



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Briefing by Truth Recovery Design Panel

17 November 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Sinead McLaughlin (Chairperson)
Mr John Stewart (Deputy Chairperson)
Mr Pádraig Delargy
Mrs Diane Dodds
Mr Pat Sheehan
Ms Emma Sheerin

Witnesses:

Ms Deirdre Mahon	Truth Recovery Design Panel
Dr Maeve O'Rourke	Truth Recovery Design Panel
Professor Phil Scraton	Truth Recovery Design Panel

The Chairperson (Ms McLaughlin): I welcome Deirdre Mahon, director of women and children's services and executive director of social work in Health and Social Care (HSC) in Northern Ireland; Professor Philip Scraton, professor emeritus at Queen's University Belfast; and Dr Maeve O'Rourke, lecturer in human rights at the National University of Ireland (NUI), Galway. You are all very welcome. I advise you that the session is not being recorded by Hansard. However, the video will be available on the Committee website. You are all welcome this afternoon. At the outset, I thank you for the work that you have undertaken so far. It is extremely valuable work for everybody in Northern Ireland but particularly for the victims of the mother-and-baby institutions in Northern Ireland, in particular, and across these islands.

Before your briefing, it may be helpful to say that there seems to be unity across the Assembly in supporting the panel's proposals, and there is unity between Members from different religious and non-religious backgrounds in absolutely condemning the appalling treatment of women, girls and young children by the institutions involved. The homes are an appalling indictment of the nature of our past society, the way victims of sexual crimes were treated and the structure of just completely horrible misogyny that infiltrated our society for many decades. I believe that we still have a battle on our hands in that regard. There is little that makes me more angry and upset than the way women and babies were treated by the institutions on this island.

I invite Deirdre, Phil and Maeve to make their presentations.

Ms Deirdre Mahon (Truth Recovery Design Panel): Thank you, Chair, for inviting us here today. At the outset, let me say that we are absolutely delighted, on behalf of victims and survivors, that the Northern Ireland Executive have accepted in totality all *[Inaudible owing to poor sound quality.]* Monday was a momentous day for them and for Northern Ireland *[Inaudible owing to poor sound quality]* those women and their now-adult children *[Inaudible owing to poor sound quality]* for so long.

Credit needs to go to *[Inaudible owing to poor sound quality]* for achieving one of their interim goals. They have a long way to go yet, but it is a positive start. Thank you also to all the MLAs, councillors and other organisations who supported the victims and survivors in their work. We now move to the challenging task of making the recommendations become *[Inaudible owing to poor sound quality.]* However, Chair, there is one point of clarification that I would like to mention, and my colleagues will emphasise it. The media *[Inaudible owing to poor sound quality]* recommendation for a public inquiry, and whilst we have —.

The Chairperson (Ms McLaughlin): Excuse me, Deirdre. We have a bit of a problem with your speaker. Your connection is falling in and out. Is there anything that we can do at our end?

The Assistant Committee Clerk: Knock off her camera. I know it is not ideal.

The Chairperson (Ms McLaughlin): Yes. Deirdre, you will probably need to knock off the camera, if possible.

Ms Mahon: OK. When did you last hear me?

The Chairperson (Ms McLaughlin): We got the gist, but you may want to start at the beginning again, because what you have to say is important. I know that a lot of victims and survivors are listening in today.

Ms Mahon: OK. I will start again. Can you hear me clearly now, with the camera off, Chair?

The Chairperson (Ms McLaughlin): Yes, Deirdre.

Ms Mahon: We are delighted, on behalf of victims and survivors, that the Executive have accepted all the recommendations. Monday was a momentous day for them and for Northern Ireland, when the voices that were silenced for so long finally felt heard. We would not be here without those women and their now-adult children having tirelessly campaigned for so long. Credit needs to go to them for achieving one of their interim goals. They have a long way to go, but it is a positive start. Thank you to all the MLAs, councillors and other organisations who supported the victims and survivors in their work. We now move to the challenging task of making the recommendations become reality.

There is one point of clarification, Chair. The media have been reporting on our recommendation for a public inquiry, which we have, of course, recommended. However, we have, in fact, recommended an integrated approach that includes an independent panel. My colleagues — the other panel members — will explain the relationship between the two in our submission to you today.

I will hand over to Dr Maeve O'Rourke, who will describe our recommendations, and then Professor Phil Scraton, who will explain in more detail the role of the independent panel. We will then take questions, if that is OK. I will hand over to Maeve now.

The Assistant Committee Clerk: Maeve has dropped off.

The Chairperson (Ms McLaughlin): She is not there. She has dropped off.

The Assistant Committee Clerk: Phil is there.

The Chairperson (Ms McLaughlin): Maeve has dropped off, Deirdre.

The Assistant Committee Clerk: Oh, she is back.

The Chairperson (Ms McLaughlin): Oh, she is back.

Ms Mahon: OK. Maeve, I just handed over to you.

Dr Maeve O'Rourke (Truth Recovery Design Panel): Thank you so much. I lost connection at the same time as Deirdre, unfortunately. Assuming that you can all hear me OK, I will say that I am extremely glad to be here today and for your time. I will focus on the integrated truth investigation part of our recommendations.

Of course, as you will know, there are five key recommendations that we have made. Number one is the adoption of guiding principles that will apply to every measure that forms part of the entire endeavour. They are derived straight from what the survivors told us but also from our evaluation of comparative processes in different jurisdictions, as you will see in chapter 11. When something has the potential to become unwieldy and when the matters at stake are so important, the adoption of guiding principles seems to be an important thing to do. Second of all is a recommendation that we are really thrilled has been accepted, which is that responsibility for the endeavour be placed at the highest and most centralised level in the Executive Office. The third recommendation is the integrated truth investigation, which I will come back to. The fourth is about access to records, which involves three components. The first is a very immediate need for a statutory preservation requirement in law requiring preservation and prohibiting, with criminal penalty, the destruction of any relevant records, given that they are held in myriad locations. The second is the progression of guidance for data controllers on how to implement personal data protection legislation that is already in place. Thirdly and importantly is something that will come once the independent panel is set up and working with survivors: legislation to create a permanent archive that gives a permanent tone to all of the work that has been done through the inquiry to gather records. That has been done in other jurisdictions with, for example, the Stasi Records Agency in Germany and the National Centre for Truth and Reconciliation in Canada. There would be a permanent centre of information provision and education to guarantee the non-repetition of similar abuses in the future. The fifth recommendation is about redress, reparation and compensation. It is extremely welcome to see a commitment to providing redress at the beginning of the process of truth telling. That has precedent in other jurisdictions. The Commission to Inquire into Child Abuse in the Republic of Ireland operated alongside the Residential Institutions Redress Board. In Scotland, there have been efforts to provide early interim redress payments before coming to the end of an investigation.

