difficulties in the time ahead because of the unknown extent of what is coming at us and the implications of all that. It is important that the victims and survivors are the first people we interact and engage with, because we do not want to go through a process and tell them, in a technical or practical way, "You may have to go through this process, but, by the way, because of what we are dealing with — it is not that anyone is kicking the can down the road — the implications will impact on the time frame for this".

Dr Browne: I agree. We have been trying to get all the mechanisms in place and to have them digitised, as I say, as far as possible because that is a protection, but not all parts of the process can be entirely digitised. Over the last day or so and particularly over the weekend, we have been looking with the revised advice at the implications for the process from end to end and at potential ways of dealing with that. We have not yet reached a conclusion on that. We will want to discuss it with Ministers and the groups. Even a short consideration of what is happening at the moment would enable anyone to conclude that there will be some impact on the process. The question is the extent of that and what is manageable.

Ms Anderson: What is that impact I think in terms of *[Inaudible owing to mobile phone interference.]* The rule book *[Inaudible owing to mobile phone interference.]* We need to be clear and concise and to

offer whatever reassurance we can to victims and survivors so that they are aware of what may or may not happen and know that we, as a Committee, will be involved in the scrutiny and the processing and can ensure that we minimise any impact insofar as we can. That is where it may be helpful in the time ahead for this to be interrogated and for some information to be relayed to us about what may happen. We are able to forecast in a worst-case scenario. We have been told by different Ministers what is the possible outcome in a worst-case scenario in terms of the number of people who may die as a consequence of the coronavirus and if we do not keep our physical distance. That is why we are all, hopefully, sitting far enough apart today — if Christopher does not sneeze or anything like that *[Laughter.]* We hope that we are doing everything. We are trying to protect the people who work in this Building and to keep ourselves safe. We need to demonstrate that to people, because there is no point in saying, "If you do not keep a physical distance and do not socially distance, you will be a person whose actions could result in someone dying. You can kill people with this if you are reckless". We all know that, but we want to be able to go to the victims and survivors, who will be watching this and asking, "What does that mean for us?". That is the kind of understanding that is perhaps needed, Gareth. Even if after the meeting some kind of explanatory note could be sent to us, as MLAs, so that we can relay that information. Like you and others, we are the people that victims, survivors and others are coming to for advice, guidance and support and to be their voice in these difficult, turbulent times.

Dr Browne: Thanks, Martina. That is helpful. We are looking at that at the moment. We need to discuss with Ministers what the handling plan is for everything. We will also want to have discussions with victims and survivors groups, as you mentioned. It is a moving situation.

Ms Anderson: I want to ask one more question about the redress board. It is on an issue that we dealt with last week: the compensation and the upper limit of £80,000 that was set and the response from the interim advocate that that was too low. The victims and survivors who I have spoken to do not want to see the process delayed, although they would like to see an uplift. Can the redress board award compensation above £80,000? A victim may, in the first instance, get the £80,000 until such time as the uplift procedures, the legislation or whatever that we discussed last week that would allow for an increased offer to be made are, hopefully, brought forward. Would the redress board need to make a declaration when it is telling the victim about the compensation payment victims, or will victims have to go through another process if there is an uplift so that such an uplift would be considered?

Dr Browne: The rules and scale have to be absolutely clear and agreed before the redress board can undertake its work. Those are the parameters within which the board has to operate, so that has to be decided beforehand. The cap currently is what it is. The interim advocate wrote recently to say that he was working with all the groups and that they did not want to proceed with changing the cap because of the potential impact on timescales and all the rest of it. It would not be possible at a later date *[Inaudible owing to mobile phone interference.]* That is my awareness.

Ms Anderson: It would or it would not?

Dr Browne: It would not be possible, because the redress board has to make its assessment on the basis of the scale that has been agreed and set. That may affect not just the cap but potentially what happens below that *[Inaudible owing to mobile phone interference.]* because in practice many of these tend to be relative *[Inaudible owing to mobile phone interference.]* so if you raise the cap, the possibility is that you raise all other relative considerations below that. It is not just a matter of some cases at the top end. That request has been withdrawn.

Ms Anderson: Just over the last few days?

Dr Browne: The interim advocate wrote —.

Mr Johnston: Yes, I think that he wrote to the Chair.

Dr Browne: Yes, just over a week ago.

Ms Anderson: We had legal advice last week and we dealt with it then, but we did not do that in the context of people saying, "This is not going to happen". We would not have sat through an off-camera meeting getting legal advice on that matter.

The Chairperson (Mr McGrath): My understanding is that there was a request about the potential to increase the threshold, we investigated it and then the groups came back to say that they did not want that upper limit. The two kind of ran alongside each other, with us trying to find out whether it could be increased, and at the end of that process they came back to say that they do not want that increase because they do not want the delay.

Mr Nesbitt: If I could add to that, Chair, over quite a period, Martina, there has been an informal gathering of representatives of the six main parties, including the Green Party, and, as I understand it, everybody was content to accept that the groups now do not want the potential delay or disruption, so we should stick with what we have.

Ms Anderson: I knew that. My understanding is that they do not want any delay or any disruption but if, given the legal advice that we got last week, this could happen and apply retrospectively — they do not want any delay for now and do not want anything that is going to in any way interfere with the process — it is certainly something that they do not want just taken off the table. I thought, going by the legal advice that we had last week, that that could happen.

Dr Browne: I have not seen your legal advice, and I am not aware of what it is, but our understanding is that the decisions are the decisions and an offer is *[Inaudible.]*

Ms Anderson: I certainly do not want to do anything that is going to cause any delay because that is exactly *[Inaudible]* in the first instance.

The Chairperson (Mr McGrath): I suppose that, in the context of this conversation we do not need to have the other conversation, so maybe if we can conclude here, we can come back to the other discussion.

Mr Stalford: Given that the legal advice was in private session, that element of the conversation can be done later.

Ms Anderson: Yes, we can do that later.

The Chairperson (Mr McGrath): OK. Sorry I was trying to read the advice, and now we have concluded at the same time *[Laughter.]* Gentlemen, that is the end of the questions. We do not want to see any delay in the process, and I am sure that the Committee will reach an appropriate decision after you leave. Hopefully, we can get the process, and, notwithstanding that, I suspect that we will invite you back to find out how things have gone and will maybe look at that. I think that maybe the impact of coronavirus on that process might be a subsection of some of the information that we will be looking for, so it might be timely if you were preparing something under that heading for the next time that we get you back. Thank you very much.