I go back to the third recommendation. There has, as Deirdre mentioned, been quite a bit of focus on the fact that, on foot of survivors' clear views, we recommended a public inquiry but as part of a two-stage integrated process of inquiry. The first part, which does not require legislation and must start immediately, is the independent panel. An independent panel and a statutory public inquiry have different powers, and therefore they have different possibilities and purposes. Given the complexity of the issues and the views of survivors and their diversity, it makes sense for those procedures to work together, rather than having to choose one over the other. There are many things that the independent panel can get to work on immediately that will then feed in to and, indeed, reduce some of the burden of work on the ultimate public inquiry. Many survivors stated that they wished to provide testimony in a non-adversarial forum; in other words, they do not wish to be put under cross-examination by a judge or by legal representatives for the institutions, agencies or professionals concerned. They wish to provide their testimony in a way that they have control over: some in public, some in private and some wishing their testimony to be permanently preserved for the education of future generations.

An independent panel has great flexibility in how it goes about gathering evidence, but an independent panel has limitations. It cannot exercise any legal powers, because it does not have statutory underpinning, to require the production of records or of testimony that is not voluntarily given. That is where a public inquiry comes in. Also, a statutory public inquiry can name individuals, because its procedures allow those who might be criticised to be legally represented. That is one of the limitations of a panel. While people may wish to give their evidence in public in a non-adversarial way and did so in Canada through the truth and reconciliation commission, it may not be possible for them to name individual alleged wrongdoers in public. It is a matter of thinking creatively, albeit within the law, in what the independent panel can do and get to doing straight away.

The panel members, according to survivors and our research, should include people from a range of disciplinary areas. Appointments should be made from a list of nominations, a shortlist created by survivors — this is in our recommendations — and the panel should regularly consult a forum of survivors and relatives, including those in the diaspora. The creation of such a forum is an immediately needed step, because it will be involved in creating that shortlist of the individuals who will make up the independent panel. We recommend that the panel members also include individuals with lived experience.

What work do we recommend the panel doing, bearing it in mind that it comes immediately and then feeds into the work of a statutory public inquiry that will need legislation and therefore will take more time to become operational? An independent panel will gather and catalogue as many records and archives as it can within existing legal powers and the voluntary contribution that is required. That will be across jurisdictions to the extent possible. Importantly, it will assist victims, survivors and relatives in obtaining information. That will be groundbreaking in terms of what inquiries in this field do. It is clear that survivors and relatives need archivists, genealogists, advocates and legal advocates, where

necessary, to assist them in gathering records. Also, the independent panel needs to be able to understand the barriers that still face people in that respect.

The independent panel should search for unmarked graves, to the extent that it can without additional legal powers. It should hear testimony in a venue and in a manner tailored to the individual wishes of survivors and relatives. It should investigate and make findings with a focus on human rights violations and on the systemic harms that were suffered and on the nature of the harms that were suffered. The independent panel is about allowing survivors and relatives to fully inform, in the way in which they are most comfortable, about the systemic harms, which then informs the more granular investigations of a public inquiry in due course, which also potentially involves naming alleged wrongdoers and individual institutions.

The independent panel, to the extent that it cannot get to the bottom of issues, will recommend issues for the public inquiry to further investigate. Importantly, as an overall measure, the panel, through its collaboration with the forum of survivors and relatives, will keep a watching brief on how well all of the recommendations of our process are being implemented.

I will stop there. Thank you very much. I look forward to your questions.

Ms Mahon: As someone who has been very involved [*Inaudible owing to poor sound quality.*]

Professor Phil Scraton (Truth Recovery Design Panel): We cannot hear you exactly, Deirdre. The line keeps breaking up.

Ms Mahon: Oh dear.

Professor Scraton: I assume that everyone can hear me OK, right?

The Chairperson (Ms McLaughlin): Yes, we can hear you.

Professor Scraton: OK, fine. Thank you. The first thing to say, quickly, is only a matter of course and is not really that interesting: my name is Phil Scraton. I am "Phil", not "Philip", and I am "Scraton", not "Scratton".

The Chairperson (Ms McLaughlin): Sorry. Apologies on both.

Professor Scraton: Do not worry. It was a double whammy. I much appreciate getting them both. Everybody calls me "Scratton". Anyway, it does not matter.

I have little more to say, really; I want to get to the questions. I have little more to say than what Maeve has already outlined about the panel. The media have had a really difficult time getting their heads around the construction of an independent panel, and I think that quite a few of those up at Stormont have had a bit of trouble getting their heads around it as well, precisely because it is relatively new. The first independent panel that was held was the Hillsborough independent panel, and, as many of you know, that ended over 20 years of controversy around the Hillsborough disaster and demonstrated what you could do if you had an independent panel of carefully selected contributors who would go into all of the documentation that was available at that time. In fact, in Hillsborough, it was documentation from over 80 institutions. Over 10,000 documents were eventually downloaded, and two million were consulted. An independent panel has that opportunity to delve into that material.

The other issue is that a further independent panel was appointed on the Jersey homes inquiry, and that independent panel took evidence. It did not go into a lot of detailed historical evidence in writing; it took oral evidence from, on the one hand, people who had been abused in the homes who wanted to be identified but also those who did not want to be identified. It gives an opportunity for people to come before a panel, to tell their truth, to have their truth listened to and to not be examined by smart lawyers representing other institutions. It is purely a truth-telling exercise, and, of course, it gives legitimacy to those stories, as Maeve has already outlined. The importance of that is that, if you wait for a statutory inquiry before you hear that evidence, much of that evidence is subject to examination. That puts many people off giving that evidence. That is why we have recommended the two. As Maeve has illustrated, they are distinct, but they are integrated. The idea is, to use the phrase that we use, that one bleeds into the other. Obviously, for the statutory public inquiry, there will need to be legislative change, and, as Maeve said, we do not need that to appoint an independent panel.

That is the core of what we say. Most of the media have missed it, and most of the political statements have missed it. It is unique. It has never been done in any of the islands, and it has not even been done internationally. There has never been this kind of process, where a fully independent panel of "experts", working alongside representatives of families and survivors, takes that evidential base and that evidential base becomes the foundation for the public inquiry. As I said, it is unique. It would work and would be an excellent contribution, but the most important thing, again, as Maeve said, is that it puts the families and survivors front and centre of the process. We know that all of you are committed to that.

That also connects clearly to the really difficult problem that has occurred for many families, which is open access to all their records. That is our fourth recommendation, and it is important that that, as a matter of urgency, is established. We are to understand that it is already in process, but it is absolutely crucial that families have direct access to all their records. It is about their lives and those of their loved ones. The cavalier way in which access has happened up to now — some not getting access; some getting access but being monitored and all that; people not being able to take away or copy records — all that has got to go. The records relate directly to their lives, and they have lived with that trauma for so many years. It is a basic human right that we all should be able to identify all the documents that relate to our background, birth and development.

The final issues, which are covered in the fifth recommendation, as Maeve indicated, are redress, reparation and compensation. Compensation is always a tricky issue in these matters, as I know only too well from the rest of my work, because it is often assumed that people are seeking financial redress simply because they want somehow to gain access to funding. That is not the case at all. All people who have been wronged and so seriously and severely wronged must receive compensation for that wrong. It can be instituted immediately by early payments and then, in the longer term, with full assessment. That is part of the process of redress and reparation, as would be permanent memorials to that hideous period in our history. Only then can we begin to demonstrate and recognise the wrongs that have been done. However, I have to say this: we can never put back the pain or the hurt. I therefore encourage all members, in all their conversations with anybody, to avoid the word "closure". There can be no closure on such horrific, horrible, dreadful circumstances of history. What there can be is some form of reparation and redress and some form of satisfaction through access to justice, but we can never put back the clock on the suffering of all the families who gave their time to us and shared their lives and experiences with us over the past six months. That is the foundation of the work that you have before you. It is a tremendous compliment to their fortitude that they came and put their trust in these three people. We promised them that we would never break their trust, and we believe that we have arrived now at a situation where collective responsibility being taken across the floor in government will bring about at least some form of redress.

Thanks for listening to me.

The Chairperson (Ms McLaughlin): Thank you very much to the panel for their words, and thank you, Professor Phil, for taking the time to explain the dual process and how integrated it is. It is really important for the public to be aware of that and of how one is dependent on the other but the independent truth panel can happen immediately. Yes, there is no closure. There is intergenerational pain that goes with the experiences of victims and survivors.

What has been the engagement from the institutions? Which institutions are fully engaged and which perhaps are not? Did you gain a feeling that they accept blame and responsibility? Secondly, how confident can we be that the institutions fully support the redress payments and will meet their legal and moral responsibilities? We have experience here with the historical institutional abuse process, and that causes me concern.

Ms Mahon: Chair, I will take the first part of that question. Can you hear me now? I have taken out my earphones; I thought that might be easier.

The Chairperson (Ms McLaughlin): We hear you now, Deirdre. Sorry about the problems earlier.

Ms Mahon: That is OK. We have not engaged with any of the institutions. Our job was to work with victims and survivors to decide the terms of reference for the next stage and what this would look like. We have not directly involved ourselves with any of the institutions. I will say, however, that, for the research that was done by Queen's University and Ulster University, the researchers had difficulty in accessing records from some of the church institutions. Whether that has changed in the past year remains to be seen. When we move into the next stage and have the independent panel work, it will

begin its work, begin its research and try to locate records. At that point, we will know whether the institutions will cooperate. It is too early for us to say. I do not know whether Maeve and Phil want to add anything to that.

Dr O'Rourke: I will jump in there. I agree with everything that Deirdre has said. I re-emphasise that the academics whose report preceded our work clearly attest to the difficulties in accessing records. It is not a good sign. That is why the preservation requirement in a small amendment to some Bill going through or in stand-alone emergency legislation is so important.

On the second question about how confident you can be that religions will participate in reparation, all I will say, as I lack extensive experience on the ground in Northern Ireland and more of my experience has been with the religious orders in the Republic of Ireland, is that access to records is the absolute key to enabling people to go to court, to the extent that they are still able to do that, of course. It is difficult, if not impossible, depending on the case. I mean the civil court. Access to records is the reason why people cannot get there. They cannot access their personal files that demonstrate who knew what, what happened to people and, for example, whether there is a consent form for an adoption. They need access not only to their personal records but to the administrative archive. Without that, they cannot see who knew what was going on at a general level, which goes to questions of compliance with a duty of care, negligence and what have you. If there is a desire to assist people in holding the institutions to account, access to records is an absolutely fundamental requirement to enable anybody, to the extent that there is still any chance of getting to court.

Professor Scraton: I obviously concur with what Deirdre and Maeve have said. One thing that can be done in a short time is an approach by or on behalf of the Executive to all institutions — we are talking about not just religious institutions but other institutions such as Barnardo's that had any involvement with the homes — with a request or even a demand that those institutions do not dispose of any of the records that they hold. In my experience, one of the things that happen in situations like this is that organisations deny that they have the records. They deny that they kept them, or they say that they were incomplete or whatever. When they are forced, usually by legislation, to reveal, suddenly the records appear. That is because, historically, institutions keep records for obvious reasons. They keep them for any cases that might come up against them regarding those who were in their care. There is no reason — this is really significant — why that issue of access cannot be addressed immediately with an approach to all the organisations to preserve all that they have.

The Chairperson (Ms McLaughlin): Thank you for that. In our experience of dealing with victims and survivors of historical institutional abuse, while the redress process was promised to be very much victim-centred, it turned out to be legalistic and unresponsive. How can we avoid that happening in this case? What lessons can we take from what has gone before us?

Ms Mahon: Maybe I will start on that, Chair. One of our recommendations is that a consultation forum should be set up that is led by victims and survivors. We also suggested that that consultation forum should decide how the redress scheme should work and that it should take some control of that. You are absolutely right: we do not want to repeat the mistakes of the past. This cannot be added to existing redress schemes that are very legalistic and are led by lawyers and judges.

There are models throughout the world that the consultation forum could look at, maybe, when deciding how best that might work. I understand that a small amount of legislation will be required for the redress scheme to make sure that it does not impact on people's benefits. However, we definitely want that consultation forum to be in some degree of control. *[Inaudible owing to poor sound quality.]*

The Chairperson (Ms McLaughlin): We are experiencing problems with Deirdre's sound as well. Her line is breaking up a little.

Ms Mahon: I will keep my camera off.

It was really about the consultation forum being in control of that. I see that Maeve and Phil were trying to jump in, so whoever wants to speak first can do so.

Dr O'Rourke: Thanks very much, Deirdre. I will be quick and then hand over to Phil.

Although, of course, that is something that there has to be consultation about — the forum that is set up as part of the independent panel will be able to serve many different functions — it is perhaps

worth noting a few things about the previous schemes in the Republic of Ireland. Others may have views on the scheme that followed the Hart inquiry, for example.

There was no need for the Residential Institutions Redress Board in the Republic of Ireland to be as adversarial as it was. That was a real failing. The Government capitulated to the institutions' desire to cross-examine every allegation of abuse, even though the legislation stated that an award was not evidence of wrongdoing. It was an ex gratia scheme, meaning that it did not recognise wrongdoing, and it was held entirely in confidence. There really needs to be extreme scrutiny of what procedures are required. If it is an ex gratia scheme, it is not a court and it is recognised that payments are tokens — invariably, they are not full and complete, assessed damages — and you really need to be careful about applying the kind of core procedures that would otherwise operate.

The other thing that we learned with the Magdalene laundry scheme was that there may be no records and, even where there were records, they may not be accurate. That was found by an independent decision maker installed in the Department of Justice on foot of an ombudsman's report about maladministration of the Magdalene laundry scheme in the South. They may not be accurate, and they may not have been compiled accurately at the time because, for example, no one wanted it to be on paper that child sex abuse victims were being taken out of school and put into Magdalene laundries so that they would not "have an influence on the children around them in school". Obviously, that was not how things were supposed to work.

It is important not necessarily to get rid of lawyers altogether but perhaps to provide them to the victims for the purposes of swearing an affidavit so that they have sworn evidence that can be accepted as the evidence of what happened to them for the duration of their stay. Otherwise, you invariably end up relying on the alleged wrongdoers' evidence.

The final thing to say on redress is that the UN Committee against Torture has found in a recent decision in the case of Elizabeth Coppin v Ireland that it is not permissible, when you are dealing with inhuman or degrading treatment as a matter of international law, to force people to waive their right to go to court and their right to accountability. What can, instead, be done is, if people succeed in court at a later date to the extent they have been paid some money by the Government, that can be reduced from their award, if any, against the state. That is the way to deal with the issue of some people wanting to go to court. You cannot force people to waive their right to accountability and their right to assert that they had a right to custody of their child. That practice should not continue.

Professor Scraton: I echo exactly what Maeve has just said. Having lived in the North for 17 years, I understand well the failings of the Hart inquiry, in that many of the families whom I know are awaiting redress. I want to make one thing clear: we, as a panel, were aware of that, and, when you look at the recommendations that we made, you will see that there are eight recommendations on redress, reparation and compensation alone and over 70 sub-recommendations, if you like, throughout the five key recommendations. We have to avoid the mistakes that happened after Hart and that continue today. We have had approaches about that from many of the families and survivors, because they are well aware of the problems that have been faced. All I will say is that I recommend that everybody read closely the sub-recommendations within the five main principles, because that is where we have attempted to detail and provide a blueprint for what should happen next.

That was a really important part of the work. Obviously, it was difficult, because we had such a short time in which to do all of that. However, we felt that we had to cover all the bases on the way in which a financial redress scheme would be developed and how that would be done in consultation with victims and survivors. One of the major issues is that people's existing access to benefits should not in any way be disturbed by any interim payments that they have received. These comments are not just being made off the cuff; they are being made because we have listened to the families and survivors in that situation and have learned from the deficiencies post Hart. I want to emphasise that issue. The three of us encourage whomever is appointed at the next stage to think in those terms. That is what I meant when I said that this is a completely unique, "Start again" situation. I wish that some of the key elements that we have progressed could have been there for those who endured the Hart inquiry, many of whom have said that they wished that they had never gone before it.

Mr Stewart: Deirdre, Phil and Maeve, I am having a few technical difficulties too, so either you hear me or you see me. It is probably better that you hear me today. Thank you for the evidence and information that you have given so far. I missed a little bit, because I was going back and forth, so apologies if I cover something that you have covered as well.

I am sure that you agree that one of the key things about a victim-centred process in any shape or form is communication and keeping victims and survivors updated. This is probably through no fault of yours, but I regret to say that I was speaking to a few victims and survivors to let them know that you were coming to the Committee today, and they were upset by the fact that they had not heard about that. They felt that there remains a void and an inability to communicate with victims and survivors. Do you think that a recommendation could be that there should be a designated person or team to communicate, liaise with and update victims regularly about exactly what is going on? As you know, they live with it every day and they often feel that they do not hear about things. I am interested to get your feelings on that, first of all.

Ms Mahon: I will come in on that. Hopefully you can hear me, John. I have turned my camera off to see whether that makes it a bit easier.

Mr Stewart: Yes, I can hear you.

Ms Mahon: Communication is always a big challenge. We finished our work early in October, but, for the victims and survivors, the work is only beginning. We sent a link to them this morning so that they could watch today.

I met TEO this morning to talk about how it will access all the contacts that we have built up over the past six months. We need to figure out the privacy and data protection issues, but most of the survivors have given permission for their details to be passed on as soon as TEO, quickly, get that sorted out. As I understand it, TEO is recruiting staff, as we speak, to make sure that there is some sort of continuity and a system for communication. As I said, the sooner it can set up the consultation forum, the sooner that will become a conduit for communications to all victims and survivors and the sooner whoever will lead the independent panel will have a group with which to communicate regularly. Those systems need to be put in place as a matter of urgency. That is absolutely crucial, John. All the good work could be undone if we lose that communication.

Mr Stewart: Absolutely. Thanks for that. I will move on to my next point. We discussed the institutions and the need to have information readily available. What could be better done to start a dialogue ahead of cross-border cooperation on information-sharing between Northern Ireland and Republic of Ireland Governments? Obviously there will need to be communication to ensure that the information flow is there. How do you think that could best be moved forward?

Ms Mahon: Do you want to take that, Maeve?

Dr O'Rourke: Sure, yes. The preservation order needs to be in legislation in the North and the South. That has to be conveyed in discussions. I do not think that there is anything yet in the Republic of Ireland that requires the religious orders to preserve everything that they have. In the Birth Information and Tracing Bill, there will be something in relation to adoption records. That will possibly not be broad enough, but, at least, it will be a start. There should be discussions about that. I do not see why legislation should not be identical here.

The matter of accessing records is somewhat complicated. As that matter is so complex, the independent panel's efforts and its interactions with survivors in making all the efforts that it can to access records in both the North and the South will be important. It is difficult for survivors and their relatives, as well as the general public, to access information in the South. The reasons for that need to be brought to light by the independent panel. My view is that there is a requirement for legislation in the South about producing records that can then be used also in the North. I and others have been doing lots of work to encourage the Irish Government to legislate for the opening of archives, because the archives of previous inquiries are not available to the general public and are available only in a limited way, through personal data access, to survivors. I would be glad to be in touch with anyone who wants more detail on that.

In our recommendations, the purpose of the independent panel and its interactions with survivors, who know so much about what is going on with records, is so important. The independent panel can then advise the public inquiry on what it needs to command the production of, although, of course, it will not have powers to command the production of things from the South. Even if the religious orders hold things in the South, perhaps their Northern representatives can be commanded; that is one thing. State files from the South could be voluntarily produced. However, if there are arguments that we cannot have something because, under legislation, it was sealed a decade ago because it was part of an investigation, there will be a need for legislation. It is complicated, but we hope that the

independent panel will get to the bottom of it. I emphasise again that we recommended that part of the independent panel's expertise should be archives, data access, genealogy and all of those relevant skills.

Mr Stewart: OK, thanks for that, Maeve; that is helpful. I will move on to the next issue. Many victims and many others, myself included, will be horrified and angered by the seriously lacking redress scheme that was announced in the Republic of Ireland yesterday. With that in mind, what are the panel's views on that announcement about the redress scheme and the ridiculous notion about babies younger than six months, who would not remember their time in an institution, and that payments are to be made only to adults who, as babies, spent more than six months in a home? Surely you think that that takes away from the many years of suffering and trauma that those people suffered in adulthood as a result. That could not be considered here.

Ms Mahon: John, we were absolutely appalled by that. I was talking to Maeve yesterday, and she is so angry about that. I know that Phil was trying to get in to say something else. *[Inaudible.]* I know that you are all over that.

Dr O'Rourke: The clear problem here is that the Mother and Baby Homes Commission of Investigation, which the Government followed in the design of its redress, failed to acknowledge the key harm that was done and the biggest, most serious human rights violation, which was the forced and unlawful separation and denial of consent through incarceration, institutionalisation and exploitation, including forced labour, denying people the money that they might need to live elsewhere and all manner of psychological coercion.

The separation of mother and child is not recognised as a harm in what the Government announced yesterday. The Mother and Baby Homes Commission did not find evidence of forced adoptions, non-consensual separation, incarceration or forced labour generally. Its findings were highly problematic and are under challenge through High Court judicial review proceedings, including by Philomena Lee, whom everybody knows.

If our recommendations are implemented, they can be so transformative of the process in Northern Ireland, so that we can understand that the key harm under investigation is unlawful enforced family separation. That never stopped; it is ongoing.

Mr Stewart: Absolutely.

Dr O'Rourke: *[Inaudible]* the very first thing we said that the independent panel needs to do is to help people to access their identity. We are dealing with an ongoing situation of human rights abuse. The first thing that the inquiry *[Inaudible]* cease that.

Mr Stewart: OK, thank you for that, Maeve. I absolutely agree. I do not know whether anyone else wants to come in. Did you want to come in on that, Phil?

Professor Scraton: I know that Maeve would not say it, so I just wanted to say that one of the great assets that we had on our panel here was Maeve herself, primarily because of her all-Ireland perspective, particularly her knowledge of the South. She is the foremost person, as far as I am concerned, on the issues. If we are looking — we should be — at how we deal with the cross-border links that you have just described, John, Maeve is the person who should be consulted.

Mr Stewart: OK.

Professor Scraton: I am not imposing something on Maeve that she does not know I am going to say. It is absolutely crucial that the knowledge base that we had for this panel, which was so strong because of Maeve's presence with that knowledge of the South, is put to good use to avoid the very issue that occurred yesterday. There will be other issues. No matter how we go forward with the consultative power and the next set of procedures, we should bear it in mind that Maeve's expertise is there to be drawn on. I notice that, as I said that, she has just dropped off the connection.

Ms Mahon: You have scared her off, Phil. *[Laughter.]*

Mr Stewart: Thanks for that, Phil. I totally agree with you on that point. I hope that Maeve will drop back in.

My last question was to Maeve — she mentioned this — but I am sure that the two of you can cover it. It is about the ex gratia payments that are to be made in the Irish Republic. I hope that you can assure us that compensation here will not be ex gratia and seen as a mere goodwill gesture but will be an acknowledgement that it is essential and rightful compensation for all the injustices suffered by victims, who should still retain their rights to publicly discuss their lived experiences. A mere goodwill gesture will not be acceptable and would fall far short of where it needs to be. What are your thoughts on that, folks?

Professor Scraton: As Maeve is gathering her thoughts before she comes back in, I will read you the recommendation that we made. The five financial redress schemes should be prioritised and there should be automatic standardised payment and entitlement to further individually assessed payment. The scheme should include all women who spent time or gave birth in any of the institutions. It should not be means-tested, should not compromise existing social welfare supports, should not require waiver of legal rights and should apply to all. They are the recommendations that we made, and, obviously, we stand by them. As you described, what is happening in the South is a denial of some of that.

Mr Stewart: Absolutely.

Professor Scraton: We have to take it lock, stock and barrel. Those recommendations have been thought through in detail to avoid the very anomalies that you have just raised, John.

Mr Stewart: OK. Thank you for that, Phil. I will let others come in. I really appreciate your time and answers today. All the best.

The Chairperson (Ms McLaughlin): I think that we all looked on in horror at the RTÉ news last night. If there is a way not to do it, it was demonstrated last night. It was a hard watch, particularly for victims and survivors.

Ms Sheerin: I begin by thanking Maeve, Phil and Deirdre for their presentation and for answering questions. My first question pertains to the point that was just made about the Twenty-six County Government proposals and the mistakes they and the commission made, which have been exacerbated by the details of the proposed redress scheme, such as the fact that they have put those time criteria on victims and excluded anyone who was in a home for "only" six months. I am not trauma-informed, but anybody who is trained in the impact of trauma on people's lives will tell you that, no matter how young you are when that trauma occurs, it will have an impact on your life. People were removed from their mothers at such young ages and moved to other families. They have maybe spent time wondering where they came from, and their whole lives have been narrated by that. For those people, this adds insult to injury.

I know that there is reference to cross-border work at the outset of your recommendations. How much were the mistakes made south of the border to the forefront of your minds when you were thinking about what not to do?

Ms Mahon: I will start on that, Emma, and then let the others come in. You are 100% correct. About 50% of our victims and survivors raised issues about cross-border access to records and the fact that they did not know where they were from. Their mummy was maybe from the North of Ireland, and they were adopted from the South of Ireland or vice versa. There were women from the South of Ireland who were placed in institutions in Northern Ireland and gave birth there. It is a huge issue.

One thing to point out, without stating the obvious, is that, when we had partition in the 1920s and the creation of the North and South of Ireland, the Churches did not separate. The Churches remained all-Ireland institutions, as they do today. That became a complicated factor, particularly in relation to access to records and, now, redress. As Phil said, we were blessed to have Maeve on our panel because she was able to highlight what not to do and what was being done wrong not just in the South of Ireland but elsewhere in the world. Maeve has done a lot of research in that area. We were really at pains to make sure that whatever we recommended was the best that we could get from what did not happen elsewhere — the least dirty alternative. We turned it around to say, "No, we can't do that, because it did not work when it was done elsewhere." That was really important to us, and the cross-border issue was huge. I will let Phil and Maeve come in on that.

Dr O'Rourke: Thanks, Deirdre. Hopefully everyone can hear me OK. The survivors were well informed about what not to do, which was great. However, one of our key recommendations was the

creation of a joined-up archive North and South, the legislation for which would be designed on the basis of the recommendations of the independent panel with its forum of survivors, because, ultimately, there is a need to change some laws to clarify others. That is needed North and South, and it would sustain the functioning of a permanent archive. In chapter 11, we mentioned the example of the Stasi Records Agency in Berlin, where, every day, the archivists work with the legislation in one hand, as it tells them exactly what information people are entitled to. That includes information that names other people who affected your life, because personal data is not just information about you and no-one else; it is information that involves you and someone else, and you both have the right to it. Often, that is not understood, unfortunately.

The other thing that we made sure to recommend and the survivors made sure to point out is that the first job of the independent panel of the public inquiry is to assist people in obtaining information. That was not the case for the Mother and Baby Homes Commission of Investigation in the South. In fact, the commission's terms of reference explicitly stated that it would not intervene in anyone's efforts to trace a family member. The commission chose not to give a single document — none of the personal data that it held — to the people to whom it belonged. It had records of where people's deceased children were but refused to give the information to the families. In this case, the exact opposite needs to happen. The investigations are for survivors, and, as I have said, they are about forced family separations, and that needs to be at the forefront of the panel's work.

We also recommend that the independent panel be able to hold public hearings of people's testimony in an unchallenged way. Of course, there would still be limitations on what people could say. For example, they may not be able name people who are living and who, they allege, wronged them. Possibly. Those would be legal issues for the independent panel to figure out. We can see from the Truth and Reconciliation Commission of Canada that not wanting to be cross-examined does not mean that you do not have a right to speak publicly. Holding public hearings of people's testimonies in a comfortable way, admittedly with some limitations, is extremely important. In the Republic, people have been forced into confidential proceedings, even when they might have wanted to inform the public about what happened to them.

Finally, when legislation is tabled for the statutory inquiry, it will require new rules of procedure through a statutory instrument. We have recommended ensuring in that statutory instrument that all victims are presumed to be core participants and therefore afforded full access to the proceedings and representation. Victims are usually represented in groups in public inquiries, but we know from the Hart inquiry that victims are not seen, by default, as core participants. Certainly with the mother-and-baby homes commission in the Republic of Ireland, they were not seen as core participants [*Inaudible owing to poor sound quality*] in the same way that the alleged wrongdoers could.

Professor Scraton: The strength of the independent panel is that it can organise the evidence-gathering in whichever way it wants. There are no statutory rules that it has to abide by. In the Jersey homes inquiry, for example, the hearing of evidence in private or publicly was established by the three-person panel, and it heard that evidence. We recommend a much bigger panel than that. Obviously, there would be anomalies in evidence. People cannot remember accurately stuff from 30 or 40 years ago, so they are not being cross-examined on that testimony. The testimonies are gathered together.

That adds to the other issue that Maeve has just mentioned, which is the preservation and production of all relevant records. The beauty of the independent panel is that it can access all the relevant records that exist, look through the testamentary evidence, add to that and take evidence itself. It can pull all that together and then hand it on to the statutory public inquiry. The statutory public inquiry will not try to enforce the taking of evidence from people who do not want to be examined in a public inquiry. That is the beauty of the system. That process will enable us to get the maximum amount of participation and of people's stories and testimonies and to dovetail those with access to their records, which they have a right to. Access to records is the one issue on which all the people whom we interviewed or took evidence from were unanimous. Access to records was a priority for all, and anybody listening to this conversation would understand why.

Ms Sheerin: Thank you all for that. The human rights of victims and survivors, looking at the issue through a human rights lens, is a guiding principle in your first recommendation. We would not have had those institutions and so-called homes without misogyny and, basically, an attitude of misogyny having been normalised throughout society. Are you looking at this through an intersectional lens given the disproportionate impact that it has had on women and girls, obviously, but, further to that, on people living with a disability? How much will that play into your work, and how much did it play into your recommendations?

Ms Mahon: Thanks, Emma. I will hand over to Maeve for that because she is our human rights expert. Our recommendations are built within a human rights framework. We spent a whole day in Belfast working that out. Everything that we did was done with an eye to those gender and disability balances. Our recommendations are made within that framework. It is spelt out in detail in chapter 11, I think, and chapter 2.

Dr O'Rourke: An extremely important job of the independent panel, through its non-adversarial hearings, is to enable the survivors to explain and illuminate the full extent of the abuses. Let us face it: these gender-based and other forms of discriminatory abuse are not well recognised yet anywhere in the world. There are no European Court of Human Rights cases about forced adoption and what consent means, for example, for an institution. There is very little. What we have are survivors who understand extremely well how their human rights were violated.

The independent panel will listen to survivors in the way in which they are most comfortable. The systems and harms will be explained so that the general public can be as fully informed as possible and the public inquiry can direct its investigations in the most human rights-focused and sensitive way possible. When we talked about the membership of the panel and the public inquiry, we said that the expertise must be human rights-focused. We mentioned that the inquiry panel should include specialist expertise in gender-, class-, or ethnicity-based human rights abuse and intergenerational trauma. As you note, in the guiding principles, we also mentioned a focus on disability. You hit the nail on the head: nobody understands the intersectional nature of the abuse better than the people who suffered it.

Professor Phil Scraton: When we talk about intersectionality, we have to add age into the equation. Quite a number of the women would be considered in law to have been minors, certainly on the cusp of adulthood. The issue of people making decisions for them is part of the intersectionality of gender, class, ethnicity, age and disability. Ethnicity is important. Whichever way we cut it, we have to look at the issues around sectarianism as well as racism.

Mr Sheehan: Thanks to the panel for your evidence. Some of the testimony that we have heard over the past few days has been absolutely harrowing. I commend Michelle O'Neill for ensuring that this was brought into the Executive Office as soon as it was. I acknowledge Monday's statement that steps will be taken as soon as possible to set up the consultative forum and the independent panel and that moves will be made to preserve the records, if possible. All of that is good news.

You probably do not remember this, Phil, but we spoke outside St Peter's Cathedral after Justice Keegan delivered her findings in the Ballymurphy massacre case. We had a discussion about the mother-and-baby homes. I was struck by how emotional and angry you were about some of the testimony that you had heard from some of the victims and survivors in those cases. Some of the evidence that we hear about babies being taken from their mothers never to be seen again and about the victim-blaming of young women and girls who were victims of rape and incest is almost unbelievable, but we all know that it happened.

I am highly impressed by the process that you have brought forward: the consultative forum will be set up to represent victims; the independent panel, which will be made up of experts in genealogy, data, archives and so on, will consult the consultative forum, which represents the victims; and then, they, in collaboration, will produce an evidence base for the public inquiry. It is so logical in its simplicity that you wonder why that has never been thought of before. I commend you for that. I commend you for the work that you have done up to this point. From knowing you personally, Phil, I am sure that you will not walk away at this stage and will still be involved and have a hand in it somewhere along the line. It is important that whatever happens in the future is victim-centred and that victims and survivors have an input into it and do not suffer in the way that victims and survivors in other abuse situations have suffered through the processes that have been established in both the North and South and in other parts of these islands.

There was no question there, but, if you want to respond, feel free.

Professor Scraton: Pat, I learned a long time ago never to forget any conversations that I have on serious issues. I remember that conversation. I think that everybody agrees that we cannot sustain a process that does not get to the heart of all the issues, whatever it takes and whatever funding or changes in legislation are necessary. It is the imperative of the moment. It can so easily be clouded and overtaken by other major issues of our time.

It has surprised me over the last few weeks how the media have misrepresented things. They have not done so purposefully, but they have never really tried to get inside and to understand the detail of what we have done here. It is unique and, at one level, simple, and we wonder why it has not been adopted previously in other situations. There are good reasons for it. I do not think that public inquiries are ever set up to be mindful of individuals' needs; public inquiries are set up to safeguard institutions. I have a lot of academic articles in which I demonstrate that. I am involved in the inquiry into inquiries, which asks why official inquiries fail. I think that they fail because they are often set up for the wrong reasons, whereas, in this case, we are stating that integrated approach from the outset. It starts with the experiences of the survivors and families, works through a process of evidence-gathering in which we get the maximum amount of evidence and dovetails into a statutory inquiry. That could change the nature of statutory public inquiries for ever. If that were adopted in every situation of serious fault, we would see different complexity in the public inquiries that we have.

Mr Sheehan: Thanks for that.

Mrs Dodds: Thank you to everyone for a comprehensive discussion. I have only one question, because so much has been covered such as the North/South dimension and so on. In the multilayered process that you have outlined, how confident are you that those who are responsible will be held to account?

Ms Mahon: That is a six million dollar question, Diane. It will be challenging. At the start of our process in January, Eamon Martin, Primate of All Ireland, went on TV and apologised to women and children in the Catholic Church. I understand, though, that, under canon law, every diocesan in the Catholic Church has their own agency and is not accountable to him as such. We will see how that works out. Some of the voluntary agencies and institutions — Barnardo's in particular — have contacted us to say, "Our files are available whenever someone is ready to read them", but we have not heard anything from any of the other Churches. They may be waiting to see where this goes.

I am not a betting woman, so, honestly, I would not like to say how much people will be held to account. I can say, however, that I am really heartened by TEO's commitment to "leave no stone unturned". I think that that process will be robust, as will the independent panel and, subsequently, the public inquiry. Through those processes, I am hopeful — that is the best word that I can use — that people will get justice and truth. I hope that that will happen.

Professor Scraton: It is a really important question, Diane, and it is probably the one on most people's minds. Accountability is crucial. Without giving a lecture on public accountability, I will say that there are two primary forms of accountability. First, there is personal, individual accountability: holding individuals to account. Many of them have died. They have passed, and that is it, but we can still name people and say that the processes that they were involved in were some of the worst examples of the treatment that happened in the institutions etc.

I am and always have been, in all my work, far more concerned about institutional accountability: holding institutions to account. It is easy for institutions, as you know well, to say, "Oh yes, it was just one bad apple", or whatever. I am interested in demonstrating, as we have done in the report, that it was a case not of one or two bad apples but of institutional wrongs. When women who are eight months pregnant are made to go on their hands and knees to scrub floors, that has not been decided by one person; that is an institutional process. I am really concerned about holding all the institutions to account, whatever their status and whether they are religious, government or quasi-government organisations.

Another thing to say that is vital — it is an undertaking that we made in addressing the issues with the families and survivors after we announced our report — is that accountability goes beyond the institutions. It goes to the medical and social work professions and to all those who served and serviced those organisations. We have been talking about cross-border transfer. That had to be facilitated. Who facilitated it? Under what directive? It was not just a religious or any other organisation moving people between their houses; it was cross-border and cross-jurisdictional. When a woman recounts what it was like to dress her newborn and have that newborn taken from her arms three or four days after birth and how that was the last that she saw of that newborn, we have to ask this: what process was in place that led to the acquisition of that child from her? It was not just the institution. I am not talking about whether the institutions profited from it, although that is an issue; my point is that it had to be facilitated by other agencies that enabled it to happen.

One of the things that we tend to focus on is institutional culpability. That can only exist with a lot of support, which then brings the state into account. It is not just about the religious institutions or the quasi-religious institutions that were involved; it is about the state institutions that facilitated the process. That goes across the board, and it is a really important issue. It is about the relationship between personal and institutional accountability and broadening the definition of institutions to encompass all the institutions that were involved directly or, in some cases, indirectly but purposefully.

Dr O'Rourke: I might add —

Mrs Dodds: Sorry, Maeve. Before I lose my train of thought, are you confident, Phil, that the process that you have outlined will encapsulate the full range of accountability? Many of us who have watched this are horrified that those things went on in our midst. It brings great shame on our society that this happened. I remember being told, as a young teacher, that some of the training schools or whatever you want to call them were models of how to do things. It brings great shame on the broad spectrum of institutions across the island of Ireland, not just here, that this happened and that people, at some level, ignored or justified it or did whatever. Accountability is key to enabling us to catch all that in the process as outlined.

Professor Scraton: The panel's fifth recommendation for the public inquiry's terms of reference is that it should:

"investigate issues of individual, institutional, organisational and state departmental/agent responsibility concerning human rights violations experienced"

in all the homes —

"and their pathways and practices (including the adoption system, related institutions such as 'baby homes' and private nursing homes, and cross-border and international transfers of children and women)."

You are absolutely correct that we should not miss those who facilitated that process.

Mrs Dodds: Thank you. Sorry, Maeve.

Dr O'Rourke: Thank you very much. Using human rights law is an extremely important tool of accountability in a truth-telling process like a public inquiry or an independent panel. The public inquiry will be statutorily barred from making any civil or criminal law findings, but that is not to say that it cannot apply human rights law, which offers a strict, clear and strong legal standard by which to measure the treatment of people. It is about systems, state responsibility and failures to protect; it is not about civil and criminal wrongdoing.

A supplemental research report that I wrote, which is published on the website of the truth recovery design panel, informed all our work. In the report, I go through, in detail, the case law concerning definitions and examples of forced disappearance, torture and ill treatment, arbitrary detention, forced labour and servitude and serious violations of the right to respect for private and family life. That law should be applied by the independent panel and the public inquiry, as we have said.

Finally, as we discussed in chapter 11, the inquiries are in addition to the existing democratic accountability mechanisms of the state. We have said that the independent panel must research and provide information to survivors and the public about their rights to criminal complaints, civil proceedings and inquests and that it must make recommendations for the better functioning of those systems. That is really important. Certainly in the Republic of Ireland, it has almost been the case that, when an inquiry like this starts up, everything else shuts down. The police sometimes tell people, "There is an inquiry. Go there". No, the gardaí and the PSNI must gather the archives as well. They must do their job, and coroners must do their job. People must be able to access compensation. Recommendation 5, which is on redress, is that people be enabled to access free legal advice and know their rights. As we recognise that these were gross and systematic human rights violations, the inquiry is in addition to and certainly not a substitute for existing accountability mechanisms. Unfortunately, it is sometimes seen as that.

The independent panel really needs to also focus on making recommendations on those existing democratic accountability mechanisms. In Australia, for example, that has been done by public inquiries really researching how well people are served by the existing accountability mechanisms. Of

course, in order for people to have been arbitrarily detained, they have to have been treated as people who did not have the ordinary rights that everybody else has. That is, obviously, terrible and needs to be rectified. They need access to ordinary systems too.

Mrs Dodds: Thank you. There are some really important pointers in that. What you say, Maeve, is absolutely true. The ordinary justice process should continue, but there is a tendency to lump it all in with one thing and try to not do it.

Thank you so much for your work and for a really interesting discussion. Redress and truth telling are important for the women who have been through terrible experiences and for the children and young people who have grown up without their birth parent. Accountability is also massively important, and I will really watch out for that as we progress.

Mr Delargy: The panel has answered most of my questions. I thank you all for coming on. You have given really thorough detail. It is a topic in which there are so many *[Inaudible owing to poor sound quality.]* Phil, I was really glad to hear what you said — Deirdre and Maeve followed up on it — about the National Archives and looking at it in an all-Ireland approach. That is really important. It will make sure that we are able to tackle the institutions that were responsible. I echo what Pat and Emma said. You have given us such a fantastic insight into the work that you are doing.

Professor Scraton: Thank you.

Ms Mahon: Thanks, Pádraig.

The Chairperson (Ms McLaughlin): I acknowledge how vital the report is and how it will change lives and, hopefully, the way that people do things. Thanks, Deirdre, Maeve and Phil, for your work. I hope that we in the Committee can do it justice. Hopefully, the Executive Office will do it more than justice. TEO must now proceed with urgency to fulfil the five key recommendations and the 84 sub-recommendations. There is no doubt that it is complex and complicated. We will look for a robust strategy, a project management framework for delivery, comprehensive engagement and victim-centred delivery on all of the recommendations.

Thank you once again for your time this afternoon.

Ms Mahon: Thank you, Chair and all the members, for listening to us and for your really comprehensive questions.

Professor Scraton: And from me, thank you.